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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 10193/2018 & C.M. No. 39734/2018**

SHASHI CABLES LTD.

..... Petitioner

Through Mr.Pramod Singh, Adv. with
Mr.Anmol Stephen, Adv.

versus

**DIRECTORATE GENERAL OF FOREIGN
TRADE (DGFT) AND ANR.**

..... Respondents

Through Mr.Akshay Makhija, CGSC with
Ms.Kriti Awasthi, Adv.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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26.09.2018

VIBHU BAKHRU, J

Introduction

1. The petitioner has filed the present petition, *inter alia*, impugning orders dated 23.02.2016, 06.09.2016 and 06.07.2017 (the impugned orders). By the impugned order dated 23.02.2016, the Policy Relaxation Committee (hereafter 'PRC') – constituted in terms of Paragraph 2.57(b) of the Foreign Trade Policy (FTP) – of the Directorate General of Foreign Trade (DGFT) rejected the petitioner's application for the second extension of validity of the Duty Free Import Authorisation on the ground that the petitioner was unable to establish a case of genuine hardship. By the impugned order dated 06.09.2016, the PRC rejected the petitioners application of review of the impugned decision dated 23.02.2016. And, by the impugned order dated

06.07.2017, the Director General of Foreign Trade (DGFT) rejected the petitioner's request after affording the petitioner a hearing.

Facts

2. On 7th February 2012, the petitioner had received a bulk deemed export order for supply of Aluminium Conductor Steel Reinforced (ACSR) for FOB value of US\$ 6.7 million, which was to be delivered within twenty one months.

3. The petitioner applied for Duty Free Import Authorization (DFIA) under the Foreign Trade Policy of 2009-14 (FTP) importing inputs duty free for meeting its export obligations. In terms of the FTP, the petitioner was granted such Authorization which was valid for a period of 18 months.

4. The petitioner completed its export obligations within the stipulated period of twenty one months (that is, by November 2013). The petitioner states that it completed the said export order by procuring raw material indigenously and not by procuring importing inputs, for which the Duty Free Import Authorization was sought.

5. The Duty Free Import Authorisation was valid till 31st March 2014. The petitioner sought extension of the validity of the Duty Free Import Authorization. On 20th May 2014, the DGFT acceded to the petitioner's request and extended the validity of the Duty Free Import Authorization by a further period of six months, that is, till 30th September 2014.

6. The petitioner did not complete its imports within the extended period as well. The petitioner, thereafter, filed an application dated 08.12.2015

seeking further extension of six months (second revalidation). In its application, the petitioner contended that the global market was too volatile to procure material with a fixed price schedule and, therefore, the petitioner was required to wait for the right time to purchase the material because of inherent limitation of availability of resources. The petitioner also contested the policy of granting only one revalidation. He contended that the same does not hold good once an exporter has fulfilled its export obligation prior to the import.

7. The petitioner's application was considered and rejected by the PRC at a meeting held on 23.02.2016, principally, on the ground that the reasons provided by the petitioner only integrated commercial risk and not genuine hardship.

8. Aggrieved by the aforesaid decision, the petitioner filed an application on 2nd June, 2016 seeking review of the said decision (dated 23.02.2016), *inter alia*, claiming that since the first extension was granted on 20th May, 2014, albeit, with the retrospective effect from 1st April, 2014, the petitioner, effectively, was provided only four months extension in real terms. The said application was also rejected by the PRC by an order dated 6th September, 2016. The PRC noted that the Duty Free Import Authorization has remained valid for a period of twenty-four months and the petitioner had imported only one item to the extent of 39%. The PRC was of the view that sufficient time had been provided to the petitioner for completing the balance imports and there was no cogent reason of not making imports within the stipulated time period (24 months). On the said basis, the PRC rejected the petitioner's application.

9. Thereafter, the petitioner applied to the DGFT and requested for a personal hearing to canvass its case for extension of the Duty Free Import Authorization. The DGFT considered the petitioner's case and after affording the petitioner an opportunity to be heard rejected its application for further extension of the Duty Free Import Authorisation.

10. Aggrieved by the aforesaid decisions, the petitioner has filed the present petition.

Reasons and Conclusion

11. At the outset, it will be relevant to refer to Paragraph 2.58 and 2.59 of the relevant FTP which are set out below:-

“2.58 Exemption from Policy/Procedures

DGFT may in public interest pass such orders or grant such exemption, relaxation or relief, as he may deem fit and proper, on grounds of genuine hardship and adverse impact on trade to any person or class or category of persons from any provision of FTP or any Procedures. While granting such exemption, DGFT may impose such conditions as he may deem fit after consulting the Committees as under:

Sl. No.	Description	Committee
(a)	Fixation/modification of product norms	Norms Committees
(b)	Nexus with Capital Goods (CG) and benefits under EPCG Schemes	EPCG Committee
(c)	All other issues	Policy Relaxation Committee

		(PRC)
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2.59 Personal Hearing by DGFT for Grievance Redressal

(a) Government is committed to easy and speedy redressal of grievances from Trade and Industry. Paragraph 2.58 of FTP provides for relaxation of Policy and Procedures on grounds of genuine hardship and adverse impact on trade. If an importer/exporter is aggrieved by any decision taken by Policy Relaxation Committee (PRC), or a decision/order by any authority in the Directorate General of Foreign Trade, a specific request for Personal Hearing (PH) along with the prescribed application fee as per Appendix-2K has to be made to DGFT. DGFT may consider request for relaxation after consulting concerned Norms Committee, EPCG Committee or Policy Relaxation Committee (PRC) and the decision conveyed in pursuance to the personal hearing shall be final and binding.

