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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 08th DECEMBER, 2023

IN THE MATTER OF:

+ **W.P.(C) 5756/2021 & CM APPL. 18076/2021**

RAJESH GUPTA & ORS.

..... Petitioners

Through: Mr. Sumit Kumar Jha, Advocate.

versus

DIRECTORATE GENERAL OF FOREIGN TRADE @ DGFT

..... Respondent

Through: Mr. Ajay Digpaul, CGSC with Ms. Ishita Pathak, Mr. Kamal R. Digpaul, Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT (ORAL)

1. The Petitioners have initially came up to this Court to allow them to complete their obligation of manufacturing and exporting copper wire by purchasing additional copper of the same grade from the open market and also seeking advance authorization license which had been issued to the Petitioner by filing W.P.(C) 3686/2021 stating that the Petitioners could not complete their export obligation due to COVID-19 pandemic.
2. The said writ petition was disposed of *vide* Order dated 23.03.2021 permitting the Petitioner to make a representation before the DGFT and a direction was given to the Respondent/DGFT to dispose of the representation within a period of 45 days.



3. It is stated that the representations were given by the Petitioner on 07.04.2021 and 12.04.2021. Since no orders were passed on the representations of the Petitioners, the Petitioners approached this Court by filing the instant writ petition with the following prayers:-

“I. To extend the Export Obligation Period by at least 12 more months in the light of the difficulties being faced by the Petitioners during these unprecedented times and worldwide lockdown caused by the covid-19 pandemic and Force Majeure situation which is beyond the control of the Petitioners,

II. To not invoke the coercive procedure to recover the customs duty under section 2.54 of Foreign Trade Policy of Government of India till the expiry of the extended period,

III. To permit the Petitioners to fill up the shortage of raw material (Copper), if any, by purchasing the same from the market at their own cost, which has been prayed in the Representations dated 07.04.2021 and 12.04.2021 made by the Petitioners to the Respondent but the Respondent has failed to decide the Representations in 45 days and has failed to comply with the order dated 23.03.2021, of the Hon'ble High Court passed in Civil Writ Petition no. 3686/2021.

IV. To consider the case of the Petitioners at par with all the relaxations granted on all the platforms by the Government of India at in the statutory and contractual obligations by extending the limitation to perform and other relaxation, due to Force Majeure situation and complete/partial lockdown; ”

4. Pending the writ petition, the representations given by the Petitioners were disposed of by an Order dated 23.06.2021. Consequent to the dismissal



of the representations, the Petitioners filed an application for amending the writ petition by which the prayer to challenge the Order dated 23.06.2021 passed by the DGFT was included.

5. Before the authorities, the Petitioner sought for two reliefs which have been summarized in the Order dated 23.06.2021, by which the said reliefs have been disposed of by holding as under:

“9. Regarding first request related to extension in the EOP (Export Obligation Period), the Handbook of Procedures (HBP), 2015-20 provides for Export Obligation (EO) Period and its Extension as per Pam 4.42 - which are reproduced below. Prima facie it seems that EOP is still valid in all the AAs quoted by the petitioner and need of EO extension is not there at present. Even if the Export obligation period expires, there are provisions for 2 extensions of 6 months each, in the HBP. Moreover, EOP extensions are given by the jurisdictional Regional Authority (RA) of DGFT & not by DGFT(HQ). For requesting EOP extension, an application is required to be made in online system with requisite composition fees to the RA. Thus sufficient period to make exports against these AAs is available currently to the petitioner as per the Foreign Trade Policy (FTP).

Relevant para 4.42 of the HBP in this regard is reproduced below:

Para 4.42 - Export Obligation (EO) Period and its Extension of Handbook of Procedures, 2015-20:-

“(a) Period for fulfilment of export obligation under Advance Authorisation shall be 18 months from the date of issue of Authorisation. Period of EO fulfilment under an Advance Authorisation



shall commence from date of issue of Authorisation. unless otherwise specified. (b) In cases of supplies to projects in India under Chapter-7 of 17P or projects abroad, the Export Obligation period shall be cotenninus with contracted duration of the project execution or 18 months whichever is more.

