IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

Present :- Hon'ble Mr. Justice Md. Nizamuddin

WPO 1286 of 2013

LGW LTD
VS
UNION OF INDIA & ORS.

WPO 922 of 2014
M/S. DHANCOT FIBRES PVT. LTD.
VS
UNION OF INDIA & OTHERS

WPO 949 of 2014
M/S. FOUR STAR INTERNATIONAL
VS
UNION OF INDIA & ORS

WPO 950 of 2014
M/S. EXIM OVERSEAS PVT. LTD
VS
UNION OF INDIA & OTHERS

WPO 952 of 2014
M/S. SUNNY TREXIM PVT. LTD.
VS
UNION OF INDIA & OTHERS.

WPO 953 of 2014
M/S. GOLD STAR COTTEX LTD.
VS
UNION OF INDIA & ORS.

WPO 974 of 2014
M/S. BANARSI DAS & SONS
VS
UNION OF INDIA & OTHERS

WPO 975 of 2014
M/S. BDB EXIM PRIVATE LIMITED
VS
UNION OF INDIA & OTHERS

WPO 976 of 2014
M/S. BDB EXPORTS PRIVATE LIMITED
VS
UNION OF INDIA & OTHERS

WPO 977 of 2014
M/S. FOUR STAR INTERNATIONAL LIMITED
VS
UNION OF INDIA & OTHERS

WPO 978 of 2014
M/S. CALCUTTA OVERSEAS
VS
UNION OF INDIA & OTHERS

WPO 979 of 2014
M/S. I.P. TRADERS PVT. LTD.
VS
UNION OF INDIA & OTHERS

WPO 980 of 2014
M/S. PINKI TRADERS
VS
UNION OF INDIA & OTHERS

WPO 981 of 2014
M/S. PANASIAN IMPEX PRIVATE LIMITED
VS
UNION OF INDIA & OTHERS

For the Petitioners	:-	**Mr. Abhrotosh Majumder, Sr. Adv.** **Mr. Aryak Dutt, Adv.** **Mr. Dipankar Das, Adv.** **Ms. Nilanjana Adhya**
For the Respondents	:-	**Mr. Vipul Kundalia , Adv.** **Mr. Sunil Singhania, Adv.** **Mr. Siddhartha Lahiri, Adv.**
Judgment On	:-	**01.12.2022**

MD. NIZAMUDDIN, J.

The Court: Heard learned Counsel appearing for the parties.

In view of involvement of similarity of facts and questions of law in all these writ petitions, same are taken up together for hearing and disposal.

For the sake of convenience WPO No. 1286 of 2013 (LGW Ltd. –Vs- Union of India & Ors.) is taken up first.

In this writ petition subject matter of challenge are letters (5 in number) dated March 28, 2013 rejecting the application(s) made by the petitioner for grant of transferability in respect of Duty Free Import Authorisations (DFIA) being no. 0210166782 dated September 28, 2011, 0210167411 dated October 13, 2011, 0210168040 dated October 24, 2011, 0210170321 dated December 7, 2011, 0210170341 dated December 8, 2011.

Between 6th January, 20112 and 16th August, 2012 the petitioner applied to the DGFT for granting amendment and transferability of the said five Duty Free Import Authorisations (DFIA).

Duty Free Import Authorisation Scheme is granted in terms of Foreign Trade Policy (FTP) 2009-2014 wherein DIFA is mentioned in Paragraphs 4.2.1 to 4.2.7 of the Foreign Trade Policy 2009-2014 which are referred and discussed hereunder:

(a) The DFIA falls under chapter 4 of the FTP which relates to duty exemption and duty remission scheme and two such exemptions schemes are Advanced Authorisation Scheme and Duty Free Import Authorisation Scheme. DFIA is an authorisation which is dependent on the export made and on fulfilment of export obligation the DFIA holder can get benefit in the import of certain goods which will be permitted as 'duty free'. Therefore fulfilment of conditions is of utmost importance for Duty Free Import Authorisation.

