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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-5305-2021
Date of decision:29.07.2021

Worldwide Tradelinks

...Petitioner

Versus

Commissioner of Customs (Exports) & another

...Respondents

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Deepak Gupta, Advocate for the petitioner.

Mr. Tajender Joshi, Advocate for respondent No.1.

Mr.Sunish Bindlish, Advocate and
Mr. Gagandeep Singh Malhotra, Advocate for respondent No.2.

(Through Video Conferencing)

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VIKAS BAHL, J.

The present petitioner has filed this writ petition seeking a writ of mandamus directing the respondents to register duty credit scrips issued under Merchandise Exports from India Scheme (MEIS) and Rebate of State and Center Taxes and Levies (ROSCTL) by the Directorate General of Foreign Trade, Ludhiana (hereinafter referred to as “DGFT”).

The petitioner’s case in the present writ petition is that, it is a Partnership firm and is engaged in the business of manufacture and export of knitted textile garments and is holding an Import Export Code Number No.3010012691 dated 25.11.2010, issued by the office of Director General of Foreign Trade, Ludhiana. It is further the case of the petitioner that the turnover of the petitioner both in respect to domestic and export is very substantial and for the said purpose, the petitioner has given a chart in Para 4 of the writ petition showing the domestic and export turnover of the petitioner for 2 years i.e. 2017-18 and 2018-19. The said chart is reproduced hereinbelow:-

Financial Year	***Domestic***	***Export (In Crore)***
2017-18	*44.75*	*79.64*
2018-19	*34.00*	*75.00*

That it is further the case of the petitioner that on 17.06.2019, staff of Directorate of Revenue Intelligence (hereinafter referred to as "DRI") searched the factory premises of the petitioner and during the course of search seized physical and electronic records lying in the factory premises and also recorded statement of the partners of the petitioner. It is further averred that the DRI summoned various input suppliers of the petitioner and the petitioner, to show its bona fide as per the direction of DRI, deposited a sum of Rs.50 lakhs towards any future liability. It is averred that the DRI directed different authorities including DGFT to withhold export incentives and the DGFT without applying its independent mind withheld export incentives of the petitioner and put the name of the petitioner in the Denied Entity List (DEL). It is further averred that no prior opportunity was granted to the petitioner. Although, the DRI permitted the petitioner to continue their export, however, the DGFT on account of the directions/alerts issued by DRI did not release export incentives. References have been made in the writ petition to the letters dated 14.10.2020 (Annexure P-5) and 22.10.2020 (Annexure P-6) in which it has been observed that the alert which have been issued against the Import Export Code (IEC) of the petitioner was active on date.

That the petitioner is stated to have filed CWP No.16214 of 2020 before this Court seeking directions to the Additional Director General of DGFT and DRI to release the admissible export incentives. Reliance has been placed upon the short affidavit filed by Deputy Director General of Foreign Trade (Annexure P-8) in the above-said writ petition. The short affidavit is reproduced hereinbelow:-

"CWP No.16214 of 2020

Worldwide Tradelinks …….Petitioner

Versus

Additional Director General, Directorate General of Foreign Trade and Another.

….Respondents

Short affidavit on behalf of respondents No.1 through Shri Navtej Singh S/o S. Iqbal Singh, ITS, Deputy Director General of Foreign Trade, age 40 years, office of Additional Director General of Foreign Trade, Green Field, Ludhiana.

I the above named deponent do hereby solemnly affirm and declare as under:

1. That the above-mentioned writ petition has been filed by the petitioner seeking issuance of writ of mandamus directing the respondents to release export incentives namely, MEIS, ROSL and ROSCTL.

2. That on 05.10.2020 the Hon'ble Court had issued Notice of Motion for 04.11.2020.

3. That after issuance of Notice of Motion, the respondents No.2 vide letter No.DRI/LDZU/856/INT-3/ENQ-1/19/PT.I/250 dated

22.10.2020 had informed the answering respondents that DRI has no objection if the export scrips, if any to the petitioner. Copy of letter dated 22.10.2020 is ***Annexure R-1/1****.*

4. That in pursuance to the letter dated 22.10.2020 the name of the petitioner was withdrawn from Denied Entity List (DEL) vide letter No.462131 dated 27.10.2020 and regarding the same the petitioner was duly informed through email dated 27.10.2020. Copy of letter dated 27.10.2020 and email dated 27.10.2020 is ***Annexure R-1/2****.*

5. That thereafter the scrips have already been issued to the petitioner on 28.10.2020.

6. That in view of the submissions made above the applications for the petitioner for MEIS, ROSL and ROSCTL have been accepted and the benefits stands transferred and therefore the prayer made by the petitioner in the writ petition has already been rendered infructuous.

