IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1248 OF 2021

R.R. Kabel Ltd. **... Petitioner**
vs.
The Union of India, through Secretary,
Ministry of Commerce and Industry & Ors. **... Respondents**

Mr.Prakash Shah i/b. PDS Legal, for the Petitioner.

Mr.Pradeep Jetly, Senior Advocate, for the Respondent - UOI.

C0RAM : DIPANKAR DATTA, CJ &
G. S. KULKARNI, J.

DATE : AUGUST 10, 2021

PC :

1. The petitioner is before the Court challenging rejection by the respondents of its application stated to be dated March 28, 2016 for issuance of a scrip under Incremental Export Incentivisation Scheme (**IEIS**) on the ground of the application being time-barred, as confirmed by a decision dated January 30, 2019 of the Policy Relaxation Committee (for short, '**PRC**') which also rejected petitioner's application to relax/condone delay in filing such application.

2. The Foreign Trade Policy 2009-14 deals with Reward/Incentive scheme in the DGFT. By a notification dated December 28, 2012, provisions relating to Incremental Export Incentivisation Scheme (**IEIS**) were introduced in Chapter III of the Foreign Trade Policy 2009-14 in terms of paragraph 3.14.4. The Scheme *inter alia* provided for the Entitlement, Eligibility Criteria etc. It also made special provisions covering exports to USA, Europe and some Asian countries.

3. By public notices issued in the year 2012-13, there were additions made in the Handbook of Procedures Volume I incorporating paragraphs 3.8.3, 3.8.3(b). As per paragraph 3.11.9 of such Handbook, application for grant of scrip under the IEIS was to be filed within a period of twelve months from the date of export or within six months from the date of realization or three months from the date of printing/release of shipping bill, whichever is later, in regard to the shipments for which claim was being filed.

4. It is the case of the petitioner that during the Financial Year 2012-13, it achieved Incremental Export Growth of FOB value of 285.62% compared to the earlier Financial Year 2011-12. It is the petitioner's contention that the petitioner had thus become entitled to duty credit scrip (authorization) to the extent of 2% of

incremental growth of export of Rs.55,65,229.59, in terms of the IEIS scheme.

5. The petitioner contends that considering its Incremental Export Growth and having realized the sale proceeds in convertible foreign exchange, it made an online-application dated March 28, 2016 for duty scrip for Rs.55,65,229.59, in the prescribed form ANF-3F. It is stated that File No.03/21/092/80008/AM17 and E-com No. 03 /95 /047 /58700 /0463/7071 was generated by the system. The petitioner has contended that, however, due to certain system issues, the application fee of Rs.1000/- could not be paid on the date of the application which came to be paid on April 7, 2016.

6. It appears that the On-Line application of the petitioner dated March 28, 2016 was not considered by the respondents as valid, for want of the prescribed fee being paid/submitted by the petitioner. Further, admittedly the prescribed fee was not paid/ remitted by the petitioner before March 31, 2016 being the cut-off date. The petitioner therefore, again made an attempt on April 7, 2016 to fill up an e-application. In paragraph 15 of the petition, the petitioner has averred that the petitioner had to "*key in all the details again*" in the E-com application alongwith the fees on April 7, 2016.

7. The petitioner's application dated April 07, 2016 was responded by the Foreign Trade Development Officer vide letter dated May 5, 2016, titled as "Deficiency Letter", informing the petitioner that the petitioner's application (for quarterly period January 1, 2012 to March 31, 2012 and January 1, 2013 to March 31, 2013) as digitally filed on April 7, 2016, was time barred.

8. The petitioner on May 7, 2016 addressed an e-mail to the respondents recording that it had in fact submitted its application under IEIS on March 28, 2016. The petitioner requested the respondents to acknowledge the same. There were further two reminders sent by the petitioner to the respondents dated May 10, 2016 and May 16, 2016.

