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

\+ W.P.(C) 8288/2022 & CM APPLs. 24974/2022, 53192/2022

HUMA INTERNATIONAL .....Petitioner

Through: Mr. P.C. Patnaik, Mr. Hemant Mishra and Ms. Ankita Sarangi, Advocates.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Rakesh Kumar, CGSC with Mr. Sunil, Advocate for UOI.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **26.09.2024**

1. The present petition assails the Order-in-Review dated 29th March, 2022 passed by Director General of Foreign Trade,[1] Respondent No. 2, confirming the Order-in-Original dated 01st November, 2013 passed by the Appellate Authority, Respondent No. 3 Additional DGFT. The aforesaid orders stem from the order dated 30th March, 2012 passed by Respondent No. 3 thereby imposing a penalty of INR 10,00,000/- on Petitioner for non-compliance of the conditions of the Advance Import Licence.[2]

FACTS AND CONTENTIONS OF THE PETITIONER:

2. Counsel for Petitioner has presented the following facts and contentions:

[1] "DGFT"
[2] "the Advance License"

2.1. The Petitioner is an exporter of various kinds of handicrafts items and holds an Importer Exporter Code bearing IEC No. 299100813. Petitioner was granted a Quantity Based Advance Import Licence bearing No. P/K/1522804 dated 31st August, 1994,[3] from the office of Joint DGFT, Moradabad, Uttar Pradesh. The said License was issued for import of 54 meters brass scrap holding CIF value of INR 19,44,000/- with a corresponding obligation to export brass handcraft of 50.23 meters for an FOB value amounting to INR 33,53,400/-, within a period of 12 months. Against the said quantities, the Petitioner imported 37.725 meters Brass Scrap with CIF value of INR 13,89,830/-. The corresponding export obligation calculates to 35.093 meters of brass handicrafts valued at INR 23,97,440/-.

2.2. During and after the valid Export Obligation Period,[4] the Petitioner fulfilled the export obligation to the tune of 34.553 meters tons of brass art wares equalling 98.46% (quantity wise) and 215.28% (value wise), vis-a-vis imports made against the Advance License. Out of the total export quantity, exports under the Advance License Shipping Bills were 27.552 meters and 7 meters under Duty Drawback Shipping Bills. For remaining unfulfilled export obligation of 0.53924 meters, on 13th April, 2007, the Petitioner deposited Custom Duty of INR 14,543/- along with interest of INR 23,765/-.

2.3. For seeking extension of the EOP, Petitioner submitted multiple applications dated 3rd October, 1996, 31st December, 1997, 18th June, 1998, 26th June, 1998, 26th September, 1999 along with request letters dated 01st October, 2003 and 07th November, 2005. However, the Petitioner's

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[3] "the Advance License"
[4] "EOP"

applications to regularize the exports were not considered by the Respondent.

2.4. Thereafter, Respondent No. 3 proceeded to issue show causes notices and demand letters dated 17th April, 2002, 25th May, 2005, 23rd January, 2006. In response, the Petitioner submitted their reply on 2nd May, 2002, 07th November, 2005, 22nd February, 2006 respectively.

2.5. During this time, Respondents issued two Public Notices dated 1st September, 1997 and 24th April, 1998 thereby granting extension in the EOP till 31st December, 2997 and then 30th September, 1998, respectively. Despite the extension provided, Respondent No. 3 did not regularize the total exports made by the Petitioner under the Advance License.

2.6. Respondent No. 2 issued public notice dated 6th April, 1999, for extending EOP in respect of EPCG and Advance Licenses in cases where export obligation has been fulfilled prior to 6th April, 1999, but outside the EOP, such exports shall be deemed to have been made within the prescribed EOP, for the purpose of regularisation of the case.

2.7. Subsequently, through Public Notice dated 2nd January, 2006 Respondent No. 2 issued guidelines for disposal of the old cases of Advance Licences issued before 2002 where the licensee is unable to produce the logged Duty Exemption Entitlement Certificate books.[5]

2.8. On 23rd January, 2006, a show cause notice was issued to the Petitioner and subsequently an adjudication order i.e., Order-in-Original dated 30th March, 2012, was passed by Respondent No. 3 for not submitting original export documents showing fulfilment of obligation under the Advance License. The said order also observed that the Petitioner has not made sufficient payment to get their case regularized and imposed a penalty of INR 10,00,000/- under Section 11(2) of the Foreign Trade (Development and Regulation) Act, 1992.[6]

2.9. Aggrieved by the afore-said order, Petitioner challenged the same before the Appellate Authority and after considering the shipping bills submitted by the Petitioner, the Appellate Authority through Order-in-Appeal dated 01st November, 2013 rejected the appeal on the ground that the Petitioner did not produce proof of export made.