(b) Paragraph 4.2.2 of the FTP (2009-2014) states that provisions of paragraph 4.1.3 shall be applicable for DFIA and the DFIA authorisation shall be issued only for products for which Standard Input and Output Norms (SION) have been notified.

(i) In the case such notification dated 7th July, 2022 for addition in SION where SION J-373 (Textile Product Group) a fifth item was added for export item – Raw Cotton (Not carded or comb quantity – 1 Kg., Import Item 5-Pesticides (Biocides/Fungicides/Herbicides/Insecticides), quantity allowed 0.01116Kgs.

(c) Paragraph 4.1.3 of the FTP (2009-2014) states that an authorisation is issued to allow Duty Free Import of inputs, which are physically incorporated in the export product.

(d) Paragraph 4.2.2 of the FTP (2009-2014) states that in case post export DFIA, a merchant exported shall be required to mention the names and addresses of the manufacturers of the export products. Applicant is required to file application to the concerned Regional Authority (RA) before effecting exports under DFIA.

(e) Paragraph 4.2.5 of the FTP (2009-2014) states that the procedure and time period related to fulfilment of Export Obligation has been laid down in Chapter – 4 of the Handbook of Procedure Volume 1 (HBP Vol-I).

(f) Paragraph 4.2.6 of the FTP (2009-2014) relates to transferability of the Authorisation which states that once export obligation has been fulfilled request for transferability of Authorisation or inputs imported against it may be made before the concerned RA and once transferability is endorsed the authorisation holder may transfer such DFIA.

The Handbook of Procedure Volume 1 (2009-2014) in Chapter 4.31 to 4.36A relates to Duty Free Import Authorisation Scheme which are referred and discussed herein below:

(a) Paragraph 4.32 of the HBP Vol-I states that while making the application for DFIA an application in ANF4H along with documents therein shall be submitted to the RA concerned.

(b) Paragraph 4.32.3 of the HBP Vol-I states that in respect of "Pesticides" the export shall be required to give declaration with regard to technical characteristics, quality and specifications in the shipping bill.

(c) Paragraph 4.36 of the HBP Vol-I relates to fulfilment of export obligation and maintenance of proper accounts. This states that provisions of Paragraph 4.25 shall apply [paragraph 4.25 states that authorisation holder shall furnish prescribed documents in ANF4F in support of fulfilment of EO]. Paragraph 4.36 states that the original DFIA holder shall maintain true and proper accounts of consumption and utilisation of Duty Free Imported/Domestically produced goods against each authorization as prescribed in Appendix 23. These records are required to be sent to the concerned RA along with request for bond waiver/redemption/discharge of export obligation/transferability.

(d) Paragraph 4.36A of the HBP Vol-I states that once export obligation is fulfilled and required documents as stipulated in paragraph 4.36 have furnished, the RA shall make authorisation transferable subject to conditions stipulated for scheme including an endorsement on the authorisation itself.

It appears from record that after the first application for transferability was made by the petitioner on 06.01.2012, the respondent authority concerned had sent letter dated 06.02.2012 to the petitioner to file revised Appendix 23 duly filled in. It is the case of the respondents that the petitioner had not filled up the details of the inputs which are physically incorporated in the export products in terms of 4.1.3 of the FTP (2009-2014) in form ANF4H, although a declaration/undertaking has been made to that effect which has been duly signed by the petitioner. Also in Appendix 23 where the inputs that are physically incorporated in the export product has not been specifically mentioned. The invoice, bill of export for duty free goods and Annexure A shipment under DFIA Scheme respectively wherein the Pesticides used which are physically incorporated in the export product has not been specifically mentioned and a general statement has been made. The inputs and the technical characteristics are not at all specified which is essential under the FTP (2009-2014) and HBP Vol-I.

