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

\+ W.P.(C) 945/2019 & CM APPL. 4264/2019

BAJAJ CARPET INDUSTRIES LTD. ..... Petitioner

Through: Mr. Jitendra Motwani, Mr. Udit Jain and Ms. Anshu Shah, Advocates

versus

UNION OF INDIA AND ANR. ..... Respondents

Through: Ms. Shiva Lakshmi, CGSC with Mr. Rajdeep, Advocate for UOI

CORAM:
HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

O R D E R

% **13.05.2024**

1. The present petition is filed under Article 226 of the Constitution to quash and set aside the order dated 27.08.2018 passed by the respondent no.2/DGFT and also to set aside the three orders dated 26.05.2017 passed by the Additional Director General, Foreign Trade.

2. The issue in controversy as appearing from the order dated 08.04.2024, is that the petitioner has submitted the Bank Resolution Certificate (BRC) in respect of only one transaction but in respect of the other transactions, the petitioner has not submitted the BRC rather, submitted other documents which are not found to be sufficient.

3. The counsel for the petitioner stated before the court on 08.04.2024 that procuring the BRC in respect of other transactions may not be possible due to the lapse of time and was ready to submit other necessary documents in place of BRC including the certificate issued by the Reserve Bank of India.

4. The respondents submitted a short affidavit. The relevant portion of the same is reproduced as under:-

3. It is respectfully submitted that the Petitioner Firm, thereafter vide their letters dated 9.4.2024 and 19.4.2024 submitted the following documents, which have been carefully examined and considered by the office of Additional GFT CLA Delhi. That the said letters have been annexed and marked as Annexure A1. The list of documents submitted are given hereinbelow:

a) Letter from RBl confirming that there are no payments pertaining to the period of said advance authorization for exports which are pending for realization.

b) Bank statement showing realization supported by CA certificate, certifying that export proceeds are realized for said advance authorization.

c) Copy of Commercial Invoice, Shipping bill of exports. Packing List, details of consignee for mapping of the realization víz-a-viz exports made by the firm through shipping bills.

d) That the Petitioner firm has also submitted a Notorized Affidavit that BRCs are not available with the firm and they have submitted the supported documents i.e. Bank statement, CA certificate that no export proceeds are pending for realization.

e) The Petitioner firm has submitted Indemnity Bond stating that the Company would indemnify the Government for any financial revenue loss if established any time in future against the said shipping bills.

4. It is submitted that matter of these documents for issuance of EODC has been considered/ examined by Addl. DGFT CLA Delhi. A view has been taken that as RBI has issued letter that "No payment pertaining to period of said advance authorization

for exports, are pending for realization". It is submitted that as a one time measure, without it being regarded as a precedent, it has been decided to consider these documents for issuance of EODC.

5. It is humbly submitted that the details of Export Obligation fultillment were worked out by the office and it was observed that the payment of due Custom Duty along with applicable interest was made by the Petitioner firm for excess imports for advance authorization number (05 101390S3 dated 27.9.2004, 0510152934 dated 11.03.2005 and 0510134I20 dated 03.08.2004.

6. It is respectfully submitted that the Petitioner firm has further submitted request for waiver of penalty amount (Rs.25,00,000 in each of the 3 cases) imposed by the adjudicating authority for non-submission of Export Obligation completion documents on the said Advance Authorizations. It is respectfully submitted that the plea of penalty waiver cannot be considered by the deciding authority at this stage.

5. Ms. Shiva Lakshmi, Central Government Standing Counsel for the Union of India in her fairness stated that in view of the documents submitted on behalf of the petitioner and the submissions made in the short affidavit, the impugned order dated 27.08.2018 is liable to be set aside and the claim of the petitioner, subject matter of the present petition is to be remanded back for re-examination of Deputy Director General of Foreign Trade who passed the original order for re-consideration.

6. Accordingly, the impugned order dated 27.08.2018 is set aside.

7. The petitioner is directed to furnish fresh representation in relation to the imposition of the penalty vide show-cause-notices dated 07.05.2010 and 21.07.2010. It is also expected that the original executing authority shall decide the issue as early as possible, preferably, within a period of 06 months.

8. The present petition along with pending application, stands disposed of.

DR. SUDHIR KUMAR JAIN, J

MAY 13, 2024
N/AK