2.10. On 25th November, 2013, the Petitioner preferred a review petition under Section 16 of the FTDR Act which culminated into an Order-in-Review dated 29th March, 2022. The said order observed that on 16th March, 2022, Petitioner furnished copies of seven shipping bills out of which two bills bearing Nos. 1000150579 and 1000118881 are outside the EOP and 1000176012 and 1001006167 are in respect of drawback shipping bills. It was held that since dates of two bills are outside the EOP and the Petitioner had not submitted any proof that EOP was extended, the review petition cannot be entertained. Subsequently, the Petitioner was put in the Denied Entry List denying all exporting benefits to them.

2.11. In such circumstances, the Petitioner has invoked the jurisdiction of this Court seeking to direct the Respondents to regularize the exports made by Petitioner during the valid EOP and extended EOP.

3. Contrarily, counsel for Respondents submits that Petitioner only submitted photocopies of shipping bills which are not admitted towards fulfilment of export obligations. Out of these bills, two bills are outside the

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[5] "DEEC books"

[6] "FTDR Act"

EOP and Petitioner has also failed to submit custom dues towards the deficit of export obligation. Further, while the EOP was extended up to 31st December, 1997, Petitioner failed to submit the prescribed documents and is, therefore, liable to pay the penalty as prescribed.

ANALYSIS AND FINDINGS:

4. The Court has carefully considered the afore-noted contentions but remains unpersuaded by the Petitioner's arguments. It emerges that the Petitioner failed to submit the original shipping bills to substantiate the claimed exports, instead providing photocopies, which were not accepted for meeting the export obligation. Of the seven shipping bills for which photocopies were submitted, two fell outside the extended export obligation period, and two were Drawback Shipping Bills, for which the customs authority had rejected the conversion request. The Petitioner also claimed that the Duty Exemption Entitlement Certificate Book No. 10967 had been lost but was unable to provide a satisfactory explanation for this before the Appellate or Reviewing Authority. Consequently, the Petitioner has not submitted the required documents to demonstrate compliance with the export obligation.

5. Further, it is noted that the Appellate Authority through communication dated 1st August, 2013, replied to the Petitioner's communication dated 10th July, 2013 and raised several obligations indicating the discrepancies in the documents. The said communication, reads as follows:

> *"To*
> *Mohd. Hassan,*
> *Proprietor, M/s Huma International*
> *Sarai Husaini Begum, Baradari,*
> *Moradabad-244001(UP).*

Subject: *Appeal against Order-In-Original No. 29/96/192/0084/AM 06/JDG/MBD/1489 Dated 30/03/2012 passed RA, Moradabad.*

Gentleman,

I am directed to refer to your letter dated 10.7.2013 and to say the documents submitted/enclosed with your referred letter have been examined and following observation are made:-

(i) It is not clear which office record you are referring to with respect to availability of original Shipping Bill No. 518155.

(ii) It is seen that S/Bill No. 1000118881 & S/Bill No. 1000150579 are dated 3/06/1998 and 20/07/1998 after the expiry of EOP on 31/12/1997. Party has not provided any documents to prove that EOP has been extended by Competent Authority. It is written on shipping bill that they are provisional pending extension of EOP.

(iii) On the S/Bill No. 552 dated 05/10/1996, the bill No and date is hand written. Further, in other entries also changes with pen are there and word "provisional" handwritten is also their on this shipping bill. Firm have not furnished the final assessed E.P copy of Shipping Bill 552 dt 5/10/2006.

(iv) Further shipping bill No. 503012 date is stamped as 27th January, 1997 and is not dated 28.6.1995 as stated in your letter dated 10.7.2013 and on bill it is stated DEEC under provisional Book No. 109673 dated 31.8.1994.

(v) In respect of Shipping Bill No. 1001006167 dated 23/12/1997 & S/Bill No. 1000176012 dated 25/08/1998 party has not been able to covert DBK S/Bill into DEEC S/BIII. DBK S/Bill cannot be accepted towards export fulfillment.

(vi) Further DEEC book No. in shipping bill No. 552 dated 5/10/1996 & 503012 dated 27.11.1997 is different from that in shipping bill No. 1001006167 dated 23/12/1997 and 1000176012 dated 25/08/1998

vii) Firm has not provided logged DEEC book by concerned custom authority for export and import.

2. You are granted opportunity to furnish the clarification/documents in respect of above points by 23.8.2013. Further, if you wish you can also request for personal Hearing before Shri V.K. Srivastava, Addl. DGFT, Appellate Authority to clarify the above points and produce the relevant documents in support of your appeal.