(b) The opportunity for Personal Hearing will not apply to a decision/order made in any proceeding, including an adjudication proceeding, whether at the original stage or at the appellate stage, under the relevant provisions of FT (D&R) Act, 1992, as amended from time to time.”

12. Paragraph 2.20 (a) of the Handbook of Procedures (HBP), 2015-2020 expressly provides for extension of import authorization for a period of six months. Paragraph 2.20 (a) is set out below:-

“2.20 (a) RA concerned may revalidate import authorisation on merits for six months from date of expiry of validity.”

13. It is apparent from the above that revalidation of import authorization is not as a matter of routine but has to be considered on merits. The

petitioner had sought for such validation and his request was accepted. It is not in dispute that in terms of the prevailing FTP and HBP, the petitioner is not entitled for extension of the validity of the term of the import authorization beyond the period of six months. It is in this context that the petitioner had applied for relaxation of the said condition in terms of Paragraph 2.58 of the FTP. As is apparent from the plain language of the Paragraph 2.58 of the FTP, the DGFT is empowered to grant exemption, relaxation or relief from the provisions of FTP or any procedure if he so deems fit. However, it is important to note that such exemption, relaxation or relief can be only granted if it is in public interest and on the grounds of genuine hardship and adverse impact on trade.

14. In the present case, the PRC had considered the petitioner's request and had concluded that the petitioner had not established a case of genuine hardship.

15. In view of the above, the only question that falls for consideration is whether, in the facts of the present case, the decision of the PRC is arbitrary or unreasonable and warrants interference in these proceedings.

16. At this stage, it will be relevant to bear in mind that the discretion to relax the conditions of the FTP/HBP rests with the PRC and not this Court. Therefore, the scope of judicial review of the decisions of the PRC is limited. Unless the petitioner is able to establish that the decision of the PRC was perverse, arbitrary, capricious or unreasonable or otherwise contrary to the statutory framework, no interference with such decision would be permissible.

17. A plain examination of the application dated 8th December, 2015 filed by the petitioner for seeking extension of validity of Duty Free Import Authorization indicates that the petitioner had sought extension on the ground that “*the global market was too volatile to procure material with a pre fixed schedule*”. The petitioner had contended that “*it was necessary to wait for the right time to book material*”. The petitioner had explained that “*there was inherent limitation on the availability of resources*”. The petitioner had further explained that small and medium enterprise “*cannot take advantage of favourable market situations and has to purchase quantities within the resources available with it*”.

18. It is, at once, clear that the petitioner had not set up a case of any unexpected hardship or any emergent situation that had precluded the petitioner from completing the imports. Essentially, the petitioner had sought extension of the Duty Free Import Authorization on the ground of commercial expediency. The PRC was of the view that since the petitioner had not set up a case of genuine hardship, it was not entitled to any relaxation in terms of Paragraph 2.58 of the FTP.

19. This Court is unable to accept that the said decision is arbitrary, unreasonable or otherwise falls foul of Article 14 of the Constitution of India.

20. The Division bench of this Court in ***NOCIL Ltd v. The Policy Relaxation Committee & Ors. : 2017 (165) DRJ 170*** had observed that “*the powers of the PRC, while making its recommendations are wide and are purely discretionary*”.

21. This Court finds no infirmity with the decision of the PRC exercising its discretion and rejecting the petitioner's request for further extension.

22. The question whether the petitioner had been afforded sufficient time to comply with the import obligations for completing the imports under the Duty Free Import Authorization, was also considered in detail by the DGFT. In its order dated 06.07.2017, the DGFT noted that the Duty Free Import Authorization was issued on 28th September, 2012 in terms of FTP. It was further noted that in terms of Paragraph 4.2.2 of the FTP, a Duty Free Import Authorization could be issued on post-export basis and pre-export basis. The exporters intending to complete their exports prior to making an application for authorization are required to complete the export and make an online application. They are, thereafter, entitled to a transferable import authorization which is valid for a period of twelve months from the date of issue. However, in cases where the exporter intends to import duty free goods prior to exports, the import authorization is issued for a period of twelve to eighteen months. In the present case, the petitioner had obtained import authorizations with a validity period of eighteen months, which was further extended for a period of six months. Thus, the petitioner had obtained an import authorization which remained valid for twenty-four months. The DGFT noted that, in this manner, the petitioner had secured a Duty Free Import Authorization which was valid for a period longer than those issued to other exporters.

23. The DGFT was also of the view that the petitioner had not provided any reasons which indicated any genuine hardship.

24. This Court finds no fault with the aforesaid decision. Even if the reasoning indicated by the DGFT is ignored, there is no denying the fact that the petitioner had not made out a case of genuine hardship.

25. The learned counsel appearing for the petitioner had further contended that although the term of the Duty Free Import Authorization had been extended by a period of six months with effect 1st April, 2014 to 30th September, 2014, the same was communicated to the petitioner only on 20th May, 2014 and, therefore, the petitioner could not import any goods against the Duty Free Import Authorisation during the period 1st April, 2014 to 20th May, 2014. Thus, it was contended that the term of Duty Free Import authorization ought to be extended at least for a period of forty days. This Court was inclined to remit the matter to DGFT to consider this limited request. However, it is seen that DGFT has provided cogent reasons for not extending the term of the Duty Free Import Authorization. He has also observed that the petitioner was provided sufficient time to complete the imports. This view also indicates the DGFT's conclusion in respect of the petitioner's request for a limited extension. And, as held above, the said view cannot be faulted.

26. The petition is, accordingly, dismissed. The pending application stands disposed of.

VIBHU BAKHRU, J

SEPTEMBER 26, 2018

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