

30.09.2022
Ct. 5
D/L 14
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WPA 22176 of 2022

Soubhik Exports Limited

-Vs-

Union of India & Ors.

Mr. Jaydip Kar,
Mr. Sagar Bandopadhyay,
Ms. Soma Kar Ghosh,
Mr. Arabinda Pathak

... for the petitioner

Mr. Amit Chakraborty,
Mr. Madhu Jana

... for the Union of India

The grievance of the writ petitioner, who is an exporter of wheat, arises out of the inaction on the part of the respondent nos. 2 and 4 being Director General of Foreign Trade and the Additional Director General of Foreign Trade, Kolkata respectively.

The petitioner made the requisite applications in terms of two Notifications of the Department of Commerce, DGFT on 13th May, 2022 and 14th May, 2022. By the said Notifications, the export of 'Durum wheat' and other wheat was prohibited under a revised policy of the DGFT. However, as a transitional arrangement, export of such products was allowed in case of shipments where irrevocable letter of credit was

issued on or before the date of the Notifications and subject to other conditions. The transitional arrangement under which export was to be allowed was reiterated in the later Notification/Trade Notice of 14th May, 2022. It further provided that exports will be allowed subject to conditions granted by the Government of India to other countries to meet their food security needs. The irrevocable letters of credit were provided in Clause 3 of the later Notice and stipulated that such NOCs should have opened on or before 13th May, 2022.

The admitted facts are that the petitioner provided for 19 irrevocable NOCs as per the two notifications and registered the same within the stipulated period of time. The respondent authorities, however, failed to give formal approval to the petitioner in terms of the application and the satisfaction of the conditions under the two Notifications from 30th May, 2022-30th September, 2022, which is today.

This is despite the fact that the respondents uploaded the list on their website on 6th September, 2022 indicating that the petitioner was granted five approvals and about eight applications were reflected as being in process. Significantly, even the five approved applications have not been physically handed over to the petitioner till date. The urgency in the matter arises out of an approval letter/registration certificate for

export, which provides that the date of expiry of the letters of credit is 30th September, 2022, which is today.

Although learned counsel appearing for the respondents authorities submits that the respondents have already constituted a Three-Member Expert Committee for scrutinizing the applications of the petitioner and have already granted approval for certain quantity of wheat sought to be exported, the contention is based on submissions and admittedly, no such formal communication has been made to the petitioner.

The facts show that the petitioner has suffered prejudice in terms of the 19 NOCs having expired sometime in September, 2022 where at least three NOCs have already been cancelled by the importers. The quality of products for export may have already deteriorated in the interregnum. It is found that the respondents have not acted in terms of their own Notifications for granting approval to the petitioner despite further communication indicating that the validity of the NOCs would be till 30th September, 2022.

Hence, the petitioner is entitled to the relief prayed for.

WPA 22176 of 2022 is disposed of with a direction on the respondent Nos. 2 and 4 to consider and dispose of the representation made by the petitioner on 6th September, 2022 within seven days from the date of communication of this order but within an outer limit of

10th October, 2022. The respondents shall extend the validity period indicated in the approval letter/registration certificate for export until 31st October, 2022. Since all 19 NOCs have already expired, the respondents shall also accept fresh NOCs furnished by the petitioner for consideration of the applications.

Parties shall act on the website copy of this order.

(Moushumi Bhattacharya, J.)