

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :09-05-2018
CORAM
THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.No.12152 of 2018
and
WMP.Nos.14170 and 14171 of 2018

M/s.Adyar Gate Hotel Limited
132 T.T.K.Road,
Chennai-600 0018.
rep.by its Director,
Mr.Manav Goyal

..Petitioner

vs

1.Union of India,
Ministry of Commerce and Industry
Through its Secretary,
Udyog Bhawan,
New Delhi-110001

2.Director General of Foreign Trade
Ministry of Commerce and Industry
Government of India,
Udyog Bhawan,
New Delhi-110001

3.Zonal Additional Director of Foreign Trade
Shastri Bhawan Annexe
4th and 5th Floor, No.26,
Haddows Road,
Numgambakkam, Chennai-600 006.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the Impugned Demand Notice dated 17.04.2018 and bearing F.No.04/SFIS/Co-ord/AM-18, passed by the respondent No.3 and quash the same.

For Petitioner : Mr.AL.Somayaji, Senior Counsel
for Mr.Karthik Sundaram and Mr.Tushar
For Respondents: Mr.A.Murugan, Central Government
Standing Counsel

O R D E R

The relief sought for in this writ petition is to call for the records in respect of the Impugned Demand Notice dated 17.04.2018 and bearing F.No.04/SFIS/Co-ord/AM-18, passed by the 3rd respondent and quash the same.

2. Mr.AL.Somayaji, learned Senior Counsel, appearing on behalf of the writ petitioner, contended that the impugned order on the face of it, is not only illegal, but non est in law. The learned Senior Counsel further contended that the said impugned order dated 19.03.2018 has been issued by the Assistant Director General of Foreign Trade, without having any jurisdiction and competency. This apart, the order passed is self-evident that there is no application of mind on the part of the authority, who passed the order. Thirdly, absolutely there is no reason for arriving such a conclusion in respect of the fact that the petitioners are promoting ''Sheraton'' brand, which is identified as foreign brand in rendering hospitality service. This apart, by referring the judgment rendered by the Delhi High Court, the learned senior counsel is of an opinion that the Delhi High Court had considered the similar issue and set aside the clarification issued by the Director General. Thus, the case of the petitioner also to be considered on these lines.

3.It is further stated that the similar matters are pending before the Karnataka High Court and before the Delhi High Court. This being the factum of the case, in the present writ petition also, an interim order of stay to be granted.

4.This Court has gone through the order impugned passed by the respondents in proceedings dated 17.04.2018. As rightly contended by the learned Senior Counsel appearing on behalf of the writ petitioner, the order is non speaking and no reasons are assigned for arriving a conclusion in respect of the factual disputes. Further, there is no opportunity of hearing was provided to the writ petitioner before passing the impugned order, in spite of the request made by the petitioners in their representations.

5.This Court has gone through the earlier notice issued by the Assistant Director General of Foreign Trade in his proceedings dated 19.03.2018, the said proceedings reads as follows:

''The Policy interpretation Committee (PIC) in meeting no.10/AM12 held on 27.12.2011 regarding implementation of the terms ''All India Service Providers'' as per Para 3.12.2 of FTP 2009-14 for grant of duty credit scrip under Service from India Scheme (SFIS), decided that grant of SFIS benefits to companies representing brands not identified as Indian Brands would not be harmonious with the intent behind the scheme.

Vide the combined judgment dated 17.08.2015 passed in writ petition no.33 of 2015 (Shri Naman Hotels

Private Ltd Vs. UOI & Others), 3040 of 2014 (Jupiter Hotels(p) Ltd, Vs UOI & Others),1516 of 2015 (Johnson & Johnson Pvt Ltd Vs. UOI & Others),1755 of 2015 (M/s.Thyseenkrupp Industrial Solutions (India)Pvt Ltd (erstwhile known as UHDE India Pvt Ltd.,) Vs UOI & Others the division bench of two judges of the Honble High Court of Judicature at Bombay upheld the decision of PIC. Subsequently M/s.Thyseenkrupp Industrial Solutions (India) Pvt Ltd., filed SLP no.29742 before the Hon'ble Supreme Court challenging the decision of the Honble Mumbai High Court, which was dismissed by the Hon'ble Supreme Court.