Place: Ludhiana *Sd/-*

Dated: 11-11-2020 *Deponent"*

A perusal of the same would show that the name of the petitioner was withdrawn from the Denied Entity List (DEL) vide letter dated 27.10.2020 and the duty credit scrips had been issued to the petitioner on 28.10.2020. The application of the petitioner had been accepted and the benefits stood transferred to the petitioner. Reference has also been made to the letter dated 22.10.2020 issued by the DRI to Additional DGFT in which, it has been stated that in view of the judgments passed by this Court, the DRI has no objection if the DGFT decides to release duty export scrips to the petitioner.

That the above-said writ petition came up for hearing on 12.11.2020 and on the said date in light of the said affidavit, the petition was rendered infructuous and was disposed of accordingly.

Subsequent to the passing of the above-said order, the Deputy Director issued duty export scrips amounting to Rs.3,25,43,947/-. It is the grievance of the petitioner that in spite of having issued the above-said duty export scrips the respondents are not registering the duty credit scrips although several months have lapsed. It has been stated that the validity period of the duty credit scrips is limited and that no buyer would buy the same unless it is registered and there is sufficient validity period left. It is further stated that once the competent authority has issued the scrips, it is the duty of the respondents to register the same as a matter of procedure and that the custom authorities cannot sit over the decision of an independent authority.

That on 05.03.2021, this Court while issuing notice of motion in the present case, passed the following order:-

"*CWP-5305-2021*

Worldwide Tradelinks V/s Commissioner of Customs

Present: Mr. Naveen Bindal, Advocate,

for Mr. Deepak Gupta, Advocate,

for the petitioner.

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Learned counsel for the petitioner states that at the time of passing of order dated 12.11.2020 this Court in CWP No.16214 of 2020 (Annexure P-10), an affidavit dated 11.11.2020 was placed *on record by the Additional Director General, Directorate General of Foreign Trade, Green Field, Ludhiana. Thereafter, the duty credit script was issued to the petitioner under the Merchandise Exports from India Scheme (MEIS). Despite issuing this duty credit script, petitioner has not been registered by the respondents.*

Notice of motion.

At this stage, Mr. Tajender Joshi, Advocate, accepts notice on behalf of the respondents and seeks time to get instructions. Copy of this petition be supplied to learned counsel for the respondents during the course of the day. Adjourned to 16.03.2021."

Thereafter on 14.07.2021, DRI was impleaded as respondent No.2. The respondent No.2 has filed its written statement and has opposed the prayer made in the writ petition. It is the plea of the DRI in the written statement that the petitioner has committed a fraud and the investigation regarding the same is underway. It has been stated that the petitioner was indulging in over-valuation in their exports to avail undue export benefits and were also showing excessive purchase of raw-material in order to misuse the facility of IGST refund. It is however, admitted that the petitioner had deposited Rs.50 lakhs towards any duty liability that may arise during the course of investigation, but the case of the DRI was that it has been deposited voluntarily. It is stated that DRI was carrying out an extensive investigation and had requested various overseas offices for causing overseas enquiry. It has been stated that the DRI had requested the various authorities including the DGFT not to grant export incentives without NOC from the DRI. The DRI has admitted the issuance of letter dated 22.10.2020 communicating its no objection to custom authorities to release export incentives to the petitioner and the fact that the said letter was issued during the pendency of CWP No.16214 of 2020. An explanation has been sought to be given by the DRI as to why the said letter was issued and why subsequent to the passing of the order by this Court dated 12.11.2020 in the above said writ petition the DRI has resumed the investigation. It has been stated that the investigation had been suspended on account of two judgments passed by this Court and it was after the Hon'ble Supreme Court of India had granted *ad interim stay* on the operation of the said judgments, that the DRI had resumed the investigation. It is further averred that the investigation conducted so far has revealed fraudulent availment of export incentives/benefits of the petitioner to the tune of Rs.3.5 crores. It has been stated that the petitioner should not be permitted to take benefit of his own wrong. Alternatively, and without prejudice to the main contention, it has been stated that 50% of the scrips may be permitted to be registered and utilised subject to the terms and conditions laid down by this Court in other similar cases.

Learned counsel for the petitioner has vehemently argued that once the DRI had issued letter dated 22.10.2020 and on the said letter, the affidavit dated 11.11.2020 was also submitted by the DGFT in the earlier round of litigation and the said writ petition was disposed of in view of the said affidavit and the scrips in question had been issued in pursuance thereof, it did not lie in the mouth of the DRI or the custom authorities to oppose the registration of the said scrips. It has further been argued that the act of the authorities would in fact amount to over-reaching the orders passed by this

Court and back-tracking from the affidavit submitted before this Court in the earlier round of litigation and therefore, would be contemptuous. It is also stated that till date no show cause notice has been issued to the petitioner so as to call for cancellation of the scrips and as per settled law, once the issuing authority has issued the scrip, then it was mandatory for the registering authority to have registered the same. Reliance in this regard has been placed upon the judgment of the Hon'ble Supreme Court of India titled as **Titan Medical Systems Pvt. Ltd. V. Collector of Customs, (2003) 9 SCC 133.** It has further been argued that the investigation has been pending since 2019 and no statement has been made as to when the same is going to end and thus, the non-registration of the duty credit scrips would cause great financial loss to the petitioner.

