OD 22

ORDER SHEET
WPO/2247/2022
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

M/S SIMPLEX INFRASTRUCTURES LIMITED
VS
JOINT DIRECTOR GENERAL OF FOREIGN TRADE AND ORS

BEFORE:
The Hon'ble JUSTICE SHEKHAR B. SARAF
Date: 29th July, 2022.

*Appearance:*
*Mr. Sujit Ghosh, Adv.*
*Mr. Somak Basu, Adv.*
*. . .for the petitioner.*

*Mr. Siddhartha Lahiri, Adv.*
*. . .for the Union of India.*

The Court: This is an application under Section 226 of the Constitution of India wherein the petitioner has aggrieved by orders dated 9th February, 2022 and 13th June, 2022 issued by the Joint Director General of Foreign Trade suspending the operation of the Import Export Code (hereinafter referred to as "IEC") of the petition.

In the very first line of the order of suspension the authority concerned has referred to an Order No. 02/21/094/80014/AM17 dated 10.06.2020 wherein the adjudicating authority under Section 15 of the Foreign Trade (Development and Regulation) Amendment Act, 2010 has imposed a penalty of Rs.10 lakhs in addition to Customs Duty and Interest as applicable. On the basis of the same the suspension has been done under Section 7 of Section 11 of Foreign Trade (Development and Regulation) Amendment Act, 2010. It is to be noted that the above order dated 10th June, 2020 was set aside by an order passed by the High Court on 21st September, 2020 wherein the authority was directed to grant another opportunity of hearing to the petitioner and pass a de novo order. Subsequent to that, an order has been passed on 22nd February, 2021 wherein similar penalty and customs duty has been made payable by the petitioner. This order was challenged by the petitioner before the Appellate Authority and the same is pending.

Under such circumstances, the present writ petition has been filed by the writ petitioner on 7th June, 2022. The matter came up for hearing as a motion on 9th June, 2022 wherein the respondent prayed for time to take instruction in the matter. Subsequently, on 15th June, 2022 the matter was released by the Hon'ble Judge on his personal ground. Surprisingly, the corrigendum was issued by the DGFT on 13th June, 2022 subsequent to filing of the writ petition wherein the date of the order has been changed to 22nd February, 2021.

In my view, the corrigendum has been issued belatedly after four months. It is clear that the initial order of suspension passed on 9th February, 2022 was done in a hurried manner without application of mind and to fill in the gaps and correct the mistakes therein the corrigendum has been passed after filing of the writ petition. Mr. Sujit Ghosh, counsel appearing on behalf of the petitioner has also relied on a Supreme Court judgment in **State of Andhra Pradesh versus**

**A.P. State Wakf Board and Ors.** reported in **2022(2) ALT69** wherein the Supreme Court relied on **Parvati Devi versus Sate of U.P.** reported in **(2007) 6 ALL LJ 50**. The relevant portion is delineated below:

> *"153. We would need to examine as to what is scope and meaning of the word "errata". "Errata" is a term of French origin which means a thing that should be corrected. It means a mistake in printing or writing. Reference may be made to a judgment reported as Parvati Devi v. State of U.P. MANU/UP/0717/2007 : (2007) 6 ALL LJ 50. It was held as under:*
>
> > *20. The word "Erratum" (French) means a mistake in printing or writing; a note drawing attention to such a mistake. A list of mistakes added at the end of a book.*
> >
> > *21. The word "Errata" is a word of French origin and means 'a thing that should be corrected.' After a book has been printed, it often happens that certain mistakes are found to have been overlooked. In later editions, it is usual to insert, a list of such mistakes and to point out the necessary corrections. These are called 'corrigenda'.*
> >
> > *xxx xxx xxx*
> >
> > *23. In Judicial Dictionary by Justice L.P. Singh and Majumdar, 2nd Edition, page 552, while quoting the following passage in Assam Rajyik Udyog Karmi Sangha v. State of Assam, (1996) Gau. L.R. 236, (at page 241), the word "corrigendum" has been defined as follows:*
> >
> > > *The dictionary meaning of the word "corrigendum" means things to be correct. It means there must be an error and there is a necessity to amend and rectify it. In the garb of corrigendum, a Rule cannot be altered and or changed, but that is what appears to have been done in the instant case. In order*

*to alter or modify a Rule the same procedure adopted in making of the Rule have to be gone through.*

*24. The meaning and application of the word "corrigendum" has been considered by the Courts time and again. In Commissioner of Sales Tax, U.P. v. Dunlop India Ltd., MANU/UP/1101/1991 : (1994) 92 STC 571, this Court held that corrigendum is issued to correct a mistake in the notification, therefore, would relate back to the date of issuance of the original notification.*

*25. In Piara Singh v. State of Punjab, MANU/SC/0426/2000 : (2000) 5 SCC 765 : AIR 2000 SC 2352, the Hon'ble Supreme Court held that there is no bar on issuing the corrigendum or 'more corrigenda' for correcting the arithmetical error.*

*xxx xxx xxx*

*27. In view of the above, the legal position can be summarised that a corrigendum can be issued only to correct a typographical error or omission therein. However, it is meant only to correct typographical/arithmetical mistake. It cannot have the effect of law nor it can take away the vested right of a person nor it can have the effect of nullifying the rights of persons conferred by the law."*

In the present case the respondent has argued that the corrigendum is only a correction of the typographical error wherein the date of the order was incorrectly mentioned. However, in my view, that is not the case and the authority has clearly not applied its mind while passing the suspension order in a hurried manner. An order that has been set aside has been made the basis of the suspension order and the same cannot be allowed to stand. Correction of the same by way of a corrigendum without any explanation in the said corrigendum for the mistake committed is also deprecated.

In light of the same, I am of the view, that this suspension order is illegal and against the principles established in law. Accordingly, the same is quashed and set aside.

I make it clear that the respondent shall be at liberty to proceed in accordance with law. Nothing in this order shall prevent them from issuing a fresh suspension order, if the same is done in accordance with law.

WPO/2247/2022 is disposed of.

(SHEKHAR B. SARAF, J.)

sp/b.pal