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

\+ W.P.(C) 3562/2019

CHEMICAL DE UNIVERSE PVT. LTD. ..... Petitioner
Through: Mr. Dinesh Rastogi, Advocate

versus

UNION OF INDIA AND ORS. ..... Respondent
Through: Mr. Manish Mohan, CGSC with Mr. Nikhil Hemrajani and Mr. Jatin Teotia, Advocates

CORAM:
HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

O R D E R

% **16.05.2024**

1. The present petition filed under Articles 226 and 227 of the Constitution of India for quashing of *ex parte* order dated 23.07.2023 whereby the respondent no. 4 imposed the penalty on the petitioner amounting to Rs.17,03,260/- under the provisions of Foreign Trade (Regulation & Development) Act, 1992, pertaining to exports and imports covered under the repealed statute of Imports & Exports (Control) Act, 1947, and subsequent orders.

2. The petitioner is stated to be engaged in the business of exports and imports of goods primarily with the erstwhile State of U.S.S.R. The petitioner was issued an advance license bearing no. P/L/3112847 dated 05.05.1986 and DEEC No. 015505 dated 05.05.1986, which requires the petitioner to complete an export obligation of Rs. Rs.79,75,000/- and was permitted to import items of CIF value of Rs.52,81,200/-. The petitioner has

completed the export obligation of Rs. Rs.96,78,260/- against the fixed obligation of Rs.79,75,000/-.

3. The respondent as per memo no. 149, the Audit Authorities Department of Economic Affairs, Ministry of Finance, stated that the petitioner has imported banned/penalized/restricted items to the extent of Rs.46,70,544/- while the petitioner's entitlement on FOB value of exports worked out to Rs.24,19,565/-. Thus, the petitioner was not eligible to the Excess Entitlement Certificate(EEC). The EEC for Rs.17,03,260/- issued to the petitioner was irregular and was liable to be adjusted towards petitioner's entitlement. The petitioner's claim that the memo no. 149 was erroneous as the matter pertains to the year 1986 as such, the petitioner was not having any record or documents at that time. The petitioner being aggrieved, filed the present petition.

4. The respondent did not file counter affidavit and their right to file the counter affidavit was closed vide order dated 09.04.2022.

5. The perusal of the impugned order dated 23.07.2023 which is stated to be Order-in-Original reflects that the petitioner was issued a show cause notice dated 09.06.2003 under section 14 for action under section 11 of the Foreign Trade (Development & Regulation) Act, 1992. However, the respondent has never placed the notice dated 09.06.2003 on record and any documentary evidence to establish that the notice dated 09.06.2003 has ever been served upon the petitioner.

6. The petitioner preferred an appeal which was dismissed vide order dated 31.07.2017 passed by the Joint DGFT, Mumbai. The petitioner also filed a review application before the Director General of Foreign trade which was also ordered to be dismissed vide order dated 31.07.2017.

7. The counsel for the petitioner stated that the petitioner was never served with the show cause notice dated 09.06.2003 before initiation of the proceedings against the petitioner even otherwise also that the alleged show cause notice was stated to be issued after the expiry of around 16-17 years. Accordingly, the proceedings in pursuance of notice dated 09.06.2003 are bad and are liable to be quashed.

8. Mr. Manish Mohan, Central Government Standing Counsel for the respondent stated that it was the duty of the petitioner to disclose or submit the necessary documents regarding the fulfilment of the export obligation before the concerned authority and even if the notice was issued after the considerable time, it does not absolve the petitioner to not produce the necessary documents before the concerned authority regarding the fulfilment of export obligation. He further draws the attentions of the court towards the para nos. 5 and 6 of the appeal preferred by the petitioner against the order dated 23.07.2023 whereby the petitioner has admitted his liability to pay Rs.42, 582/-.

9. It is reflected from the records that the petitioner was never served with the show cause notice dated 09.06.2003 and if any such notice was issued, it was issued after the gap of 15-16 years. The proceedings arising out of the said notice cannot be sustained in law due to the inordinate delay in the issuance of the notice and accordingly, are liable to be set aside.

10. Accordingly, the *ex parte* order dated 23.07.2023 is hereby set aside. However, the petitioner has admitted his liability to pay Rs.42,582/-.

11. Accordingly, the petitioner is also directed to pay the said amount with the office of the respondent no. 2 i.e. DGFT within one month from today.

12. The petition is accordingly decided.

DR. SUDHIR KUMAR JAIN, J

MAY 16, 2024
K/HVK