OD-15

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

WPO/2313/2005

MD. IQBAL AHAMED
Versus
UNION OF INDIA & ORS.

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date : 30th June, 2022.

Appearance:
Mr. N. K. Chowdhury, Adv.
Mr. Arijit Chakraborti, Adv.
Mr. Nilotpal Chowdhury, Adv.
Mr. Prabir Bera, Adv.
...for the plaintiff/petitioner

Mr. Siddhartha Lahiri, Adv.
...for the respondent nos. 1 and 2

Mr. Somnath Ganguli, Adv.
Mr. S.Seal, Adv.
Ms. Priyamvada Singh, Adv.
...for the respondent no. 3

The Court: Heard learned Advocates appearing for the parties. By this writ petition petitioner has challenged the impugned order of the appellate authority dated 26th October, 2005 being Annexure P-13 to the writ petition passed by the Additional Director General of Foreign Trade confirming the adjudication orders dated 21/27.1.2004, 21/22.1.2004, 21/27.1.2004, 21/30.1.2004, 21/27.1.2004 and 21/27.1.2004. The impugned show cause notice was issued on the ground that the DEPB benefits which the petitioner has availed for exporting Potassium Chloride to Bangladesh which according to the respondent authority, the petitioner is only entitled if it is of Indian origin and it is the case of the respondent authority concerned that the same are not of Indian origin and accordingly show cause notices being Annexure P-2 to the petition were issued to the petitioner and the main charge against the petitioner was that the goods in question were not produced in India and were not of Indian origin and the petitioner could not produce any documents of his suppliers from whom he had procured those substances for exporting. In response to the show cause notices petitioner had filed reply as appears from record being Annexure P-3 to the petition considering the replies filed by the petitioner against the show cause notices, orders in original were passed by the adjudicating authority being Annexure P-4 to the writ petition. Petitioner has challenged the impugned adjudication orders of the adjudicating authority before the Appellate authority on the ground that the same are not speaking orders and not dealt with the contentions raised by the petitioner in its reply to the show cause notices and also on the ground that the adjudication orders have been passed without giving personal opportunity of hearing and while passing the adjudication orders, the adjudication authority travelled beyond the scope of the show cause notices. It appears from record that against the aforesaid adjudication orders, petitioner went to appeal and the appellant authority by its order dated 26th October, 2005 being Annexure P-13 to the writ petition considering the case of the petitioner dismissed the appeals of the petitioner by a common order. On perusal of the impugned order of the appellate authority and considering the reasons recorded by it, I am of the view that in exercising constitutional writ jurisdiction under Article 226 of the Constitution of India, this Court cannot re-appreciate the evidence and decide the issue as to whether a substance is of Indian origin or of a foreign origin since these are totally a matter of facts and evidence. Further on perusal of the records available with the writ petition and considering the same, I could not find a single scrap of paper or document there in support of the contention of the petitioner that the substance in question exported was of Indian origin. The whole contention of the petitioner is that when earlier, Customs Authorities have allowed the export of the substance in question by certifying that exported goods were in order thereafter it could not raise the issue of its origin. I did not find on perusal of the certificates of the Customs Authorities upon which Mr. Chowdhury, learned Advocate appearing for the petitioner relies that the Customs Authorities have specifically certified at the time of export that the goods in question were of Indian origin and further petitioner also failed before the adjudicating authority, appellate authority and even before this Court to produce any document to show who were its suppliers of the substance in question exported and that the substances in question were of Indian origin. The documents the petitioner wants to rely are its own declaration without any supporting document from any person from whom he had purchased the substance in question. This is also not a case where the impugned order of the appellate authority which petitioner wants interference in this writ jurisdiction, was passed in violation of principles of natural justice or without giving any opportunity of hearing. Petitioner still had the chance before the appellate authority to produce the document in support of its contention that the substances in question were of Indian origin even it had failed to produce those documents before the adjudicating authority but it could not produce before the Appellate authority. I am also of the view that this is not a case where the impugned order passed by the authority is having inherent lack of jurisdiction. Paragraphs 5 and 6 of the impugned order of the appellate authority relating to finding of the appellate authority are also relevant which are quoted below:-

> "5. I have gone through the facts of the cases available on record and as well as written/oral submissions made by the appellant firm. The benefits of DEPB Scheme are available only for exports of goods of Indian origin. The main allegation against the appellant firm is that they had deliberately and willfully mis-declared the goods exported by them as that of Indian origin to avail the undue benefit of DEPB Scheme. While the appellant firm have all along contented that the goods exported were of Indian origin and were purchased from domestic market, they have not been able to produce any substantive and concrete evidence like the details of the supplier, and the manufacturer to prove that those were not of foreign origin. The link from factory in India to the procurement by the licencee needs to be established by the licencee that they are of Indian origin. It is observed that in spite of given adequate opportunity, the appellant firm could not produce requisite documentary evidence in support of their contention about the Indian origin of the exported product on which they had availed the DEPB. In this connection it is relevant to refer to general instructions for DEPB Rates in the Schedule of DEPB Rates which inter-alia provides that the rates of DEPB shall not be applicable to "***exports of goods of foreign origin, unless the goods have been***

manufactured or reprocessed or on which similar operations have been carried out in India". As such the export product has to be necessarily of Indian Origin for becoming eligible for the benefits of DEPB Scheme.

6. In the instant cases the product exported by the applicant firm does not meet the above mentioned basic criteria of being of "Indian Origin" provided in DEPB Scheme. In view of this I do not find any grounds for allowing the benefit of DEPB Scheme on the product exported by the appellant firm when it does not meet the requirement of DEPB"

Considering the submissions of the parties and facts as appear from records and findings of the Appellate authority and in view of the discussion made above, I am not inclined to interfere with the impugned order and accordingly, this writ petition being WPO/2313/2005 is dismissed. No order as to costs.

(MD. NIZAMUDDIN, J.)

TO