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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1374 OF 2019

Balkrishna Industries Limited ..Petitioner
Vs.
The Union of India & ors. ..Respondents

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Mr. Prakash Shah I/b. PDS Legal for petitioner.
Mr. Pradeep Jetly, Senior Counsel a/w. Mr. A.R. Singh for respondents.

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CORAM : S.C. DHARMADHIKARI & M.S. KARNIK, JJ.

RESERVED ON : 8th FEBRUARY, 2019
PRONOUNCED ON : 15th MARCH, 2019

<u>JUDGMENT (PER M.S.KARNIK, J.)</u>:-

. Rule. Rule is made returnable forthwith by consent of the parties and heard finally.

2. By this Petition filed under Article 226 of the Constitution of India, the petitioner prays for appropriate directions to the respondents to forthwith issue duty credit scrip (authorization) in terms of paragraphs 3.14.4 and 3.14.5 of the Foreign Trade Policy for the balance amount of

Rs.6,59,65,508.03.

3. The facts of the case briefly stated are thus :-

The petitioner is a company incorporated under the provisions of the Companies Act, 1956. It is engaged in the manufacture and export of Pneumatic Tyres of Chapter 40 of First Schedule to the Central Excise Tariff Act, 1985. The refusal to issue duty credit scrip to the extent of Rs.6,59,65,508/- by invoking paragraph 3.14.5 (C)(i) of the Foreign Trade Policy 2009-2014 read with Notification No.43(RE-2009-14) dated 25/9/2013 is challenged in this Petition as being contrary to the binding judgment of this Court in the case of **JSW Steel Ltd. Vs. Union of India (2016 (334) E.L.T. 222 (Bom.)**.

4. Learned counsel for the petitioner invited our attention to various orders passed by this Court following the decision in **JSW Steel Ltd.** (*supra*) whereby similar applications filed by the petitioners therein are allowed in its entirety.

5. In the Petition it is stated that the petitioner is a

leading manufacturer and exporter of Off-Highway tyres in India. The petitioner is exporting more than 85% of its products to more than 120 countries including most developed countries like USA, Canada, Germany, France, Italy, UK, Russia, Australia, New Zealand, Japan, Korea, etc. and at the same time serving both Original Equipment Manufacturers (OEM) and the replacement market in India and across the globe. In this Petition the petitioner has narrated the prestige associated with the said company and details regarding its excellent export performance.

6. Vide Notification No.3 (RE-2013)/2009-2014 dated 18/4/2013, paragraph 3.14.5 was added in Chapter 3 of the Foreign Trade Policy 2009-14. The petitioner during the financial year 2013-2014, achieved Incremental Export Growth of FOB value of 28.13% compared to the financial year 2012-13 of 15.48% . According to the petitioner, they became entitled to duty credit scrip (authorization) to the extent of 2% of incremental growth of export of Rs.379,82,75,401.38 in terms of

IEIS Annual Scheme.

7. The petitioner has thereafter narrated the amendments in the Foreign Trade Policy from time to time viz. by Public Notifications dated 17th May, 2013, 25th September, 2013 and another Notification No.43 (RE-2013)/2009-14 of the same date viz. 25th September, 2013. For the sake of brevity we are not reproducing these Notifications as all these Notifications are considered in the case of **JSW Steel Ltd.** (*supra*) neither are we setting out the facts in detail as the present case is squarely covered by the case of **JSW Steel Ltd.** (*supra*). The said decision is followed by this Court in subsequent Petitions filed by the petitioners therein claiming similar relief.

8. In view of the Incremental Export Growth achieved by the petitioner and having realized the sale proceeds in convertible foreign exchange, vide online application dated 24th March, 2015, the petitioner claimed duty scrip for Rs.7,59,65,508.03 in the prescribed form ANF-3F. However, the EDI system, at that point of time, did not accept application for

issuance of scrips for value above Rs. 1 crore. Accordingly, the petitioner made online application for issuance of duty credit scrip for Rs.1 crore and also filed manual application dated 25/3/2015 to the Additional Director General of Foreign Trade, Mumbai – respondent No.3 herein in the prescribed form ANF 3F along with original documents. By a representation dated 7th July, 2015 followed by a letter dated 13th July, 2015, the petitioner again pointed out that the system did not allow the petitioner to file the claim for Rs.7.60 crores, as the system was accepting entitlement only for Rs.1 crore. It was pointed out that the petitioner filed physical claim documents for Rs.7.60 crores with DGFT on 25th March, 2015 and also shown its willingness to submit the documents as may be required by the DGFT.

9. Vide an authorization forwarding letter dated 4/9/2015, respondent No.3 issued two scrips, both dated 4/9/2015, under the Incremental Export Incentivisation Scheme ('IEIS' for short) issued by the Assistant Director General of

Foreign Trade, Mumbai, for an aggregate amount of Rs.1 crore (Rs.50 lakhs each) as against the claim of the petitioner of Rs.7,59,65,508.03. The respondents restricted to claim amount from Rs.7,59,65,508.03 to Rs.1,00,00,000/- without assigning any reason whatsoever.

10. By a letter dated 8th January, 2016 to the Joint Director General of Foreign Trade, Mumbai, the petitioner requested reconsideration of its case for issuance of the balance scrip amounting to Rs.6.60 crores at the earliest. By a letter dated 17th February, 2016, the petitioner brought to the notice of respondent No.3 various decisions of this Court which covers the issue and requested that its representation be considered favourably.

11. The petitioner by a letter dated 30th May, 2016, brought all these facts to the notice of Mr. Anup Wadhawan, the then incumbent Director General of Foreign Trade, New Delhi. The office of the respondent No.3 by a letter dated 17th November, 2016 informed the petitioner that the request for

issue of balance IEIS cannot be considered since the office has not received any communication regarding the same from DGFT Headquarters. The petitioner by its letter dated 26th April, 2018 addressed to Shri Dr. Ajay Sahai, the Director General & CEO of Federation of Indian Export Organization (FIEO), New Delhi, requested him to take up the matter with the concerned Ministry as the issue is already settled by this Court as well as other High Courts. As the respondents did not issue authorization for the balance amount of Rs.6,59,65,508/-, the petitioner has approached this Court contending that the impugned action of the respondents in restricting the duty credit scrip (authorization) under the IEIS for Rs.1 crore and the purported denial/refusal to issue duty credit scrip for the balance amount of Rs.6,59,65,508/- is arbitrary and unsustainable in law.

12. Learned counsel for the petitioner invited our attention to the order passed by this Court in **JSW Steel Ltd.** (*supra*). We find that the judgment in **JSW Steel Ltd.** (*supra*) to which one of us (S.C. Dharmadhikar, J) was a party squarely

covers the issue involved in the Petition.

13. This Court in Writ Petition No. 2548 of 2016 has even considered the Notification No.43 (RE-2013)/2009-14 and observed that the same would also be covered by the judgment of Division Bench of this Court in **JSW Steel Ltd.** (*supra*). Though Mr.Jetly opposed the Petition, we find that the judgment in **JSW Steel Ltd.** (*supra*) would also enure to the benefit of the present petitioner as the very same Notification No.43 was also the subject matter in Writ Petition No. 2548 of 2016. We therefore take a similar recourse.

14. The Rule is, accordingly, made absolute in terms of the judgment of Division Bench of this Court in **JSW Steel Ltd. vs. Union of India & ors.** (*supra*).

15. The Petition succeeds and we grant eight weeks time to the respondents to comply with the above directions.

(M.S. KARNIK, J.) **(S.C. DHARMADHIKARI, J.)**