Respondents submitted that the aforesaid letter dated 06.02.2012 was replied by the petitioner by letter dated 02.04.2012. The respondents by their letter dated 17.08.2012 asked the petitioner to provide quality and specification of inputs/import items as paragraph 4.3.2 of the Handbook of Procedure is required. In reply the petitioners by their letter dated 07.09.2012 gave all the generic names of pesticides which are used for cotton cultivation in India without giving specific pesticide used by them in the export product which they intend to import under the scheme. Since such evasive reply was given, the respondent once again by their letter dated 10.10.2012 asked for clarification for technical characteristics, quality and specification and further stated that the CIF Value claimed against pesticide was 76.34% of FOB value which is abnormal and the petitioner was asked to justify about the same and another evasive reply came from the petitioner dated 18.10.2012.

In the reply dated 18.10.2012 the petitioner referred to the decision of the DGFT in its meeting of the Norms Committee held on 31.05.2012. The decision of the committee which states that the generic name of pesticide could be used for cultivation of cotton and are required for cotton farming, and the committee after deliberations decided to inform the applicant therein that these generic items are pesticides required for cotton farming in India and were made to ease out the incorporated inputs in the export products which are to be imported to be specified since SION J-373 and item 5 was very general and referred to pesticide without giving any details thereof. The Norms Committee to ease out and help the exporters had decided that such products are pesticides that are used in India for cotton farming and any of them could have been used for manufacturing in the export product for consequential import.

On 28th March, 2013, the Additional DGFT rejected the grant of transferability in respect of the five DFIAs of the petitioner.

The impugned order of rejection of petitioners' application for grant of transferability was made on three counts in respect of DFIA No. 0210166782 dated 28.09.2011:

(i) There was misdeclaration while submitting application prescribed in ANF4H and the DFIA was obtained on basis of such misdeclaration. The petitioner had prayed for importing pesticides/insecticides for CIF Value of Rs. 1807125000/- as against total CIF Value of Rs. 18,12,23,527.50/- against the FOB value of Rs. 22,00,11,750/- and it is cleared that such DFIA obtained for insecticides/pesticides was to the extent of 82.14% of the FOB Value which is a clear violation of the policy as mentioned wherein export of 1 Kg of raw cotton import of 0.01116 Kgs. was only allowed. The policy clearly stated about the weight of raw cotton exported vis-à-vis the pesticides to be allowed to be imported and as such there is a clear misdeclaration in obtaining the DFIA licences.

(ii) The application being ANF 4H regarding the details of supporting manufacturer was not mentioned in terms of paragraph 4.1.3.4 (a) read with paragraph 4.2.2 of Foreign Trade Policy 2009-2014.

(iii) The technical characteristics quality and specifications of insecticides/pesticides in the shipping bills were also not mentioned in terms of paragraph 4.32.2 of Handbook of Procedure 2009-2014.

Petitioner submits that the petitioner had fulfilled export obligations and that the said fact has been acknowledged by the authorities in all the documents. Petitioner submits that the applications of your petitioner for amendment and transferability of all the 5 (Five) DFIA Licenses were made way back during the period from January 2012 to August 2012 and no cogent reason has been given by the respondent Licencing Authorities for sitting over the matter for such a long time and finally rejecting all the aforesaid applications on identical grounds which are outside the scope of law, whimsical and biased according to the petitioners.

Petitioners submit that once export obligations have been fulfilled in terms of the Exim Policy Conditions for DFIA benefits, request for amendment and transferability of DFIA Licences or the input imported against it was made before the respondent Licencing Authority, it is incumbent upon the respondents to grant such request for amendment & transferability.

Respondents submit that similar rejections were made in respect of other five DFIA and justify such rejection.

Respondents submit that in supplementary affidavit in opposition affirmed by Sri Utpal Kumar Acharya on 23rd August, 2018 to the reply by the Commission for Agricultural Costs and Prices Ministry of Agriculture and Farmers Welfares. By this letter the said Ministry had replied to the Dy. DGFT that between 2010-11 and 2012-13 the maximum state wise percentage cost of Insecticides to total cost of raw cotton was at 8.47 for the year 2011-12 in the State of Punjab whereas other cotton farming States were below that level and the National average for the year 2010-11 is 3.424 for the year 2011-12 is 3.833 and for the year 2012-13 is 3.374.