In view of the above you are requested to refund the SFIS benefits availed, with interest, as per the list given as your brand is not identified as Indian Brand in line with the PIC decision and which upheld by the Hon'ble Mumbai High Court & Supreme Court. Your reply should within 15 days from the date of issue of this letter or you may meet Shri Varun Singh DDGFT on any working day between 2 PM-5 PM with prior appointment to place your side of defence.'

6.Though certain references are provided in the said proceedings dated 19.03.2018, it is not clear, whether those orders and instructions were considered and adjudicated before passing the final orders in proceedings dated 17.04.2018.

7.This apart, Section 15 of the Foreign Trade Development and Regulation Act, 1992, provides an Appeal provision and the same is extracted hereunder:

"Section 15. Appeal. - (1) Any person aggrieved by any decision or order made by the Adjudicating Authority under this Act may prefer an appeal,-

(a) where the decision or order has been made by the Director General, to the Central Government;

(b) where the decision or order has been made by an officer subordinate to the Director General, to the Director General or to any officer superior to the Adjudicating Authority authorised by the Director General to hear the appeal, within a period of forty-five days from the date on which the decision or order is served on such person:

Provided that the Appellate Authority may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the aforesaid period, allow such appeal to be preferred within a further period of thirty days:

Provided further that in the case of an appeal against a decision or order imposing a penalty or redemption charges, no such appeal shall be entertained unless the amount of the penalty or redemption charges has been deposited by the appellant:

Provided also-that, where the Appellate Authority is of opinion that the deposit to be made will cause undue hardship to the appellant, it may, at its discretion, dispense with such deposit either unconditionally or subject to such conditions as it may impose.

(2) The Appellate Authority may, after giving to the appellant a reasonable opportunity of being heard, if he so desires, and after making such further inquiries, if any, as it may consider necessary, make such orders as it thinks fit, confirming, modifying or reversing the decision or order appealed against, or may send back the case with such directions, as it may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary:

Provided that an order enhancing or imposing a penalty or redemption charges or confiscating[goods (including the goods connected with services or technology)] of a greater value shall not be made under this section unless the appellant has been given an opportunity of making a representation, and, if he so desires, of being heard in his defence.

(3)The order made in appeal by the Appellate Authority shall be final."

8. Section 15(1)(b) of the Act states that where the decision or order has been made by an Officer subordinate to the Director General, the appeal lies to the Director General or to any Officer superior to the Adjudicating Authority authorised by the Director General to hear the appeal, within a period of 45 days from the date on which the decision or order is served on such person. Thus, the provision stipulated under the Act is unambiguous that any decision or order made by the Adjudicating Authority under the Act is an appealable order either under Section 15(1)(b) or under Section 15(1)(a).

9. In the instant case, the impugned demand notice has been issued by the Assistant Director General of Foreign Trade for Zonal Additional Director General of Foreign Trade. The said authority is subordinate to the Director General of Foreign Trade. This being the factum of the case, the writ petitioner ought to have preferred an appeal under Section 15(1)(b) of the Act, to the Director General of Foreign Trade or to any Officer superior to the Adjudicating Authority authorised by the

Director General to hear the appeal.

10. However, the learned Senior Counsel, appearing on behalf of the writ petitioner, made a submission that in respect of the issues involved in the impugned demand notice, the Director General himself had earlier taken a decision, which runs contrary to the interest of the writ petitioner and therefore, no fruitful purpose would be served by preferring an appeal under Section 15 of the Act. This apart, the decision already taken by the Director General had been quashed by the Delhi High Court and therefore, preferring an appeal before the Director General will be an empty formality.

11. This Court is of an undoubted opinion that the institutions constituted under the Statutes must be allowed to exercise its powers in accord with the procedures contemplated under the Statutes or the Rules. In the event of intermittent interventions by the Constitutional Courts, this Court is afraid that we are not permitting such authorities to exercise their lawful powers by applying their mind. Thus, all the intermittent interventions and the writ petitions filed without exhausting the remedies prescribed under the Statutes need not be entertained in all circumstances in a routine manner. When certain serious legal lapses are noticed, then alone the writ proceedings need to be entertained. However, judicial review in this regard are certainly limited and the Courts must be cautious before entertaining such writ petitions filed without exhausting the remedies available under the provisions of the Statutes.

