IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13246 OF 2018

Xytel India Pvt. Ltd. .. Petitioner

v/s.

The Union of India & Ors. .. Respondents

Mr. Prakash Shah a/w Mr. Jas Sanghavi a/w Ms. Divyasha Mathur I/b PDS Legal for the petitioner
Mr. Pradeep S. Jetly a/w Mr. Devesh Tripathi for the respondents

CORAM : AKIL KURESHI &
M.S. SANKLECHA, J.J.

DATED : 29th NOVEMBER, 2018.

P.C.

1. At the request of the parties, the petition itself is taken up for final disposal at the stage of admission.

2. This petition under Article 226 of the Constitution of India challenges an order dated 11th October, 2018 passed by the Joint Director General of Foreign Trade, Pune under the Foreign Trade (Development and Regulation) Act, 1992 (Act). By the above impugned order, the petitioner's claim of having fulfilled its export obligation as required in terms of advance authorization dated 16th December, 2016 issued to it, was negatived. This on the ground that in case of exports to SEZ (special Economic Zone), the petitioner had failed to produce bill of export. Thus, redemption of advance authorization dated 16th December, 2016 was refused, resulting in

imposition of a penalty of Rs.1.96 crores upon the petitioner.

3. The grievance of the petitioner is that it is not disputed that there are contemporaneous documents to evidence supply of goods to SEZ, thus the absence of bill of export, cannot by itself lead to the conclusion that the export obligation is not fulfilled in respect of supplies made to SEZ. This more particularly so as the issue stands concluded in favour of the petitioner by the binding decisions of this Court in ***Larsen & Tubro Ltd. Vs. Union of India, 2018 (360) E.L.T. 289, Rochem Separation Systems India Pvt. Ltd. Vs. Union of India & Ors. 2018, TIOL 2060*** and ***Electromech Material Handling System India Pvt. Ltd. Vs. Union of India & Ors., 2018, TIOL 2150*** on identical issue. Thus, the respondents were obliged to follow the above binding decisions of this Court. More particularly when during the course of proceedings, the attention of respondent no.2 was invited to the binding decision of this Court in Larsen & Tubro Ltd. (supra) as found in the petitioner's reply to the show-cause notice.

4. Mr. Jetly, learned Counsel appearing for the respondent does not dispute the fact that the issue as such stands concluded by the above decisions of this Court. However, he submits that the respondent has challenged the order of this Court in Larsen & Tubro Ltd. (supra) before the Apex Court and the same is awaiting consideration for admission. It is also submitted that there is an alternative remedy of an appeal available under Section 15 of the Act. Therefore, the petitioner must avail of the same and this court should not entertain the petition.

5. We note that once it is undisputed that the issue stands concluded by the decision of this Court in Larsen and Tubro Ltd. (supra), Rochem Separation Systems India Pvt. Ltd. (supra) and Electromech Material Handling System India Pvt. Ltd. (supra), then in the absence of the same being reversed and / or stayed by the Hon'ble Supreme Court, is binding on all authorities within the State of Maharashtra. (see *East India Commercial Co. Ltd. Vs. Commissioner of Customs, 13 ELT 1342*). In the above circumstances, the question of relegating the petitioner to an alternative remedy of an appeal in these facts does not arise. It may be pointed out that the petitioner had applied to the Policy Relaxation Committee (PRC) as far back as on 18th March, 2018 seeking relaxation of the requirement of submission of bill of exports for redemption of Advance Authorization. However, no action was taken on the same and the respondent no.2 without waiting for the decision of the PRC has passed the impugned order. In fact, in all the above three decisions of this Court being relied upon by the petitioner, the challenge as to the decision of the PRC and the respondent were directed to issue export discharge certificate for redemption of Advance Authorization. The same direction would be appropriate in these facts also as the substance of the dispute is identical. Moreover, the PRC would have had to allow the application in view of the binding decisions of this Court.

6. Accordingly, following the decision of this Court in Larsen and Tubro Ltd. (supra), we set aside the impugned order dated 11th October, 2018. We further direct the respondent no.2 to issue an export application discharge certificate and allow the redemption of the advance authorization certificate dated 6th December, 2016 to the

petitioner.

7. Therefore, the petition is allowed in above terms. No order as to costs.

(M.S. SANKLECHA, J.) **(AKIL KURESHI, J.)**