9. Thereafter by a letter dated May 23, 2016, the petitioner stated that the e-com for IEIS although was generated by the petitioner on March 28, 2016, however, due to system error, the petitioner could not deposit the fee on March 28, 2016 and the fee was deposited on April 7, 2016. It was recorded that as the petitioner was required to submit the same to the RA, Mumbai, a letter from DGFT, New Delhi, confirming that e-com was generated on March 28, 2016, be issued.

10. The petitioner on February 8, 2017 addressed another letter to the respondents, explaining the reasons for delay in payment,

which was to the effect, that the fee could not be paid because of some communication/server issues. The petitioner stated that it had followed up with the DGFT office, New Delhi and despite which the petitioner's application came to be rejected on May 05, 2016.

11. The petitioner thereafter on November 21, 2017 made a representation to the Policy Relaxation Committee (for short, 'PRC') requesting that an IEIS licence be granted to the petitioner as the petitioner was unable to apply within time limit due to decline by the DGFT website. Another representation was addressed to the PRC by the petitioner on May 14, 2018.

12. The PRC granted a personal hearing to the petitioner and by its impugned decision dated January 30, 2019, considering the petitioner's case, found no merit in the petitioner's case and rejected the same.

13. Mr.Shah, learned counsel for the petitioner in assailing the impugned rejection of the petitioner's application would submit that the petitioner had acted diligently, as due to technical issues, a complete application along with the fees could not be submitted by the petitioner before the cut-off date which was March 31, 2016. Mr.Shah would not dispute that the fees actually came to be paid on April 07, 2016 after the cut-off date and on the same date the petitioner's application also came to be uploaded. It is hence his

submission that considering the fact that the petitioner had attempted to upload the application on March 28, 2016 and the only deficiency being the deficiency of payment of the prescribed fees, such deficiency should not be weighed against the petitioner to disqualify the petitioner of the benefit of the IEIS licence. He accordingly submits that the PRC ought to have held the petitioner eligible for issuance of a scrip under the IEIS.

14. On the other hand, Mr.Jetly, learned senior counsel appearing for the respondent-UOI submits that considering the fact that the cut-off date was March 31, 2016 and the petitioner having not uploaded its complete application alongwith fees within time, the petitioner’s application was rightly rejected being time-barred, which was informed to the petitioner by the respondent on May 05, 2016. It is also Mr. Jetly’s submission referring to Exhibit-C that in the declaration/undertaking in the e-form, the petitioner itself has declared its application to be dated April 16, 2016 although the fees were paid by him on April 07, 2016 to which Mr.Shah has no explanation. Mr.Jetly has submitted that conduct of the petitioner right from the inception is certainly negligent in pursuing its rights. He accordingly, prays that the petition deserves to be dismissed.

15. We have heard learned counsel for the parties. We have also perused the record.

16. At the outset, we observe that the petitioner did not comply with the time lines to submit a complete application which was to be filed by March 31, 2016. The petitioner was informed of the rejection of its application on May 05, 2016. The petitioner although attempted to give justification by its letters as noted by us, however the fact remains that the petitioner approached the PRC for the first time by an application dated November 21, 2017, which was almost 19 months after rejection of its application being deficient. The petitioner's approach of merely writing letters after the decision dated May 05, 2016 cannot be construed as an assertion of its rights in the manner known to law. It is further, quite glaring that although the PRC decided the petitioner's application on January 30, 2019, the petitioner has belatedly approached this Court by the present petition which was filed on February 07, 2020, which is almost one year after the PRC passed the impugned order. The explanation as set out in the petition is far from satisfactory so as to categorize the petitioner's conduct to be that of a diligent litigant not sleeping over its rights. We, therefore, find much substance in the submission of Mr.Jetly that the petitioner was not diligent in asserting its rights and pursuing its cause. The delay, in our opinion, is quite gross which would dis-entitle the petitioner to any equitable and discretionary reliefs. We are, accordingly, not inclined to exercise our jurisdiction under

Article 226 of the Constitution, to entertain this petition. It is, accordingly, rejected. No costs.

(G. S. KULKARNI, J.) **(CHIEF JUSTICE)**