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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 1566/2019**

VIKAS ECOTECH LTD. ..... Petitioner

Through: Mr Priydarshi Manish and Mrs Anjali J. Manish, Advocates.

versus

UNION OF INDIA AND ORS. ..... Respondents

Through: Ms Shiva Lakshmi, CGSC with Mr Siddharth Singh, Advocates for R-1/UOI.

AND

3.

\+ **W.P.(C) 1979/2019**

VIKAS ECOTECH LTD. ..... Petitioner

Through: Mr Priydarshi Manish and Mrs Anjali J. Manish, Advocates.

versus

UNION OF INDIA AND ORS. ..... Respondents

Through: Mr Amit Mahajan, CGSC with Mr Apoorv Singhal, Mr Dhruv Pande and Ms Mallika Hiremath and Mr Kavindra Gill, GP for R-1, 2 and 5.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 18.03.2019

1. The petitioner has filed W.P. (C) 1566/2019, *inter alia*, praying that directions be issued to the respondents to decide the petitioner's application for redemption of advance authorization issued to the

petitioner.

2. The petitioner has filed W.P. (C) 1979/2019, *inter alia*, impugning the deficiency letters calling upon the petitioner to remove the deficiencies for the consideration of its application for revalidation of advance authorization.

3. The petitioner was issued advance authorization for import of products including Tin Ingot/Tin Alloy; Methyl Tin Mercaptide; Styreine Butadine Co-Polymer; Polysterene; Veeprene PG/TPR Compound/TPE Compund; Chlorinated Polythlene; Polymethyl Meta Acrylate; Styrolex; PVC Resin, and; Titanium Dioxide for using the same to manufacture certain products for export. The petitioner claims that it had fulfilled its export obligation in terms of the advance authorization and had applied to the Directorate General of Foreign Trade (DGFT) for issuance of the export obligation discharge certificate. It is the petitioner's grievance that the said application has not been decided as yet. The petitioner had also applied for renewal of the advance authorizations. However, the same were not accepted and deficiency letters were issued indicating that the Directorate of Revenue Intelligence (DRI) was investigating the petitioner's export and, therefore, the petitioner's request could not be acceded to.

4. The DRI had sent a letter dated 26.02.2018, requesting the DGFT not to finalise the Export Obligation Discharge Certificate (EODC) in respect of the advance licences issued to the petitioner, as investigation was pending against the petitioner. A letter to the similar effect was also issued by the DRI on 27.09.2018, informing the DGFT that the DRI was investigating the petitioner for allegedly availing of ineligible export

incentives. It was also clarified that the said investigation was not limited to the three licences where goods had been seized, but also covered other advance licences issued to the petitioner.

5. It is in the aforesaid context that this court had called upon the DRI to indicate a time frame within which the investigations could be completed. The learned counsel appearing for the DRI, after obtaining instructions, submits that no time frame can be indicated and that the DRI would complete the investigation within the statutory period as available under the Customs Act, 1962 (hereafter 'the Act'). He also referred to Section 28 Act, which concerns recovery of duty not levied, not paid or short levied or short paid. Sub-section (4) of Section 28 of the Act is relevant and reads as under:-

> **"28. Recovery of (Duties not levied or not paid or short-levied or short paid) or erroneously refunded.-**
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> XXXX XXXX XXXX XXXX
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> (4) Where any duty has not been [levied or not paid or has been short-levied or short-paid] or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-
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> (a) collusion; or
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> (b) any wilful mis-statement; or
>
> (c) suppression of facts,
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> by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been [59][so levied or not paid] or which has been so short-levied or short-paid or to

> whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice."

6. It is thus the DRI's contention that it would complete the investigation within a period of 5 years from the concerned exports.

7. Mr Mahajan and Ms Shiva Lakshmi, learned counsel appearing for the DGFT, referred to Rule 7 and Rule 10 of the Foreign Trade (Regulation) Rules 1993 (hereafter 'the Rules') and contended that the DGFT could refuse issuance/renewal of licence in certain circumstances.

8. Ms Shiva Laxmi, learned counsel appearing for the UOI, also refers to the conditions of the advance authorization which expressly makes it clear that the licensee/petitioner was obliged to follow the provisions of the Act and the Rules made thereunder.

