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

% *Date of Judgment: 17th July, 2019*

\+ W.P.(C) 13841/2018, C.M.Nos.54073/2018 & 8214/2019

M/S. JAGAT GEMS & JEWELLERY ..... Petitioner

Through: Mr.Ankul Chandra Pradhan, Sr.Adv. with Mr.P.C.Patnaik, Advts.

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Ms.Maninder Acharya, ASG with Mr.Ravi Prakash, CGSC, Mr.Farman Ali and Mr.Viplav Acharya, Advts.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J. ***(ORAL)***

1. Learned counsel appearing for the petitioner firm submits that the petitioner was awarded an Export House No.0006 on 22.01.2004 for achieving good export turnover. Consequently, plot bearing no.129G-34/35 measuring 1290 square meters was allotted to the petitioner firm on 21.10.2004. Keeping in view the high export turnover, the office of the Development Commissioner vide their letter dated 23.12.2005 awarded two star export house certificate to the petitioner based on their performance. The Development Commissioner further allotted plot no.129G-33 measuring 450 square meters to the petitioner on 02.06.2005 and also the office of Development Commissioner vide letter dated 27.09.2005 further extended the validity of LOA dated 10.03.2000 for next 5 years upto March, 2010. In the year 2016, the LOA of the petitioner was renewed twice for six months with the

condition that no request for transfer of assets and liabilities shall be entertained and the unit shall re-start its business within the stipulated period. By a communication dated 23.03.2016, the petitioner sought further time for starting operations on account of the building requiring maintenance. Further extension was granted. However, the petitioner did not start its business activities. The reasons for non-start of the business activity were on account of prolonged illness of one of its proprietors, slump in the gold business and rising cost of gold in the international market and allied reasons. The explanation report filed by the petitioner was not found acceptable resulting in passing of an order dated 23.03.2017, by which the Noida Export Processing Zone (NEPZ) did not renew the LOA issued to the petitioner and the possession was taken. An appeal filed against the aforesaid order stands rejected on 12.05.2017.

2. After some hearing in the matter, learned Senior Counsel appearing for the petitioner, on instructions, submits that since the order of the appellate authority is not a reasoned order, the petitioner would be satisfied if one opportunity of hearing is granted to the petitioner to explain his case and thereafter, the appellate authority be directed to pass a reasoned order. Learned senior counsel further submits that in case the request so made is acceptable, he would not press the prayer made with regard to the challenge to the vires of the section 8 (2)(g), 8(6) & 8(7) of the Special Economic Zones Act 2005 (SEZ Act) (28 of the 2005).

3. Learned Additional Solicitor General submits that this case has a chequered history as two writ petitions were filed earlier. In fact, the

second writ petition was not maintainable as the earlier writ petition was withdrawn without any liberty being sought.

4. Learned Senior Counsel appearing for the petitioner has strongly urged before us that the request so made may be taken as a mercy petition for the reason that the petitioner is passing through a very rough phase both on the financial side and his personal life. It is submitted that in the past he has had an excellent track record and the petitioner has earned substantial amount of Foreign Exchange for the nation.

5. Reliance is placed on export performance, which has been placed on record at page 63 of the paper book. The same is reproduced below:

Export Performances

Exports from the operational SEZs during the last twelve years and current year are as under:

Years	Exports (Value in Rs. Crores)	(Billion USD)	Growth over previous year (INR)
2005-2006	22,840	5.08	-
2006-2007	34,615	7.69	52%
2007-2008	66,638	14.81	93%
2008-2009	99,689	21.77	50%
2009-2010	2,20,711	46.54	121.40%
2010-2011	3,15,868	69.30	43.11%
2011-2012	3,64,478	76.01	15.39%
2012-2013	4,76,159	87.45	31%

64

2013-2014	4,94,077	81.67	4%
2014-2015	4,63,770	75.84	-6.13%
2015-2016	4,67,337	71.38	0.77%
2016-2017	5,23,637	78.07	12.05%
2017-2018	2,66,773 (as on 30.09.2017)	41.44	13.39%

6. Attention has also been drawn to the table, which we reproduce below, to show the export turnover,:

Statement Of LOA Issued, Projected Target Exports by Development Commissioner & in actual Exports made by the Petitioner:-

