

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8389 OF 2019**

Arun H. Sukhtankar	...	Petitioner
versus		
The Additional Director General of Foreign Trade and Ors.	...	Respondents

Mr. T.D.Deshmukh, for Petitioner.

**CORAM: AKIL KURESHI &
S.J. KATHAWALLA, JJ.**

DATE: 6th AUGUST, 2019

P.C.:

1. The Petitioner has challenged the order dated 28th March, 2019 passed by the Additional Director General of Foreign Trade, Government of India, Ministry of Commerce. By such order, the Authority was pleased to dismiss the Petitioner's Appeal against the adjudication order. The Adjudication order was passed levying penalty against the Company and its director for failing to fulfill the export obligation arising out of the authorization for import of goods without payment of custom duty. The Petitioner was the director of the Company at the relevant time. His Counsel however, submitted that the Petitioner had resigned from the directorship on a letter dated 13th August, 2002 and repeated this position, under a subsequent letter dated 24th August, 2004, the Petitioner was therefore, not liable of payment of any penalty. While dismissing the Petitioner's Appeal, the Additional Director General had held

and observed as under :

“After hearing the appellant and going through the Adjudication order/written submission in appeal as well as the documents available on record and after due application of mind, I find the following :

- 1. Adjudicating Authority had passed the order as it was found that the appellant had failed to submit export documents evidencing fulfillment of export obligation.*
- 2. The appellant has failed to submit documentary evidence to prove that he was not holding the post of director in the Company at the time of the said authorization.*
- 3. Therefore, I find that there is absolutely no justification to interfere with the order in Original dated 13th February, 2018 passed by the Adjudicating Authority.*

In view of the above findings and in the interest of natural justice, I in exercise of the powers vested in me under Section 15 of the Foreign Trade (Development and Regulation) Act, 1992, as amended, pass the following order :

ORDER

Appeal is dismissed and the Order-in-Original dated 9th March, 2018 passed by the Adjudicating Authority is Upheld.”

2. As per this order, thus, the Petitioner had failed to produce any documentary evidence to prove that he was not holding the post of the director of the said Company at the time of issuance of the authorization. The Petitioner's reliance on the letters dated 13th August, 2002 and 25th August, 2004 would be of no avail. A

copy of the letter dated 13th August, 2002 has produced at Annexure B (page 27 of the compilation). Though this letter carry the date of 13th August, 2002, the stamp of the Courier Company delivering such letter carries the date of 13th August, 2004. Thus, clearly the said letter, though dated 13th August, 2002 transmitted for service only in August, 2004. In the subsequent letter dated 25th August, 2004 (Annexure C, at page 28 of the compilation), there is a reference to the previous letter dated 13th August, 2002, under which the Petitioner had purportedly resigned as Managing Director of the Company. When we find that the previous letter dated 13th August, 2002 itself was never dispatched even if waiting, close to two years, its reliance on the letter dated 23th August, 2002 would be of no consequence.

3. The observations and conclusion of the Appellate Authority are factual in nature, wherein the facts found that the Petitioner was thus, Managing Director of the Company, when permission to import goods without payment of duty was granted on the condition of fulfilling of such export obligation. The Company admittedly failed to discharge such obligation. The Petitioner had therefore, exposed himself for the liability arising out such authorization for import of goods. The learned Counsel for the Petitioner stated that the Petitioner does not dispute the order of Appellate Authority on merits, but only disputes the liability of the Petitioner as the Director of the said Company. In the result, the Writ Petition is dismissed.

(S.J.KATHAWALLA, J.)

(AKIL KURESHI, J.)