9. Rule 7 and Rule 10 of the said Rules, read as under:-

> **"7. Refusal of licence**.-
> (1) The Director General or the licensing authority may for reasons to be recorded in writing, refuse to grant or renew a licence if -
> (a) the applicant has contravened any law relating to customs or foreign exchange;
> (b) the application for the licence does not substantially conform to any provision of these rules;
> (c) the application or any document used in support thereof contains any false or fraudulent or misleading statement;
> (d) it has been decided by the Central Government to canalise the export or import of goods and distribution thereof, as the case may be, through special or specialised agencies;

(e) any action against the applicant is for the time being pending under the Act or rules and Orders made thereunder;

(f) the applicant is or was a managing partner in a partnership firm, or is or was a Director of a private limited company, having controlling interest against which any action is for the time being pending under the Act or rules and Orders made thereunder;

(g) the applicant fails to pay any penalty imposed on him under the Act;

(h) the applicant has tampered with a licence;

(i) the applicant or any agent or employee of the applicant with his consent has been a party to any corrupt or fraudulent practice for the purposes of obtaining any other licence;

(j) the applicant is not eligible for a licence in accordance with any provision of the Policy;

(k) the applicant fails to produce any document called for by the Director General or the licensing authority;

(l) in the case of a licence for import, no foreign exchange is available for the purpose;

(m) the application has been signed by a person other than a person duly authorised by the applicant under the provisions of the Policy;

(n) the applicant has attempted to obtain or has obtained cash compensatory support, duty drawback, cash assistance benefits allowed to Registered Exporters or any other similar benefits from the Central Government or any agency authorised by the Central Government in relation to exports made by him on the basis of any false, fraudulent or misleading statement or any document which is false or fabricated or tampered with.

(2) The refusal of a licence under sub-rule (1) shall be without prejudice to any other action that may be taken against an applicant by the licensing authority under the Act.

XXXX XXXX XXXX XXXX

10. Cancellation of a licence.-
The Director General or the licensing authority may by an order in writing cancel any licence granted under these rules if -
(a) the licence has been obtained by fraud, suppression of facts or misrepresentation; or
(b) the licensee has committed a breach of any of the conditions of the licence; or
(c) the licensee has tampered with the licence in any manner; or
(d) the licensee has contravened any law relating to customs or foreign exchange or the rules and regulations relating thereto."

10. Although, it is stated that the investigation is underway, it is obvious from the contentions made on behalf of the DRI that the same are nowhere near completion. The petitioner on the other hand claims that it has not violated any provisions of the Foreign Trade (Development and Regulation) Act, 1992, or, any conditions of the advance authorization.

11. There is no provision in the Act or the Rules that would entitle the DGFT to withhold the petitioner's request indefinitely. Rule 7 of the Rules indicates that the DGFT may refuse to grant or renew the licences. However, the same has to be done by an order in writing and only for the reasons as stated therein.

12. Thus, the DGFT may refuse to grant or renew the licence if it is of the view that any of the reasons as set out in Rule 7(1) of the Rules are established. And, he is required to pass an order specifically stating the

said reason. In the present case, it is alleged that the petitioner has contravened the Act and thus the licence can be refused for the reasons as stated in Rule 7(1)(a) of the said Rules. Plainly, if the DGFT comes to the conclusion that the petitioner had violated or contravened any law relating to customs or foreign exchange, it would undoubtedly be entitled to refuse the grant of renewal of licences, albeit, by recording its reasons in writing. However, it cannot defer its decision indefinitely.

13. Similarly, in terms of Rule 10 of the Rules the DGFT may, by an order in writing, cancel the licence if the licensee has contravened any law relating to customs or foreign exchange or the rules and regulations relating thereto. In either case, it would be essential for the DFGT to arrive at a firm conclusion regarding violation of the conditions of licence, or, provisions of the Act or Rules made thereunder. It will certainly not be open for the DGFT to not pass any order or to not take a decision for an indefinite period.

14. The learned counsels for the parties have also not been able to show any provisions of law which required the DGFT to defer its proceedings merely on the ground that the DRI has initiated investigation against any particular entity.

15. In view of the above, this Court considers it apposite to direct the DGFT to take an informed decision within a period of six months from today. It is expected that the DRI would be able to provide the DGFT concrete material, if any, regarding any contravention, if found. As stated above, applications of the petitioner cannot be deferred indefinitely.

16. The deficiency letters calling upon the petitioner to cure the deficiency are clearly untenable, as the only reason provided in a

deficiency letter is that the DRI investigation is going on. It is certainly not in the hands of the petitioner alone to cure such deficiency. The impugned deficiency letters are, accordingly, set aside.

17. The petitions are disposed of in the aforesaid terms.

VIBHU BAKHRU, J

MARCH 18, 2019
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