Court No. 1
14.05.2024
(AD 16)
(RP/S. Banerjee)

MAT 742 of 2023

M/s. P K Agri Link Pvt. Ltd. & Anr.
Vs.
Norms Committee VI & Ors.

CAN 1 of 2023
CAN 2 of 2023

Mr. Rahul Dhanuka
Mr. Niraj Baheti
Mr. Akash Sarkar
Mr. Soham Bandopadhyay
... for the petitioner
Mr. Vipul Kundalia
Mr. Kaushik Dey
Mr. Tapan Bhanja
... for the respondents

1. This intra-court appeal by the writ petitioner is directed against the order dated 08.12.2022 passed in WPA 9359 of 2021. In the said writ petition essentially two prayers were sought for by the appellant; one, to declare the fixation of ad hoc input output norms allowing import of rice bran against export of De-oiled Rice Bran extraction which occurred into the appellant could not have been rejected on the assumption that value addition criteria cannot be satisfied. The other challenge is to the show-cause notice dated 08.10.2020 issued by the Customs authorities. Learned Single Bench noted that the show-cause notice has been adjudicated and an order of adjudication has been

passed and such an order is an appellable order and that there is no scope of interfering with the show-cause notice which is based on the Norms Committee report and it will be well open to the appellant to raise all points before the appellate authority. When the matter came up earlier before this court, it was noted that the appeal filed before the appellate authority was dismissed and the appellant was in the process of filing an appeal before the learned Tribunal. The matter was adjourned to examine as to whether an appeal as against the decision of the Norms Committee is maintainable in terms of Section 15 of the Foreign Trade (Development and Regulation) Act, 1992 (hereinafter referred to as 'Act 22 of 1992').

2. Today we have elaborately heard the learned advocates for the parties and carefully perused the materials placed on record. The appellant was communicated the decision of the Norms Committee by the Directorate General of Foreign Trade wherein the decision of the Norms Committee noted that the data given by the appellant supported the earlier decision which was taken by the Norms Committee when the appellant has not achieved the minimum value addition of 15 per cent. which is a key parameter of Advance Authorisation Scheme. If the

decision of the Norms Committee as communicated by the Directorate General of Foreign Trade is to be treated as a decision of the Directorate General, then it has to be examined as to whether an appeal would be maintainable against such a decision under Section 15 of Act 22 of 1992. Sub-Section (1) of Section 15 of the Act states that any person aggrieved by any decision or order made by the adjudicating authority under the said Act, may prefer an appeal. Adjudicating authority has been defined under Section 2(a) to mean the authority specified in or under Section 13. Section 13 specifies the authority to be Directorate General. Thus, if the order of the Norms Committee is to be treated as an order passed by an adjudicating authority, who is the Directorate General, then in terms of Section 15(1)(a) of the Act an appeal lies to the Central Government. However, in the facts and circumstances of the case on hand we find that such remedy will not be an efficacious remedy since the case of the appellant has travelled up to the Tribunal wherein the challenge is to the correctness of the order of adjudication as well as the order passed by the first appellate authority. The show-cause notice proceeds based on the decision of the Directorate General of Foreign Trade. Therefore, the Customs authorities would not be in a position to go beyond what has been decided by the Norms Committee as communicated to the appellant by the Directorate General of Foreign Trade. Thus, the appellant should not be precluded from challenging the decision of the Norms Committee which, if remained unchallenged, the challenge to the adjudication order and the appellate order before the learned Tribunal would become a fait accompli.

3. Therefore, we are of the view that in the peculiar facts and circumstances the appellant should be granted liberty to challenge the correctness of the decision of the Norms Committee as communicated by the Directorate General of Foreign Trade or else the appeal filed before the learned Tribunal will not be an efficacious remedy. A challenge to decision of the Norms Committee cannot be entertained in a writ petition as it requires adjudication into the disputed questions of fact.

4. Therefore, essentially a fact finding authority or a fact finding Tribunal would be the best forum which can examine the correctness of the decision of the Norms Committee. The appellant has already preferred an appeal before the learned Tribunal. However, the concerned authorities of the Directorate General of Foreign Trade are not respondents in the

appeal which is now pending before the learned Tribunal.

5. Therefore, considering the peculiar facts and circumstances of the case, we are of the view that the appellant should be permitted to implead the appropriate authorities of the Directorate General of Foreign Trade as respondents in the appeal which is now pending before the learned Tribunal and the learned Tribunal shall hear the said authorities as well as the Customs authorities and thereafter consider the grounds canvassed by the appellant and decide the appeal on merits and in accordance with law.

6. In the result, the appeal stands disposed of by directing the appellant to implead all the concerned authorities of the Directorate General of Foreign Trade in the appeal which is now pending before the learned Tribunal and upon such impleadment the learned Tribunal is directed to issue notice o the said authorities, hear the appellant, the Customs department as well as the authorities of Directorate General of Foreign Trade and take reasoned decision on merits and in accordance with law.

(T. S. Sivagnanam)
Chief Justice

(Hiranmay Bhattacharyya, J.)