(c) Export Obligation for items falling in categories of defence, military store, aerospace and nuclear energy shall be 24 months from the date of issue of authorization or co-terminus with contracted duration of the export order whichever is more. (d) Extension in export obligation period for Authorisations issued under Appendix-4J (issued under FTP 2015-20) shall be allowed for a period not more than the half of the stipulated export obligation period. In such cases, composition fee shall be levied @ 0.5% per month of unfulfilled FOB value, in case exports effected are more than 50% within initial Export Obligation period and @ 1% per month where less than 50% exports have been effected within initial export obligation period. (e) Regional Authority may consider a request of Advance Authorisation holder for one extension of EO period up to six months from the date of expiry of EO period subject to payment of composition fee of 0.5% of the shortfall in F20. Authorisation holder will have to submit a self declaration to RA stating that unionised imported/domestically procured inputs are available with the applicant. (f) Request for further extension of six months after first extension as in (b) above can be considered by Regional Authority, provided Authorisation holder has fulfilled minimum 50% export obligation in quantity as well as in value,



on pro-rata basis. This will be subject to payment of composition fee @ 0.5% per month on unfulfilled FOB value of export obligation. No further extension shall be allowed by Regional Authority. This provision shall also be applicable to Advance Authorisations issued during FTP 2009-2014. However, only two extensions of six months each as mentioned above can be allowed subject to payment of composition fee and under no circumstance Regional Authority shall allow any extension beyond 12 months from date of expiry of EO period. At the time of filing application for second EO extension, the Authorisation holder will have to submit a self declaration to RA stating that unutilised imported/domestically procured inputs are available with the applicant. (g) Deleted. (h) Whenever a ban / restriction is imposed on export of any product export obligation period in respect of Advance Authorisation already issued prior to imposition of ban, would stand automatically extended for a period equivalent to the duration of ban, without any composition fee.

10. Regarding, 2nd request of the petitioner i.e-to fill up the shortage of raw material (copper), by purchasing the same from the domestic market it cannot be considered in view of explicit provisions in Para 4.03 (a) of the Foreign Trade policy (FTP) 2015-20 (reproduced below), because as per the stated policy, the Advance Authorisation is issued to allow duty free import of input, which is physically incorporated in the export product and as per the provision of Para 4.16 (i) of the Foreign Trade policy, 2015 - 20 - material imported against the AA cannot be transferred even after completion of export obligation. it specifies that the goods imported



against the AA shall be subject to Actual User condition in case of Advance Authorisation. These para of FTP 201S-20 are reproduced below:

4.03 Advance Authorisation

(a) Advance Authorisation is issued to allow duty free import of input, which is physically, incorporated in export product {making normal allowance for wastage). In addition, fuel, ail, catalyst which is consumed / utilized in the process of production of export product, may also be allowed

"4.16 Actual User Condition for Advance Authorisation"

(i) Advance Authorisation and / or material imported under Advance Authorisation shall be subject to 'Actual User' condition. The same shall not be transferable even after completion of export obligation. However, Authorisation holder will have option to dispose of product manufactured out of duty free input once export obligation is completed.

11. As far as petitioner requests like loans taken from private money lenders and consequent issues between petitioner and lenders are concerned, these are extraneous matters between the petitioner & private parties & fall outside the domain of the DGFT if needed the petitioner could have taken legal action against such people for recovery of the material as per the law of the land. Nevertheless, the petitioner is also at liberty to opt out of this scheme & regularize these authorisations as per provisions of the FTP and HBP with the payment of the applicable custom duty benefits along with the interest."



6. A perusal of the abovementioned order shows that the request of the Petitioner to fill up the shortage of raw material by purchasing the same from the domestic market, the same has been rejected by the Department placing reliance on Para 4.03 of the Foreign Trade Policy 2015-20. Since the Foreign Trade Policy specifically insists that in case advance authorization is issued to allow duty free import which is physically incorporated in the export product, the request to allow the Petitioner to purchase the raw material from open market for these exports could not be permitted.

7. The Court while adjudicating administrative orders exercising its jurisdiction under Article 226 of the Constitution of India only looks into the decision making process and also the fact that whether the order is violative of any law. The reasons given in the order passed by the Respondent does not require any interference under Article 226 of the Constitution of India.

8. The Apex Court in B.C. Chaturvedi v Union of India (1995) 6 SCC 749, while discussing the scope of Article 226 in administrative matters has observed as under:

“12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to



hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion.

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When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."

9. A perusal of the Order challenged in the present Writ Petition indicates that the DGFT has given a proper opportunity of hearing to the other sides and, therefore, this Court is of the opinion that the decision making process is fair. Further, even on merits, the learned Counsel for the Petitioner has not been able to establish as to why the Order is contrary to the law or that any provisions of the Foreign Trade Policy or the handbook of procedures has been violated. Resultantly, this Court finds no reason to interfere with the present Writ Petition.
10. The writ petition is rejected along with pending application(s), if any.
11. In case the Petitioners are aggrieved by any order of the regional



authority, it is open for Petitioners to take such steps as permissible under law.

SUBRAMONIUM PRASAD, J

DECEMBER 8, 2023

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