OD-14

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APO/141/2018
With
WPO/1714/2006
IA NO.GA/1/2016 (Old No.GA/1648/2016)

VERSATILE WIRES LTD. & ANR.
VS.
DIRECTOR GENERAL OF FOREIGN TRADE & ORS.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA
Date : September 19, 2022.

Appearance:
Mr. J.P. Khaitan, Sr. Adv.
Mr. Agnibesh Sengupta, Adv.
Mr. Uttam Sharma, Adv.
... for the appellant.

Mr. Dibashis Basu, Adv.
Mr. Arun Bandyopadhyay, Adv.
... for the DGFT/UOI..

Mr. Kaushik Dey, Adv.
...for the DRI.

Mr. Bhaskar Prosad Banerjee, Adv.
Mr. Abhradip Maity, Adv.
...for the Customs Authority.

The Court :- This intra-Court appeal by the writ petitioner is directed against the order dated 12th May, 2016 in WP No.1714 of 2006. The said writ petition was filed by the appellant praying for an issuance of a writ of declaration that the appellant is entitled to extension of the export obligation period in respect of its licence dated 2nd January, 1996 in accordance with paragraph 5.5.1 of the Export and Import Policy, 2002-07 and subsequent policies and the Department of Commerce & Revenue, Government of India are bound to allow such extension. The appellant also sought for issuance of a writ of mandamous to cancel/rescind the communication received by them from the Director General of Foreign Trade (DGFT) dated 28th September, 2006 and the notices dated 29th September, 2006 and 30th October, 2006 and for consequential direction to allow extension of export obligation period in respect of the said licence granted to the appellant.

The learned Single Bench by the impugned order had disposed of the writ petition by directing that the appellant should deposit a cash security of Rs.38,18,206/- with the authorities as security for the subject licence.

Aggrieved by the such order, the appellant is before us by way of this appeal.

We have heard Mr. J.P. Khaitan, learned senior Counsel appearing for the appellant and Mr. Dibashis Basu, learned Counsel for the DGFT, Mr. Kaushik Dey, learned Counsel for the DRI and Mr. Bashkar Prosad Banerjee, learned Counsel for the Customs authority.

The appellant was granted a licence to import goods with a condition that the products manufactured by the appellant should be exported in terms of the licence granted by the DGFT. There was delay in compliance with export obligation not for the entire quantity but for a portion of the quantity as mentioned in the licence. The appellant ran into financial difficulty and the matter was referred to the BIFR which had framed a scheme for rehabilitation. Before the BIFR, the DGFT as well as the Customs Department were parties. Ultimately, the scheme was settled and the appellant was put in the path of recovery. In the meantime, the Customs authorities on account of not furnishing export obligation discharge certificate initiated proceedings for recovery of the duty save on account of the licence granted to the appellant by the DGFT. The proceedings culminated in the order of adjudication and the matter is now pending before the learned Tribunal and the appellant has effected the pre-deposit. Consequently, the demand made in the order of adjudication should be construed to have been stayed during the pendency of the appeal before the learned Tribunal. When this appeal was heard on the earlier occasion, the DGFT was directed to file a report as to what is the stage of the request made by the appellant for grant of the export obligation discharge certificate.

Learned standing Counsel for the DGFT has produced a written communication received from the Deputy Director General of Foreign Trade, Kolkata dated 12th September, 2022 which is to the following effect :

" GOVERNMENT OF INDIA
MINISTRY OF COMMERCE & INDUSTRY
O/o ADDITIONAL DIRECTOR GENERAL OF FOREIGN TRADE
4, ESPLANADE EAST : : KOLKATA- 700069

FILE No: 01/36/021/00330/AM96 ***DATE: 12.09.2022***

APO 141 2018 Versatile Wires Ltd vs DGFT

The present status of the EPCG authorisation 01500179 dt. 02.01.1996 related to APO 141 2018 Versatile Wires Ltd. & Anr. vs DGFT & Ors. as sought by the Hon'ble Court vide order dt. 07.09.2022 is as follows

1. *The authorisation holder i.e. M/s Versatile Wires Ltd has approached the EPCG committee vide submission dt. 28.08.2021 in relation to their request for issuance of Export Obligation Discharge certificate with a plea for acceptance of Supply Invoice for deemed exports to 100% EOU*

2. *The matter was considered in the 2nd EPCG Committee meeting held on 18.05.2022 and a report was sought from O/O Addl. DGFT, Kolkata vide email dt. 24.06.2022.*
3. *Report dt. 11.07.2022 has been accordingly sent to DGFT HQ, New Delhi*
4. *The matter is under consideration of the EPCG committee*

This is issued with the approval of the competent authority.

Yours faithfully,

Sd/- 12/09/22

Arjun Upadhyay S

Dy. Director General of Foreign Trade"

From the above it is seen that the request made by the appellant for issuance of Export Obligation Discharge Certificate was considered in the second EPCG Committee meeting held on 18.5.2022 and a report was sought for from the office of Additional Director General of Foreign Trade, Kolkata vide communication dated 26.6.2022. In response to the said communication report dated 11.7.2022 has been sent to the Director General of Foreign Trade, Headquarter, New Delhi and the matter is under consideration of EPCG Committee. In the given factual scenario, we are of the view that directing the appellant to effect a cash security is not required. That apart, the binding effect of the scheme of rehabilitation as sanctioned by the BIFR is also to be taken note of since both the customs authorities as well as the DGFT were parties before the BIFR. In any event, the orders of adjudication passed by the customs authorities are subject-matter of appeal before the learned Tribunal and pre-deposit has also been effected by the appellant. The learned Single Judge while directing cash deposits to be made by the appellant to the tune of Rs.38,18,206/- took into consideration other cases which had come before the Court at the relevant point of time and we find there is nothing particularly against the appellant warranting such deposit of cash security. Therefore, we are of the view that the parties should be left to agitate the matter before the learned Tribunal in the pending appeal and, in the meantime, it is for the DGFT to take note of the report submitted by the Additional Director General of Foreign Trade, Kolkata vide e-mail dated 24.6.2022 and take a decision on the request made by the appellant for issuance of export obligation discharge certificate.

For the above reasons, the appeal (APOT/141/2018) is allowed and the order and direction issued by the learned Single Bench is set aside. The appellant is directed to pursue its appeal before the learned Tribunal and, in the meantime, the EPCG committee shall take a decision on the request made by the appellant for issuance of export obligation discharge certificate and communicate the same to the appellant as expeditiously as possible.

In the light of the above, no coercive action can be initiated against the appellant by the customs authorities.

Consequently, the connected application for stay being IA No.GA/1/2-16 (Old No.GA/1648/2016) also stands disposed of.

(T.S. SIVAGNANAM, J.)

(SUPRATIM BHATTACHARYA, J.)

S.Pal/S.chandra