3. The issues with approval of Addl. DGFT

Sd/-

(Munish Kumar)
Dy. Director General of Foreign Trade"

6. The Petitioner did not provide a written response to the stated objections but, through a communication dated 22nd September 2013, requested a personal hearing to explain the issues raised by the Appellate Authority. However, as noted in the order issued by the Appellate Authority, despite being granted several opportunities for a personal hearing and directed to submit the required export documents, the Petitioner failed to comply. These observations by the Appellate Authority are also reflected in the Order-in-Review, which reads to the following effect:

> *"2.3 The Petitioner filed an appeal on 02.05.2012 before the Appellate Authority. The Appellate Authority granted several opportunities of personal hearings to the Petitioner and also advised to submit prescribed export documents, but, the Petitioner failed to respond. The Appellate Authority observed that in some of the shipping bills, the date of export was outside the export obligation period and the others were provisional or drawback bills and that the Petitioner did not submit documents evidencing exports made and foreign exchange realized and there was no reason to interfere with the orders passed by the Adjudicating Authority. The Appellate Authority dismissed the appeal vide OIA dated 01.11.2013.*
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> *3.1 The Petitioner has now submitted a Review Petition dated 25.11.2013 to the undersigned. It has stated that:*
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> *(i) it had fulfilled the export obligation in terms of quantity by 98.46% and in terms of value by 215.28%,*
> *(ii) it had deposited custom duty of Rs. 14,403/- on 13.04.2007 and interest Rs. 23,765/-on 27.04.2007 in respect of balance export obligation,*
> *(iii) it had submitted all the relevant original documents as demanded by letter dated 13.06.2013 during the pendency of the appeal,*
> *(iv) it had submitted two original drawback shipping bill dated 25,08.1998 and 23.12.1997 to Dy. Commissioner (Customs), Mumbai for their conversion to DEEC shipping bills vide the letter dated 21.02.2006,*
> *(v) an opportunity of personal hearing was not granted and therefore aforesaid facts were not explained t to the Appellate Authority*
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> *3.2 The Petitioner has prayed that:*

(i) the Quantity Based Advance License No. P/K/1522804 dated 31.08.1994 be closed;

(ii) appropriate orders be passed for stay of DEL orders.

4. A report was called RA, Moradabad. RA, Moradabad vide their letter dated 18.02.2014 furnished its comments in which they have informed that the Petitioner has only deposited Customs Duty of Rs. 14,403/- and interest of Rs. 23,765/-.

5. The Petitioner was granted personal hearing on 10.03.2022 which was attended by Shri PC Pattnaik, Advocate of the Petitioner. He asked for one week time for submission of documents. The Petitioner vide letter dated 16.03.2022 furnished copies of seven shipping bills out of which two bills Nos. 1000150579 dt 20.07.1998 & 1000118881 dt. 03.06.1998 are outside the EOP and bill Nos. 1000176012 & 1001006167 are in respect of DBK

6. I have gone through the records and the submissions made by the Petitioner. It is observed that out of seven shipping bills, the dates of two bills are outside the 6. EOP and the Petitioner has not submitted any proof that the EOP was further extended. Two bills are drawback shipping bills which has been admitted by the Petitioner and the Customs Authorities had rejected the request for conversion of the drawback shipping bills to DEEC vide letter No. 5/6-B-255/06 EXP dated 10.03.2006. The Petitioner has failed to produce any subsequent document showing that the Custom Authorities have agreed to convert the said shipping bills from DBK to DEEC bills. Thus the Petitioner has failed to produce the prescribed documents evidencing fulfillment of export and has not paid the prescribed Custom duty plus applicable interest to the full extent.

7. I, therefore, in exercise of powers vested in me under Section 16 of the Act pass the following order:

ORDER

The Review Petition dated 25.11.2013 is rejected. Order-in-Appeal No. 11/20/2012-13/ECA-I dated 01.11.2013 and Order-in-original No. 29/96/192/0084/AM.06/JDG/MBD dated 30.03.2012 are upheld. The Petitioner is directed to pay the complete Custom duty plus applicable interest and regularize the Advance License No. P/K/1522804 dated 31.08.1994.

Sd/-
(Santosh Kumar Sarangi)
Director General of Foreign Trade"

7. In view of the above, it is evident that the Petitioner has failed to

provide the necessary documents to demonstrate that the Customs Authority had agreed to convert the shipping bills from Drawback Shipping Bills to DEEC Shipping Bills. Furthermore, they have not submitted the required documents to prove fulfilment of the export obligation, nor have they paid the prescribed customs duty. Under these circumstances, the three orders rejecting the review petition cannot be deemed arbitrary, nor do they provide sufficient grounds for this Court to exercise its jurisdiction under Article 226 of the Constitution of India, 1950. The decisions of the three authorities are based on the absence of essential documentation required to substantiate the export obligation. Therefore, no interference by this Court is warranted, as the reasoning provided in the afore-mentioned orders appears to be reasonable and justified based on the facts presented.

8. Accordingly, the present petition, along with pending application(s), if any, is dismissed.

SANJEEV NARULA, J

SEPTEMBER 26, 2024
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