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

\+ W.P.(C) 6387/2018

M/S N&R INDUSTRIES L L C ..... Petitioner

Through: Ms Jayashree Parihar and Mr Sameer Jain, Advocates.

versus

DIRECTOR GENERAL OF FOREIGN TRADE AND ORS ..... Respondents

Through: Mr Anurag Ahluwalia, CGSC with Mr Kartikeya Rastogi, Advocates for R-1, 2 & 4.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% **25.04.2019**

1. The petitioner impugns an order dated 11.12.2017 passed by respondent no.4 (Additional Director General of Foreign Trade), whereby the petitioner's appeal against the order dated 27.02.2015 passed by the Joint Director of Foreign Trade was rejected. The petitioner also impugns the said order dated 27.02.2015 (the said orders are, hereafter, referred to as "the impugned orders"). By the impugned orders, the concerned authorities have declined to take any punitive measures against respondent no.3 (M/s Lodha Offset Ltd.) in respect of the complaint made by the petitioner regarding supply of defective products.

2. The petitioner claims to be a company incorporated under the laws of New Jersey, United States of America. However, the Memo of Parties

indicates that the petition has been filed through a sole proprietor. Further, the petition is also supported by an affidavit of Sh. Harry Bhalla who claims to be a sole proprietor of the petitioner company.

3. The petitioner claims that it had placed an order for Filler Paper on respondent no.3. Pursuant to the said order, respondent no.3 had exported the said goods and had issued invoices in the month of April / May, 2012. The petitioner claims that it had received the consignment(s), however, the products were not of the requisite quality inasmuch as they had been inaccurately punched and, therefore, were could not be used. The petitioner claims that the said goods were not accepted by its purchasers and, therefore, the petitioner was constrained to store the same in a warehouse at its cost.

4. The petitioner states that respondent no.3 had initially accepted that the goods were defective and had also informed the petitioner that the delinquent employee, responsible for the defects, had been removed from services. In view of the said exchange of emails, the petitioner claims that there is no dispute that the goods supplied by respondent no. 3 were defective.

5. On 15.03.2013, the petitioner made a representation to the Deputy Director General Foreign Trade complaining against respondent no.3. Respondent no.3 filed its response to the said representation, and the matter was thereafter taken up by the Regional Sub-committee in Quality Complaint (hereafter 'RSCQC') at a meeting held on 12.11.2013 (Fifth meeting). It is stated that at the said meeting, the petitioner and respondent

no.3 agreed that a joint inspection of the consignments lying at the warehouse be conducted to ascertain the defects. However, subsequently, respondent no.3 sent a letter dated 01.02.2014 declining to carry out the joint inspection.

6. It is stated that the complaint was taken up again by RSCQC at its meeting (Sixth meeting) held on 27.03.2014. At that meeting, RSCQC recommended that action be taken against respondent no.3 for cancellation of their Import Export Code (IEC) under the Foreign Trade (Development and Regulation) Act, 1992 (hereafter 'FTD&R Act').

7. It is stated that thereafter, respondent no.3 sent a letter dated 28.09.2014 requesting that the matter be heard *de novo*. The said request was considered by RSCQC at a meeting held on 14.10.2014 (Seventh meeting). The minutes of the said meeting indicate that the Committee (RSCQC) was of the view that its decision taken on the Sixth meeting could not be reviewed. However, it observed that Joint DGFT was empowered to take an independent view in the matter.

8. Thereafter, the petitioner sent an email dated 24.12.2012 seeking information as to the status of the matter pending before the Joint DGFT. It is stated that since the petitioner did not receive any response to the said communication, it filed a writ petition – W.P.(C) No. 3151/2005 – on 23.03.2015, *inter alia*, praying that directions be issued to respondent no.1 (DGFT) to take action for cancellation of the IEC of respondent no.3.

9. In the initial stage of the said proceedings, an interim order was passed in favour of the petitioner. However, it was subsequently noticed that

a show cause notice under Section 8(b) of the FTD&R Act had been issued to respondent no.3 on 09.10.2014 and a hearing was held at the office of Joint DGFT on 19.12.2014. Thereafter, the Joint DGFT had decided not to take any action against respondent no.3. He had, by a letter dated 06.02.2015, observed that enough doubts had been raised in the matter and it may not be prudent to cancel/suspend the IEC of respondent no.3. The Joint DGFT was also of the view that a joint inspection by the concerned two parties (the petitioner and respondent no.3) was the only way forward, as was observed by RSCQC at its Fifth meeting. The said decision was communicated on 27.02.2015.

