OD –5

ORDER SHEET
WPO/315/2010
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

VIJAY KUMAR GUPTA
VS
UNION OF INDIA AND ORS.

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date: 24th January, 2024.

Appearance:
Ms. Micky Chowdhury, Adv.
Mr. B.N. Pal, Adv.
Mr. Protyush Chatterjee, Adv.
...For the petitioner
Mr. Vipul Kundalia, Adv.
Mr. S.K. Tiwari, Adv.
...For the DGFT Authority

The Court: Heard learned advocates appearing for the parties.

By this writ petition, petitioner has made prayer for declaration of the public notice no. 40(RE-2003)/2002-2007, New Delhi, dated 28th January 2004 as ultra vires to the Foreign Trade Policy as also the Foreign Trade (Development & Regulation) Act, 1992 and all consequential benefit by making such declaration.

It is the case of the petitioner that the respondent DGFT Authority concerned by relying upon the aforesaid public notice has denied the benefit to the petitioner under Duty Free Credit Entitlement Scheme for the year 2003-04 by passing an order dated 4th December, 2006 being annexure P-2 to the writ petition. In support of her contention, learned advocate representing the petitioner has relied on a reported decision of the Hon'ble Supreme Court in the case of DG of Foreign Trade vs. Kanak Exports reported in (2016) 2 Supreme Court Cases 226 and particularly on paragraphs 33 and 100 of the aforesaid decision of the Hon'ble Supreme Court which are quoted as hereunder :

"33. Vide Public Notice bearing No. 40 dated 28-1-2004, which was issued along with the aforesaid Notification No. 28 on the same date, certain amendments were made in the Handbook of Procedures (Vol. I). This public notice was issued by DGFT in exercise of powers conferred under Para 2.4 of the EXIM Policy. By this public notice, Para 3.2.6 was inserted below Para 3.2.5 of the Handbook of Procedures (Vol. I), which reads as under :

"The scheme will be applicable to status-holders who were also status-holders as on 31-3-2003 and who had achieved minimum export turnover of Rs. 25 crores in the year 2003-04:

I. For direct as well as third-party exports, the export documents viz. Export order, invoice GR form, bank realisation certificate should be in the name of applicant only. However, for the third-party exports, where goods have been procured from a manufacturer, the shipping bill should contain the name of the exporter as well as the supporting manufacturer.

II. Goods allowed to be imported under this Scheme shall have a nexus with the products exported and a declaration in this regard shall be made by the applicant in Appendix 17-D.

III. The licensing authority shall at the time of issuance of the duty-free credit entitlement certificate endorse the name of the associate manufacturer/supporting manufacturer/job-worker on the certificate as declared by the applicant. Goods imported against such entitlement certificate shall be used by the status-holder or his supporting manufacturer/job-worker in proportion to the value of their direct contribution to the entitlement.

IV. The last date for filing of such applications shall be 31st December.

V. The duty-free credit entitlement certificate shall be issued with a single port of registration. For each duty-free credit entitlement certificate, split certificates subject to a minimum of Rs. 5 lakh each and multiples thereof may also be issued. A fee of Rs. 1000 each shall be paid for each split certificate. However, a request for issuance of split certificate(s) shall be made at the time of application only and shall not be considered at a later stage.

VI. The duty-free credit entitlement certificate shall be valid for a period of 12 months from the date of issue. The status-holder shall within one month of the last imports made under this certificate or within one month of expiry of the certificate whichever is earlier, submit a statement of imports/utilisation made under the certificate as per Appendix 17-E, to the jurisdictional regional licensing authority who has issued the certificate with a copy to the jurisdictional Excise Authorities.

It also provided that :

In terms of Para 3.2.5 of Handbook of Procedures (Vol. I), the following items would not be taken into account for computation of entitlement and export performance under Duty-Free Credit Entitlement Scheme for Status-Holders :

(a) Rough, uncut and semi-polished doamonds;

(b) Gold, silver in any form including plain jewellery thereof;

(c) Foodgrains sourced from central pool maintained by FCI;

(d) Items exported under free shipping bills.

(3) In terms of Para 3.2.5 of Handbook of Procedures (Vol.I) the following items would not be allowed for imports under duty-free entitlement certificate for status-holders.

(a) Agricultural products, which fall under Chapters I to 24 of ITC (HS) Classification of Export and Import items."

"100. Therefore, we hold that the Public Notice dated 28-1-2004 issued by DGFT, so far as it excludes the aforesaid four items, is ultra vires.

I have considered the aforesaid judgment of the Hon'ble Supreme Court in the case of Kanak Exports (Supra) wherefrom it appears that the aforesaid impugned public notice dated 28th January, 2004 issued by DGFT excluding the four items one of which relates to petitioner has been declared ultra vires.

I have also perused the aforesaid order dated 4th December, 2006 passed by the respondent DGFT Authority and on perusal of which I find that the sole ground of rejection by the Authority, the aforesaid claim is paragraph 3.2.6(A) (Vi) of the aforesaid public notice dated 28th January, 2004.

Considering the facts and circumstances of the case and submission of the parties and taking into consideration the aforesaid judgment of the Supreme Court in the case of Kanak Exports (supra) the aforesaid order dated 4th December, 2006 and all subsequent orders passed on the basis of the aforesaid impugned public notice are set aside and the matter is remanded back to the DGFT Authority concerned to reconsider the claim of the petitioner by taking into consideration the aforesaid judgment of the Hon'ble Supreme Court in the case of Kanak Exports (supra) and to grant all consequential benefits by passing a reasoned and speaking order and after giving opportunity of hearing to the petitioner or his authorised representative within a period of four weeks from the date of communication of this order.

With these observations and directions, this writ petition being WPO 315 of 2010 is disposed of.

(MD. NIZAMUDDIN, J.)

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