

(This order stands corrected as per speaking to minutes order dated 18th September, 2019)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3034 OF 2019

Beico Industries Private Limited

...Petitioner

VS.

Union of India and Others

...Respondents

Mr. Prakash Shah a/w. Mr. Jas Sanghvi i/b.PDS Legal, for Petitioner
Mr. P.S. Jetly i/b. Mr. Tripathi, for the Respondents.

**CORAM : M.S. SANKLECHA &
M. S. SONAK, JJ.**

DATE : JUNE 13, 2019

P.C.:

. At the request of the parties, this Petition is taken up for final disposal at the stage of admission. This for the reason that it is an agreed position between the parties that the issue involved in this Petition stands concluded by the decision of this Court.

2. This Petition under Article 226 of the Constitution of India seeks the following reliefs:

(a) That the Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the Petitioner's case and after going into the validity and legality thereof be pleased to quash and set aside the impugned decision taken in the Minutes of 4th meeting of the EPCG Committee held on 29th August, 2018, inter alia o the EPCG License / Authorization No. 0330007517 dated 30th December, 2004 (Case No. 57; F.No. 01/36/218/149/AM-17/EPCG-I) in the case of the Petitioner.

(b) That the Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India ordering and directing the Respondents, by themselves or their subordinate servants and agents to:

(I) Forthwith issue Export Obligation Discharge Certificate and redeem the EPCG License/ Authorization No. 0330007517 dated 30th December, 2004, by accepting ARE-1 as proof of export under para 4.25 of the Handbook of Procedures 2009-2014;

(II) Remove the Petitioner's name from Denied Entity List;

(III) Permit the Petitioner to apply for fresh EPCG and/or Advance Authorizations and/or any other licenses or scrip under the Act and the rules framed thereunder.

3. The Petitioner's primary grievance is that EPCG (Export Promotion Capital Goods) Committee (in the office of Respondent No. 2 – The Director General of Foreign Trade) has by its Minutes dated 29th August, 2018 rejected the Petitioner's application for waiver of submission of bill of export to evidence the supplies made to SEZ (Special Economic Zone) as fulfillment of its export obligations. Consequent to the above, the Petitioner is unable to redeem its EPCG License dated 30th December, 2004. Further resulting in its name has put in the denial entry list and not being able to apply for the license or scrip under the Foreign Trade Policy. The EPCG Committee is empowered to grant

relaxation/requirements in terms of paragraph 2.5 of the Foreign Trade Policy 2009-2014 from the requirements of policy and handbook. Paragraph 2.5 of the Foreign Trade Policy 2009-14 reads as under:

DGFT may pass such orders or grant such relaxation or relief, as he may deem fit and proper, on grounds of genuine hardship and adverse impact on trade.

DGFT may, in public interest, exempt any person or class or category of persons from any provision of FTP or any procedure and may, while granting such exemption, impose such conditions as he may deem fit. Such request may be considered only after consulting Committees as under:

No.	Description	Committee
1	Fixation/ modification of product norms under all schemes.	Norms Committee
2	Nexus with Capital Goods (CG) and benefits under EPCG Schemes.	EPCG Committee
3	All other issues	Policy Relaxation Committee (PRC)

4. It is an agreed position between the parties that a similar issue had come up before this Court in the case of **Larsen & Toubro Limited vs. Union of India, 2018 (360) E.L.T. 289 (Bom.)** in respect of non grant of waiver of bill of exports to evidence supplies of goods to SEZ by the Policy Relaxation Committee (PRC) at Serial No. 3 of paragraph 2.5 quoted hereinabove. The only difference in facts is that in this case goods supplied to SEZ by the Petitioner has nexus to the import

of capital goods, while in the *Larsen & Toubro Limited* (supra), the goods supplied to SEZ had no nexus to import of capital goods by the Petitioner therein. However, it is undisputed that the above factual difference is of no consequence in grant of relaxation to submit bill of exports.

5. The decisions of this Court and the decision in *Larsen & Toubro Limited* (supra) was challenged by the State before the Apex Court by filing ***Special Leave Petition (Civil) Diary No(s). 2330/2018, (Union of India and Ors. vs. Larsen and Tourbo Limited Etc.)***. It was dismissed on 8th April, 2019. Thus, the decision of this Court in *Larsen & Toubro Limited* (supra) has attained finality.

6. Our Court has followed the decision of this Court in *Larsen & Toubro Limited* in the cases of ***Kirloskar Pneumatic Company Ltd. vs. Union of India, 2017-TIOL-2116*** and ***Rochem Separation Systems India Pvt. Ltd. vs. Union of India and Ors., 2018-TIOL- 2060*** and ***Electromech Material Handling System India Pvt. Ltd. vs. The Union of India and Ors., 2018-TIOL-2150***. In all the above, it has been held that non availability of Bill of Export would not lead to denial of

benefit of export made to SEZ, if the export to SEZ is evidenced from other contemporaneous documents.

7. In the above view, the impugned minutes dated 29th August, 2018 of the EPCG Committee to the extent it held the benefit of export to SEZ will not be available due to absence of bill of export is set aside. It is held that the absence bill of export by itself will not lead to denial of the supplies made to SEZ as exports.

8. Our attention is now invited to the deficiency letter dated 26th November, 2012 wherein the only objection of the Additional Director General of Foreign Trade in not accepting the supplies made to SEZ was Bill of Export and revised ANF-5B. We also note that the revized ANF-5B has been submitted by the Petitioner by its letter dated 20th December, 2016.

9. Therefore, the Petition is allowed in terms of prayer clause (a) and (b) above.

(M.S. SONAK, J.)

(M. S. SANKLECHA, J.)