Respondents submit that it is therefore impossible that the petitioner will be allowed to import 82.14 % of Pesticides for an export of 100 % of raw cotton. Since only the pesticides that are physically incorporated in the export product can be imported, it is impossible that 82.14 % of Pesticides were used in the export product which are sought to be imported through such DFIA. This was the principle ground for the point 1 of rejection of transferability.

Respondents submit that Point no. 2 and 3 of rejection relates to non-mentioning of supporting manufacturer and also not providing technical characteristics, quality and specification of pesticides/insecticides in the shipping bills.

Respondents submit that with regard to transferability of the two DFIA Authorisations that were allowed by the respondents it has been clearly stated in the affidavit in reply that such transferability was granted on 19.10.2011 and on 26.12.2011 which is much before the transferability of DFIA applications in the present writ petition which was on 6th January, 2012 and the said action was wrong and it was a bonafide mistake and the petitioner cannot claim estoppel against policy/law and cannot claim legitimate expectation for grant of transferability of five DFIA with relation to two DFIA which were allowed by way of bonafide mistake which cannot be continued in perpetuity.

Respondents submit that the policy circular No. 57/2009-14 dated 6th March, 2012 relates to the applicability of paragraph 4.32.2 of HBP Vol-I for declaration of technical characteristics, quality and specification and it is a circular which gives instructions to the Regional Authorities for transferability and fulfilment of export obligations and is not for the exporters (both manufacturing and merchant). The paragraph 4.32.2 of HBP Vol-I clearly states that in respect of "Pesticides" the exporter shall be required to give declaration with regard to technical characteristics, quality and specifications in the shipping bill. This policy circular has been made to instruct the RA's to comply with the said paragraph of the HBP Vol-I.

Respondents submitted that the transferability of the five DFIA's was rightly rejected by the respondent DGFT since the petitioner did not fulfil the Export Obligations and did not fulfil the stipulations of the FTP (2009-2014) and the stipulations of HBP Vol-I (2009-2014) and regarding the other writ petitions the transferability of the DFIA's were rightly rejected in terms of the Foreign Trade Policy 2009-2014 and the Handbook of Procedures (volume 1)

2009-14 as would be reflected from the several dismissal orders as annexed to the respective writ petitions.

Considering the facts and circumstances of the case as appears from record and submission of the parties and taking into consideration the contents of the impugned orders in all these writ petitions rejecting the petitioners' applications for grant of transferability in respect of Duty Free Import Authorisation (DFIA) in question which according to me are lacking sufficient reason and not dealt with and discussed the relevant legal contentions raised by the petitioners in these writ petitions and accordingly the impugned orders of rejection of the petitioners' aforesaid applications for grant of DFIA in question are set aside and the matters are remanded back to the respondents/authority concerned to reconsider the aforesaid applications and pass reasoned and speaking orders in all the aforesaid applications after giving opportunity of hearing to the petitioners or their authorised representatives and petitioners will be entitled to urge before the respondents/authority concerned all the points raised in these writ petitions, within eight weeks from the date of communication of this order without granting any unnecessary adjournment to the parties.

With the observation and direction made above, all these writ petitions being WPO No. 1286 of 2013 with W.P.O. No. 922 of 2014, W.P.O. No. 949 of 2014, W.P.O. No. 950 of 2014, W.P.O. No. 952 of 2014, W.P.O. No. 953 of 2014, W.P.O. No. 974 of 2014, W.P.O. No. 975 of 2014, W.P.O. No. 976 of 2014, W.P.O. No. 977 of 2014, W.P.O. No. 978 of 2014, W.P.O. No. 979 of 2014, W.P.O. No. 980 of 2014, W.P.O. No. 981 of 2014 stand disposed of.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[MD. NIZAMUDDIN, J.]