10. On 19.01.2016, the petitioner withdrew its writ petition (W.P.(C) 3151/2015) with liberty to file an appeal to challenge the decision of Joint DGFT dated 27.02.2015. Thereafter, on 15.02.2017, the petitioner filed an appeal under Section 15(1) of the FTD&R Act before the DGFT. The said appeal was considered and disposed of by an order dated 11.12.2017, which is impugned in the present petition.

Reasons and Conclusion

11. A plain reading of the impugned order indicates that the petitioner's appeal was dismissed, essentially, for two reasons. First, that the appeal was beyond the period as specified under Section 15(1) of the FTD & R Act; and second, that the same was not maintainable as no appeal was provided against an order declining to cancel the licence.

12. Section 15 of the FTD& R Act is relevant and reads as under:-

"**15. Appeal.** – (1) Any person aggrieved by any decision or order made by the Adjudicating Authority under this Act may prefer an appeal: –

(a) where the decision or order has been made by the Director General, to the Central Government;

(b) where the decision or order has been made by an officer subordinate to the Director General, to the Director General or to any officer superior to the Adjudicating Authority authorised by the Director General to hear the appeal,

within a period of forty-five days from the date on which the decision or order is served on such person:

Provided that the Appellate Authority may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the aforesaid period, allow such appeal to be preferred within a further period of thirty days:

Provided further that in the case of an appeal against a decision or order imposing a penalty or redemption charges, no such appeal shall be entertained unless the amount of penalty or redemption charges has been deposited by the appellant:

Provided also that, where the Appellate Authority is of opinion that the deposit to be made will cause undue hardship to the appellant, it may, at its discretion, dispense with such deposit either unconditionally or subject to such conditions as it may impose.

(2) The Appellate Authority may, after giving to the appellant a reasonable opportunity of being heard, if he so desires, and after making such further inquiries, if any, as it may consider necessary, make such orders as it thinks fit, confirming, modifying or reversing the decision or order appealed against, or may send back the case with such

directions, as it may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary:

Provided that an order enhancing or imposing a penalty or redemption charges or confiscating [the goods (including the goods connected with services or technology)] of a greater value shall not be made under this section unless the appellant has been given an opportunity of making a representation, and, if he so desires, of being heard in his defence.

(3) The order made in appeal by the Appellate Authority shall be final."

13. A plain reading of Section 15(1) of the FTD&R Act indicates that an appeal has to be filed within a period of fourty-five days from the date on which the decision or an order is served on the person aggrieved. In terms of the first proviso of Section 15(1), an appellate authority is empowered to entertain an appeal within a period of 30 days thereafter, if it is established that the appellant was prevented by sufficient cause from preferring the appeal within the initial period of fourty five days.

14. In the present case, the petitioner had preferred an appeal almost two years after the date of the impugned order passed by the Joint DGFT. Even if the period spent by the petitioner in pursuing its remedies before this Court is excluded, there is no credible explanation for the delay of over one year after the petitioner's writ petition was disposed of.

15. As noticed above, the petitioner had withdrawn the writ petition on 19.01.2016 with liberty to file an appeal. Thus, at this stage, the petitioner was fully aware of its remedies. However, the petitioner took no steps to

file an appeal till 15.02.2017. Even if the period spent by the petitioner in pursuing the writ petition is excluded, the appeal filed by the petitioner was after 360 days of the petitioner withdrawing the writ petition. Thus, concededly, there is a delay of over 315 days in filing the appeal and the petitioner has failed to establish that it was prevented by sufficient cause from filing the appeal within a stipulated time. Thus, the impugned order rejecting the petitioner's appeal on the ground that it is delayed, cannot be faulted.

16. In view of the above, it is not necessary to examine the contention whether the remedy of an appeal was available to the petitioner under Section 15 of the FTD& R Act.

17. The petition is, accordingly, dismissed.

VIBHU BAKHRU, J

APRIL 25, 2019
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