SL. No.	Details Letter of Approval issued (LOA) number ssued.	LOA projected Target Export (INR) Cr.	Actual Exports taken place by petitioner in (INR) Cr.	Projected NFE (INR) Cr.	NFE achieved In INR Cr.
1	1546/10-3-2000	47.47	237.37	5.98	5.40
2	8302/27-9-2005	47.47	230.12	5.98	9.43
3	4104/28-5/2010	98.00	NIL	1.65	NIL
	Total	**192.94 Cr.**	**467.49 Cr**	**13.62 Cr.**	**14.83 Cr.**

7. We have heard the learned counsel for the parties. The basic facts which we have noticed above are not in dispute. Keeping in view the past record, the learned Senior Counsel for the petitioner has strongly urged before us that the order passed by the Appellate Court is extremely harsh. It has also been contended that the order of the Appellate Court is devoid of any reason and has prayed for one opportunity to explain the stand of the petitioner before the appellate authority.

8. The relevant portion of the order passed by the Appellate Court is reproduced below:

> "The approval Committee deliberated on the matter in detail and came to the conclusion that the unit has been lying non-functional since 2010-11 and even after giving enough opportunities the unit has failed to re-start its activities. The Approval Committee did not find any merit in this case for further extension in the validity of LOA and accordingly did not agree for further extension of LOA."

9. In the case of ***State of Orissa and others Vs. Chandra Nandi***, *(2019) 4 SCC 357*, the Apex Court has held that every order passed by judicial, quasi-judicial, tribunal or any competent authority, which decides the disputes between the parties must be supported by a cogent reasoning. Para 10 of the judgment reads as under :

> "**10.** This Court has consistently laid down that every judicial or/and quasi-judicial order passed by the court/tribunal/authority concerned, which decides the *lis* between the parties, must be supported with the reasons in support of its conclusion. The parties to the *lis* and so also the appellate/revisionary court while examining the correctness of the order are entitled to know as to on which basis, a particular conclusion is arrived at in the order. In the absence of any discussion, the reasons and the findings on the submissions urged, it is not possible to know as to what led the court/tribunal/authority for reaching to such conclusion. (See *State of Maharashtra* v. *Vithal Rao Pritirao Chawan* [*State of Maharashtra* v. *Vithal Rao Pritirao Chawan*, (1981) 4 SCC 129 : 1981 SCC (Cri) 807] , *Jawahar Lal Singh* v. *Naresh Singh*[*Jawahar Lal Singh* v. *Naresh Singh*, (1987) 2 SCC 222 : 1987 SCC (Cri) 347] , *State of U.P.* v. *Battan* [*State of U.P.* v. *Battan*, (2001) 10 SCC 607 : 2003 SCC (Cri) 639] , *Raj Kishore Jha* v. *State of Bihar* [*Raj Kishore Jha* v. *State of Bihar*, (2003) 11 SCC 519 : 2004 SCC (Cri) 212] and *State of*

Orissa v. *Dhaniram Luhar* [*State of Orissa* v. *Dhaniram Luhar*, (2004) 5 SCC 568 : (2008) 2 SCC (Cri) 49] .)"

(emphasis added)

10. Reading of the order dated 12.05.2017 passed by the appellate authority would show that the said order is not a reasoned order. Applying the law laid down by the Apex Court to the facts of this case, we set aside the order of the Appellate Court.

11. Without expressing any opinion on the merits of the matter and having regard to the facts, we find that the order of the appellant court is not a reasoned order. Accordingly, we set aside the order of the appellate court. The appellate court will grant one opportunity of hearing to the petitioner. The petitioner would be entitled to produce such documents which they deem appropriate. The appellate authority will decide the matter in accordance with law within six weeks from the date of receipt of the order. It is agreed that till the final decision is rendered, the subject property shall not be put to auction and in case the matter is decided against the petitioner the protection shall continue for a period of three weeks to enable the petitioner to seek such remedy as available to it in accordance with law.

12. Accordingly, the writ petition and C.M.Nos.54073/2018 & 8214/2019 are disposed of with the above directions.

G.S. SISTANI, J

JYOTI SINGH, J

JULY 17, 2019/rb