12. The writ petitioner on hand raised the contention that the Assistant Director General of Foreign Trade for Zonal Additional Director General of Foreign Trade, is not a competent authority for issuing the impugned demand notice. Further, it is contended that the Director General of Foreign Trade himself had already taken a decision in respect of the issues involved in the impugned demand notice. Such being the factum, no useful purpose would be served by once again approaching the third respondent for re-adjudication or the Director General of Foreign Trade for further adjudication. Even in case, the Director General of Foreign Trade has not considered the appeal to be filed by the writ petitioner on account of certain predetermined decisions already taken in respect of other cases, then also it is left open to the writ petitioner to approach the Central Government under Section 15(1)(a) of the Act. The very apprehension raised on behalf of the writ petitioner itself is untenable. Even the Courts are deciding the matters of similar issues that does not mean that on production of any new material or on account of the expression of new views and ideas, the earlier decisions are to be modified or reviewed, if necessary,

in the interest of justice. Law is an evolving procedure and the pragmatic approach by the Courts as well as by the authorities are certainly in growing nature. In a developing nation, the field of law is also being developed by new ideas and thoughts. Thus, such apprehension raised that the authority will confine himself only in respect of the previous decision, cannot be accepted nor shall form a basis for not exhausting the remedies provided under the Statute.

13. Thus, a decision taken by the Director General of Foreign Trade in earlier occasion will not preclude him from reconsidering the issues nor the writ petitioner shall come to the conclusion that the Director General of Foreign Trade is incompetent to re-adjudicate the issues in respect of the materials produced. Even the Courts are reviewing its own orders and reconsidering the new issues, if any, placed before the Courts, so also the authorities/quasi judicial authorities are also certainly competent to re-adjudicate or review their own decisions, if any new materials or otherwise, have been produced before them.

14. Thus, it is left open to the writ petitioner to file an appeal and to submit all the judgments now relied on before this Court, instructions or circulars issued by the Government of India or the provisions of the Statutes, if any, for the purpose of adjudicating their case in respect of the impugned demand notice on merits before the Director General of Foreign Trade/second respondent under Section 15(1)(b) of the Act.

15. However, this Court is of a strong opinion that all the points raised in this writ petition, including the point of jurisdiction and competency, are also to be adjudicated before the Appellate Authority and the powers of the Director General of Foreign Trade is of quasi judicial in nature under the Act. Thus, the writ petitioner is at liberty to raise all the legal and factual points in the appeal and adjudicate the appeal in the manner known to law. सत्यमेव जयते

16. This being the view of the Court, the writ petitioner is at liberty to submit an appeal before the Appellate Authority as per the limitation prescribed under the Act and in the event of receiving any such appeal from the writ petitioner, then the Appellate Authority is at liberty to consider all the grounds raised by the writ petitioner in the appeal and decide the matter by providing reasonable opportunity to the parties, if necessary, to provide personal hearing in the event of any such request is made and pass orders on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of the appeal.

17. With these directions, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(comp)

//True Copy//

Sub Assistant Registrar

kak/sk/Svn
To

- 1.The Secretary,
Union of India,
Ministry of Commerce and Industry
Udyog Bhawan,
New Delhi-110001
- 2.Director General of Foreign Trade
Ministry of Commerce and Industry
Government of India,
Udyog Bhawan,
New Delhi-110001
- 3.Zonal Additional Director of Foreign Trade
Shastri Bhawan Annexe
4th and 5th Floor, No.26,
Haddows Road,
Numgambakkam,
Chennai-600 006.

+1cc to Mr.KarthikSundaram, Advocate sR.No.33400
+1cc to Mr.A.Murugan, Advocate Sr.No.33571

KSSAR(CO)
sm:15.5.2018

W.P.No.12152 of 2018

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