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Court : Delhi

Decided On : Feb-08-2005

Reported in : 117(2005)DLT525; 2005(80)DRJ344; 2005(99)ECC546

Judge : Manmohan Sarin, J.

Acts : [Foreign Exchange Regulation Act, 1973](#) - Sections 8(3) and 8(4)

Appeal No. : WP(C) 5017-20/2004

Appellant : Sunil Engineering Corporation and ors.

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : Atul Batra, Adv.

Advocate for Pet/Ap. : Ajay Kumar Sharma, Adv

Disposition : Petition allowed

Judgement :

Manmohan Sarin, J.

1. Petitioners by this petition impugned the order dated 21st January, 2004 passed by the Adjudicating Officer wherein, while holding that there has been no contravention of Sections 8(3) and 8(4) of [Foreign Exchange Regulation Act, 1973](#), penalty of Rs.5 lakhs on the firm and Rs.50,000/- each on the partners has been

imposed. Mr. Ajay Kumar Sharma, learned counsel for the petitioners submits that the Adjudicating Officer has found only a formal violation of the procedure prescribed under para 7A.20 of Exchange Control Manual, inasmuch as petitioner has been found to have imported the goods in question. The remittance and payment has also been made by Letters of Credit through normal banking channels. The only procedural violation attributable to the petitioners is that petitioner failed to furnish the original Exchange Control copy of 'Bill of Entry' within three months from the date of remittance.

2. The Adjudicating Officer in para 9 of the impugned order held that "though they have submitted enough proof for import of the goods but could not submit proof for submission of Exchange Control Copy of Bill of Entry. They have, therefore, violated the provisions of para 7A.20 of Exchange Control Manual.'

On this basis, the Adjudicating Officer had imposed the penalty of Rs.5 lakh on the firm and Rs.50,000/- each on the partners.

3. It would be relevant at this stage to reproduce paras (iv) and (v) of 7A.20 of the Exchange Control Manual:-

(iv) In case an importer does not furnish the Exchange Control copy of the Bill of Entry within three months from the date of remittance (or within prescribed period as provided in paragraph 7A.10), the authorised dealer should issue a reminder to the importer asking him to produce it forthwith. If there is still no response, a reminder by registered post with acknowledgment due should be issued not later than one month from the date of the first reminder.

(v) Authorised dealers should forward to reserve bank a statement as at the end of each calendar quarter in form BEF furnishing details of import transactions in respect of which the importers have defaulted in submission of Exchange Control copies of Bills of Entry within a period of 21 days from the date of issue of registered (acknowledgment due) reminder. The quarterly statement should be submitted to Reserve Bank within 15 days from the end of the quarter to which the statement relates.

4. Learned counsel for the petitioners submitted that as per the prescribed procedure the Bank was to issue a reminder to the importer asking them to produce Exchange Control copy of Bill of Entry forthwith and if there was still no response, a reminder by registered A.D. post is required to be sent not later than one month from the date of reminder. No provision is made in the Exchange Control Manual with regard to imposition of penalty for non-furnishing of the Exchange Control copy of the Bill of Entry. In these circumstances, it is contended that penalty of Rs.5 lakhs on the firm and Rs.50,000/- on the partners was wholly arbitrary, unwarranted and exorbitant. This is a case of failure of exercising jurisdiction in accordance with law and bar of alternate remedy should not come in the way of court granting relief.

5. Mr. Atul Batra on behalf of respondents in opposition urged that discretion has been exercised by the Adjudicating Officer for the admitted breach of non-furnishing of the original Bills of Entry. He, very fairly admits that there is no breach of any of the provisions of FERA.

6. Petitioners submit that original Bills of Entry had also been tendered but they were not having the receipt for the same as the same had been misplaced and was not traceable. However, petitioners had duly furnished the copies of Bills of Lading, Invoices. The photocopy of Exchange Control copy of the Bill of Entry duly carried endorsement by the Customs Authorities of the clearance of the goods. Mr. Sharma also submitted that the Bank itself had failed to comply with the procedure.

7. In this view of the matter, there was hardly any doubt left regarding genuineness of the transactions which fact is not even disputed by the respondents. In these circumstances, the omission of the petitioners is merely a procedural irregularity. Reference is invited to the judgment of the Supreme Court in M/s Hindustan Steel Ltd. Vs . The State of Orissa : [1972]83ITR26(SC) wherein the court while dealing on the question of imposition of penalty observed as under:-

'Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all

the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute.'

8. In view of the foregoing discussion, the impugned order is not sustainable and is liable to be set aside and is quashed. Counsel for the petitioner submits that as a genuine recompense for the lapse committed by the petitioners in not furnishing original receipt for Bill of Entry, they would deposit a sum of Rs.5000/- in the Prime Minister's National Relief Fund for Tsunami Victims. Let this be done in two weeks.

Petition stands allowed in the above terms.

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