IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

214

CWP No.14611 of 2018
Date of Decision : 17.10.2019

M/s D.D. International Pvt. Ltd.

.....Petitioner

Versus

Union of India and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Jagmohan Bansal, Advocate
for the petitioner.

Mr. Sanjay Vashisth, Sr. Panel Counsel
for the respondents..

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RAKESH KUMAR JAIN, J. (ORAL)

The petitioner has challenged the validity of the order dated 06.12.2017 passed by the Policy Relaxation Committee of the Directorate General of Foreign Trade in its meeting held on 06.12.2017.

In brief, the petitioner had applied through online application dated 21.06.2013 for grant of Duty Free Import Authorization (DFIA) under standard input-output norms (SION) SI No.67/38 for export item Basmati Rice (Packed in 225000 Kgs. LDPE/HDPE Granules Printed Bags) in terms of para 4.2.1 of the Foreign Trade Policy (FTP) 2009-2014 read with para 4.32 of the HBP (Hand Book of Procedure) Vol-I 2009-2014 with ANF (Aayat Niryat Form) 4H. The petitioner subsequently submitted a covering letter along with hard copy of application on 25.06.2013 with a request to issue Duty Free Import Authorization (DFIA) and also applied for post-export Duty Free Import Authorization by way of an offline application.

Accordingly, the petitioner was issued DFIA bearing No.1210008744 dated 25.06.2013 by the Joint DGFT, Amritsar as per FTP 2009-2014. The DFIA under FTP, 2009-14 was issued with non-transferable condition having 12 months validity to import and 18 months to fulfill export obligation.

According to the petitioner, the said license was issued for post-export DFIA. The petitioner exported rice upto December, 2014 and vide letter dated 30.09.2015 requested the respondent for extension of the limit of export as they had exported 43700 MT rice against required export of 15000 MT. The said request of the petitioner was declined on the ground that the license had already been expired. The petitioner by letter dated 11.08.2016 applied for transferability of DFIA as petitioner was not inclined to import goods but sell DFIA in open market. The petitioner made an application to the Joint DFGT, Amritsar for transferability of the license and transfer of license for a period of atleast three months from the date of issuance of transferability. The matter was put up before the Policy Relaxation Committee which held its meeting on 06.12.2017 to consider the request of the petitioner for grant of condonation of delay in applying for transferability of license and transfer of license for a period of atleast three months from the date of transferability and rejected the prayer with the following decision:-

> "The case was discussed again at length giving patient hearing to the representatives. It was noted that DFIA under FTP, 2009-2014 was issued initially with actual user condition having 12 months validity to import and 18 months to fulfill stipulated export obligation. In case exporter willing to avail facility of replenishment with transferability then he has to export first against the EDI File Number and submit documents including proof of realizing remittances. In such cases, RA issues transferable

> DFIA having 12 months validity to import the goods. The submissions made by the applicant are factually not correct. Since they had obtained DFIA with AU condition, import should have been made within the validity of the Authorization or export documents should have been submitted to RA within validity of the Authorization for getting transferability. Therefore, rejection letter issued by the RA was as per the provisions of the FTP.
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> Since, the applicant did not give any cogent reason of genuine hardship of not making imports within the validity period of DFIA, the committee did not accede to the request and reiterated its earlier decision."

Learned counsel for the petitioner has submitted that there are two types of DFIA. One is pre-export and the other is post-export. In the case of pre-export, the goods imported are used to manufacture the goods for the purpose of further export whereas in the case of post-export, the goods manufactured are exported at the first instance and the goods are imported to be used for manufacturing. It is submitted that as per para 4.29 of the Policy i.e. the Foreign Trade Policy for the year 2015-2020 in the matter of post-export, the period of import has to be calculated after the completion of the export and realisation of the proceeds. Paragraph 4.29 of the said policy is reproduced as under:-

> "Validity & Transferability of DFIA:
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> (i) Applicant shall file online application to Regional Authority concerned before starting export under DFIA.
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> (ii) Export shall be completed within 12 months from the date of online filing of application and generation of file number.
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> (iii) While doing export/supply, applicant shall indicate file number on the export documents viz. Shipping Bill/Airway Bill/Bill of Export/ARE-1/ARE-3, Central Excise certified Invoice.
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> (iv) After completion of exports and realization of proceeds, request for issuance of transferability Duty Free Import Authorisation may be concerned Regional Authority within a period of twelve months from the date of export or six months (or additional

time allowed by RBI for realization) from the date of realization of export proceeds, whichever is later.

(v) Applicant shall be allowed to file application beyond 24 months from the date of generation of file number as per paragraph 9.03 of Hand Book of Procedures.

(vi) Separate DFIA shall be issued for each SION and each port.

(vii) Exports under DFIA shall be made from a single port as mentioned in paragraph 4.37 of Hand-book of Procedures.

(viii) No Duty Free Import Authorisation shall be issued for an export produce where SION prescribes 'Actual User' condition for any input.

(ix) Regional Authority shall issue transferable DFIA with a validity of 12 months from the date of issue. No further revalidation shall be granted by Regional Authority."

It is further submitted that the decision has been taken by the Committee under a misconception that the case of the petitioner is pre-export and that is why the Committee has referred to actual user condition which comes into play only when the goods are imported first for the purpose of manufacture and then exported. Whereas the case of the petitioner is reverse i.e. post-export.

Counsel for the respondent has contested the petition on the basis of reply filed on behalf of respondents No.1 to 3 contending that the policy for the year 2015-2020 cannot be taken into consideration and also that the petitioner did not make any hue and cry during the subsistence of the validity period.

We have heard learned counsel for the parties and perused the record with their able assistance. The issue involved in this case as to whether PRC i.e. Policy Relaxation Committee has rightly considered the grievance of the petitioner on the anvil that the petitioner has prayed for post-export DFIA and not for pre-export DIFA. In our considered view, the Committee has referred to the actual user condition in its impugned decision which would apply in a case of pre-export DFIA and not in a case of post-export DFIA. Therefore, the whole complexion of the decision of the Committee has changed as it does not deal with the actual issue raised by the petitioner in its representation/application which was to be dealt with by the said Committee. In such circumstances, we are of the considered opinion that the Committee is required to look into this matter again with reference to the fact that the case of the petitioner is post-export DFIA and not pre-export DFIA.

Accordingly, the writ petition is hereby allowed, the impugned decision dated 26.12.2017 is set aside and the matter is remanded back to the Policy Relaxation Committee to decide the same afresh. The parties are directed to appear before the Committee on 04.11.2019.

(RAKESH KUMAR JAIN)
JUDGE

(ARUN KUMAR TYAGI)
JUDGE

17.10.2019
Kothiyal

Whether speaking/reasoned Yes/No
Whether reportable Yes/No