OD 5 WPO 69 of 2021

IN THE HIGH COURT AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION

ORIGINAL SIDE

PRATEEK MINES AND MINERALS PVT LTD AND ANR
VERSUS
DEPUTY DIRECTOR GENERAL OF FOREIGN TRADE AND ORS

BEFORE:

The Hon'ble JUSTICE ARINDAM MUKHERJEE

Date: 15th February, 2021

APPEARANCE:
Mr. Abhrajit Mitra,Sr.Adv.
Mr. Agnivesh Sengupta,Adv.
Ms. Rajshree Kajaria,Adv.
Mr. Uttam Sharma,Adv.

Mr. Vipul Kundalia,Adv.
Ms. Sumitra Das,Adv.

The Court: Affidavits of service filed in Court today be kept on record.

The petitioner no. 1 held a EPCG licence dated 28th May, 2008 which stipulated for export of a certain value of goods within a time-frame. The petitioner no. 1 applied for fulfilling such exported obligation through its group companies after having been unable to fulfil such exported obligation by itself. Subsequently, the petitioner exported the entire value of goods through itself and its group companies. The Foreign Trade Development Officer, by a redemption letter dated 26th October, 2017 certified the fulfillment of the export obligation by the petitioner no. 1 and its group companies. The petitioner no. 1 was also allowed to take the corresponding benefit on fulfillment of such export obligation. All on a sudden, according to the petitioner, the Foreign Trade Development Officer on behalf of the Joint Director General, foreign trade issued a notice dated 19th August, 2019 intimating the petitioner no. 1 that during internal audit it has been observed that the export obligation against the EPCG licence of the petitioner No. 1 has been wrongly discharged with 100 per cent export by its group companies which was not permissible beyond 1st April, 2008.

The petitioner no. 1 was therefor requested to pay the customs duty/interest for the unfulfilled export obligation to the extent of 50 per cent. The petitioner no. 1 made a representation against such notice and, ultimately, on 1st January 2021 a show cause notice was issued under Sections 9 and 11 of Foreign Trade Development Act, 1992 read with Rule

7 of the Foreign Trade (Regulation) Act, 1993. The petitioners have, inter alia, challenged the notices dated 19th August, 2019 and 1st January, 2021 in the instant writ petition. The petitioners say that the said two notices are without jurisdiction and bad in law. This Court according to the petitioners in exercise of its writ jurisdiction should interfere with the said two notices being without jurisdiction. The petitioners say that they are apprehending coercive action as against the petitioner No. 1 in view of the two notices respectively dated 19th August, 2019 and 1st January, 2021. The petitioners in support of their contention that the notices are without jurisdiction have relied upon a judgment reported in 2010 (260) ELT 78 (Delhi). In the case of the Commissioners of Customs vs. AIR Travel Bureau Ltd. On behalf of the respondents the Foreign Trade Policy for the period of 1st September, 2004 to 31st March, 2009 which came into effect from 1st April, 2007 and the Foreign Trade Policy for the same period which came into effect from 1st Apri, 2008 has been referred to. By referring to clause 5.4 of the said two Foreign Trade Policies a distinction has been pointed out between the said two policies. It is further submitted by the respondents that the EPCG licence of the petitioner is governed by the Foreign Trade Policy which came into effect from 1st April, 2008 since the licence was dated 28th May, 2008. The respondents also submit that so far as to the fulfilment of export obligation by the group company in excess of

50 % is concerned the petitioner has violated the provision under the Foreign Trade Policy being effective from 1st April, 2008. This was detected subsequently and, as such, the notice dated 19th August, 2019 was initially issued and the show cause notice dated 1st January, 2021 was issued considering the reply from the petitioners. On behalf of the respondents it is further submitted that the question of taking coercive steps at this stage does not arise as the matter is only at the stage of issuance of the show cause notice which will culminate into an adjudication order only after the adjudication is complete. Till such time the question of taking any coercive step will not arise from the side of the respondents.

After hearing the parties and considering the materials on record, I find that the two notices respectively dated 19th August, 2019 and 1st january, 2021 have been issued by the authorised officer. The interference by Writ Court at the Show Cause stage can be made only on very limited grounds. The matter being in adjudication stage and that the two notices cannot be said to be without jurisdiction on face on record, I am not inclined to interfere with the said two notices at this stage. The adjudication pursuant to the Show Cause should be brought to a logical conclusion. The petitioner shall cooperate with the adjudicating authority in terms of the notice dated 1st January, 2021. The petitioners shall file their reply to the said show cause notice dated 1st January, 2021 within a period of three weeks from date, failing which the matter will be adjudciated without the petitioners' reply. The entire exercise of adjudication shall be completed by the concerned officer within a period of five weeks from date.

Since no adjudication has been made by the respondents as yet and that there has been no coercive steps taken since August 2019, it is expected that there shall be no coercive action from the respondents as against the petitioners till one week after the communication of the adjudication order in terms of the show cause notice dated 1st January, 2021. Nothing further remains to be adjudicated in this writ petition and the same is, accordingly, disposed of without any order as to costs.

Since I have not called for affidavits, the allegations contained in the petition are deemed to have not been admitted by the respondents.

(ARINDAM MUKHERJEE, J.)

sp3/S.Chandra