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ORDER SHEET

WPO 601 of 2022
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

TREND VYAPAAR AND ANR.
Vs
UNION OF INDIA AND ORS.

BEFORE:

The Hon'ble JUSTICE MD. NIZAMUDDIN

Date : 17th February, 2022

(Via Video Conference)

Mr. Abhrajit Mitra, Sr.Adv.
Mr. Aritra Basu,
Mr. Dwipraj Basu,
Mr. Souradeep Banerjee, Advs.
...for the petitioner
Mr. Vipul Kundalia,
Mr. Tapan Bhanja,
Ms. S. Majumder,
Mr. A. Roy, Advs.
...for the respondents

The Court: Heard learned advocates appearing for the parties.

In this matter petitioner has challenged the impugned suspension order dated 21st October, 2019 suspending the importer and exporter code of the petitioner in exercise of power under Section 11(7) of the Foreign Trade (Development and Regulation) Act, 1992. It appears from the said impugned suspension order on perusal that the authority concerned has invoked this power under Section 11(7) of the said Act for the reason of non-payment of penalty in addition to customs duty and interest in question in respect of EPCG.

Mr. Mitra, learned senior counsel appearing for the petitioner draws my attention to Section 11(7) of the said Act which is quoted hereunder :

"(7) Without prejudice to the provisions contained in this section, the Importer-Exporter Code number of any person who fails to pay any penalty imposed under this Act, may be suspended by the Adjudicating Authority till the penalty is paid or recovered, as the case may be."

On a plain reading of said section it appears to me that Section 11(7) of the Act can be invoked/exercised only in case of failure to pay any penalty imposed under the said Act and it does not cover any customs duty and interest in respect of EPCG for which the impugned suspension order has been passed.

Mr. Kundalia, learned advocate appearing for the respondent DGFT Authority submits that Section 11(7) of the said Act covers the customs duty and interest also, I am not convinced with such submission since in the fiscal law there is no scope of any presumption or assumption and it has to be strictly interpreted and the Court neither can add any word nor exclude any word from the fiscal statute.

Mr. Mitra, learned senior advocate appearing for the petitioner submits that he has already paid the penalty in question and there is a specific averment on oath in paragraph 14 of the writ petition where the details of such payment has been given after the impugned order of suspension. Mr. Kundalia, learned advocate appearing for the respondent denies the allegation of the petitioner that IEC Code licence of the petitioner has been cancelled and he submits that it has been only suspended.

Considering the submissions of the parties and admitted facts as appears from records and considering the provisions of Section 11(7) of the said Act, this writ petition being WPO 601 of 2022 is disposed of by setting aside the impugned suspension order dated 21st October, 2019 subject to satisfaction of the Authority about the payment of penalty in question which is to be done by the petitioner within seven days from the date of communication of this order and in case petitioner fails to satisfy about the payment of penalty in question, the petitioner undertakes that it will make a fresh payment of the said amount within seven days and in case either penalty has already been paid or petitioner makes any fresh payment of the penalty in question, the impugned order of suspension will not survive and legal consequence will follow. So far as non-payment of any duty and interest in question as referred in the impugned suspension order is concerned, this order will not be a bar to take appropriate action in accordance with law by the respondents.

Since this writ petition has been disposed of at the motion stage without calling for affidavits, any allegation contrary to records shall be deemed to have been denied by the respondents.

With these observations and directions, this writ petition stands disposed of.

(MD. NIZAMUDDIN, J.)

TR/