On the other hand, learned counsel for the respondents has also vehemently argued that the present case is a case in which the respondents has indulged in over-valuation in their exports and has shown excessive purchase to misuse the facility of IGST refund. It has further been argued that the petitioner in fact is not even cooperating with the investigation. Learned counsel for the respondents has tried to explain the resumption of the investigation by relying upon the stay order passed by Hon'ble Supreme Court of India which had been granted against the judgments passed by this Court on account of which the investigation had been suspended. In the alternate, by placing reliance upon two orders of this Court, it has been argued that only 50% of the scrips may be permitted to be registered and utilised subject to the terms and conditions laid by this Court in similar matters.

We have considered the submissions made by both the counsels and have perused the record.

It is the admitted case of the parties that after the DRI had searched the factory premises of the petitioner on 17.06.2019 and had issued an alert and had also directed the DGFT and the other authorities not to grant/release the export benefits to the petitioner, the petitioner had approached this Court by filing CWP No.16214 of 2020. It is also admitted between the parties that during the said proceedings a letter was issued by the DRI to the Additional DGFT granting its no objection to the DGFT for releasing the export scrips. The DGFT inturn had submitted an affidavit in the said proceedings clearly stating that the petitioner's name was withdrawn from the Denied Entity List (DEL) and that the scrips have already been issued to the petitioner on 28.10.2020. They had further stated that the benefits already stand transferred to the petitioner. On the basis of the said affidavit, the earlier writ petition had been rendered infructuous. The respondents did not choose to file application for review/recalling of the said order by explaining the facts, which are now sought to be explained when the petitioner has filed the present writ petition. In our considered view, the said approach of the respondents-authorities is not in accordance with law, inasmuch as, in case on the basis of certain factors, the respondents had the understanding that they could have still denied the relief to the petitioner, then they should have moved an application in the first writ petition detailing all the facts. However, the respondents-authorities have chosen to withdraw the benefit which, at one stage, had been conceded to by them in the earlier writ petition. The said proceedings are binding on the petitioner as well as the respondents and thus, once the respondents-authorities had chosen to issue the scrips then the non-registering of the same cannot be justified. The respondents cannot be permitted to back-track from the affidavit dated 11.11.2020 filed in the earlier proceedings. Moreover, admittedly, till date no show cause notice has been issued by the proper officer nor any proceeding under the Act is pending against the petitioner. The investigation by the DRI although is pending and continuing but there is no indication when the same would finally culminate. Moreover, the respondents-authorities have sufficient power to proceed against the petitioner, if any amount is found due against them, even after the registration of the duty credit scrips. The turnover of the petitioner is substantial as is apparent from the chart reproduced hereinabove and the chart has not been denied by the respondent-authorities. The Petitioner cannot be made to wait endlessly for deriving benefit of the scrips issued to him. Thus, keeping in view the above-said facts, we are inclined to accept the prayer of the petitioner subject to conditions. This Court had put to the learned counsel for the petitioner as to how much amount the petitioner is ready to deposit in addition to the amount of Rs.50 lakhs already deposited, in order to protect the interest of the Revenue. Learned counsel for the petitioner has very fairly stated that the petitioner is ready to deposit an amount of Rs.1 crore within a period of 30 days from today. The duty credit scrips issued in the present case are for a value of Rs.3,25,43,947/- and since the petitioner has already deposited Rs.50 lakhs, thus, we find the offer of further deposit of Rs.1 crore to be very just and fair, in the facts and circumstances of the present case. The orders relied upon by the learned counsel for the respondents were passed on the basis of consensus. However, in the present case no such consensus has been reached. Thus, we deem it appropriate to dispose of this writ petition by passing the following directions:-

i. The petitioner is directed to pay an amount of Rs.1 crore within a period of 30 days from today. The said amount would be over and above the amount of Rs.50 lakhs, which the petitioner has already paid.

ii. The petitioner is also directed to provide security for the balance amount of the scrips i.e. Rs.1,75,43,947/-, by furnishing personal surety duly supported by personal guarantees of two other persons within a period of 1 month from today.

iii. The respondents-authorities are directed to register the duty credit scrips in accordance with law, within a period of 15 days from the date the direction under (i) and (ii) herein above are complied with by the petitioner.

Since the main case is disposed of, the pending Civil Miscellaneous Application(s), if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

(VIKAS BAHL)
JUDGE

29/7/2021
Jitesh (JTS)

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No