**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

124

**CWP No.30662 of 2019
Date of Decision : 23.10.2019**

Sanjay Gupta

.....Petitioner

Versus

Union of India and others

.....Respondents

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

Present : Ms. Kirti Sharma, Advocate for the petitioner.

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RAKESH KUMAR JAIN, J. (ORAL)

The petitioner is aggrieved against the order dated 16.09.2019 **(Annexure P-8 Colly)**, passed by the Deputy Director General of Foreign Trade under Section 13 of the Foreign Trade (Development and Regulation) Act, 1992 (for short 'the Act'), imposing the penalties upon respondent No.3 i.e. Company and its Directors.

In brief, the respondent No.3 availed three export licences bearing Nos.3030002797, 3030002796 and 3030003279 on 28.05.2007, 28.05.2007 and 16.10.2007 respectively which all were to expire on 27.05.2015. The case of the petitioner is that he was one of the Directors of the Company when the export licences were obtained but has resigned from the Directorship of the company on 19.04.2013. The account of the company become Non Performing Asset (NPA) on 13.03.2015 and on an application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short 'the Code'), the NCLT, Chandigarh admitted the petition and appointed the Interim Resolution Professional (IRP). The company was also ordered to be liquidated vide order dated 08.08.2018. While these proceedings were pending, the petitioner received a notice from the Director General of Foreign Trade dated 22.05.2019 in regard to all the aforesaid three licences on the pretext that the petitioner has not submitted the documentary evidence to have fulfilled all the export obligations of the authorization and was advised either to submit the documents of exports and get his case closed or to pay custom duty exemption availed on the imported goods plus interest within a stipulated time. The petitioner had challenged the said notice by way of a writ petition in this Court bearing CWP No.22631 of 2019 which was disposed of on 27.08.2019 with the following orders:-

> *"The petitioner may, if so advised, file the comprehensive reply to the notices. In case any such reply is filed to the impugned notices, within a period of one week from the date of receipt of certified copy of this order, the respondents shall decided the said reply by passing a speaking order and till then respondents shall not take any coercive steps against the petitioner."*

The petitioner thereafter filed the comprehensive reply to the show cause notice which has been rejected by the impugned order dated 16.09.2019 against which the present petition has been filed.

Though, counsel for the petitioner has vehemently argued that the Deputy Director General of Foreign Trade has committed an error in passing the impugned order under Section 13 of the Act, imposing the penalty in respect of three exports licences to the tune of ₹90,00,000/-, ₹10,00,000/- and ₹6,00,00,000/- because it has lost sight of the fact that the petitioner had already resigned from the Board of Directors on 19.04.2013 and the company is before the NCLT, Chandigarh in the insolvency proceedings/liquidation proceedings and the entire record of the company is with the official liquidator but at the same time, learned counsel for the petitioner has fairly and candidly informed the Court that there is a provision of appeal under Section 15 of the Act against such an order which has been passed under Section 13 of the Act. However, she has argued that the appeal would not be an appropriate to remedy because the petitioner has been unnecessarily involved in this litigation initiated after issuance of the show cause notice under Section 11 of the Act which culminated into the passing of impugned order under Section 13 of the Act. She has also relied upon a judgment of Hon'ble Supreme Court in the case of ***Whirlpool corporation Vs. Registrar of Trade Marks, Mumbai : 1999 (1) RCR (Civil) 220*** to contend that this Court has the jurisdiction under Article 226 of the Constitution of India to interfere in the such type of matters.

We have heard learned counsel for the petitioner and on perusal of record, are of the considered opinion that once the statutory remedy of appeal is provided to the petitioner against the order which is stated to be totally illegal the writ petition is not maintainable specially when there is no challenge to the fundamental rights of the petitioner or the petitioner has not been heard before passing the impugned order or the order passed by the respondent is without jurisdiction. In the present case, the petitioner has filed the reply but according to him the reply has not been taken into consideration in its totality by the respondent while passing the order but it is denied that he has the jurisdiction to pass the order under Section 13 of the Act. Thus, the order may be illegal but it can be challenged by way of appeal by any person who is aggrieved against it.

In view of the above, we do not find any reason to invoke the extra ordinary jurisdiction of this Court under Section 226 of the Constitution of India for the purpose of interfere in this petition. However, the petitioner may, if so advised, file the appeal as the time for filing the appeal is still available because as per Section 15 of the Act, time to file appeal is 45 days and the impugned order was passed on 16.09.2019. It is also provided in Section 15 that if sufficient cause is shown, the appellate Court may condone the delay also and in case it is shown that the impugned order is harsh and the petitioner/appellant is no in a position to pay the penalty, the appellate Court has all the jurisdiction to deal with such a request.

With these observations, the present petition is not found to be maintainable and thus, the same is hereby dismissed.

(RAKESH KUMAR JAIN)
JUDGE

(ARUN KUMAR TYAGI)
JUDGE

23.10.2019
Kothiyal

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