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SooperKanoon Citation : sooperkanoon.com/795266

Court : Chennai

Decided On : Dec-17-1986

Reported in : 1993(42)ECC106

Judge : V. Ramaswami, J.

Appeal No. : W.P. Nos. 4683 and 10162 of 1984

Appellant : Rasi Leathers Private Ltd.

Respondent : The Chief Controller of Imports and Exports and anr.

Disposition : Petition allowed

Judgement :

ORDER

V. Ramaswami, J.

1. The petitioner, a private limited company, is a manufacturer of finished leather, leather garments and leather goods. It is stated to be a registered small-scale industry. The petitioner also exports finished leather and leather goods manufactured by it as well as such goods purchased by it from other manufacturers. Under the Import Policy of the Government of India for the period

April 1979 -- March 1980, a person who wants to get an Export House Certificate shall submit an application to the Chief Controller of Imports and Exports before the date prescribed therein. Paragraphs 1 and 4 of this Import Policy statement, refers to the conditions which are required to be fulfilled for grant of such an Export House Certificate. Among the conditions prescribed certain annual average F.O.B. value of exports for the prescribed base period for the select and non-select products is one. These statements of exports on which the application is based should be certified by a Chartered Accountant or a Cost Accountant. The petitioner applied for such an Export House Certificate originally for the year 1979-80 in his application dated 28.5.1979. An Export House Certificate was issued on 1.5.1980 which was valid from the date of issue upto 30.6.80. Of course, the certificate issued was subject to the conditions as contained in the import Policy for 1979-80. For the purpose of utilising foreign exchange for promotional activities under paragraph 179 of the Policy F.O.B. value of exports during 1978-79 was also admitted as Rs. 84.83 lakhs in this certificate. Again on 28.6.1980, the petitioner applied for an Export House Certificate under the Import Policy for the registered headquarters [exporters?] for the year 1980-81, producing the evidence that is required. The Export House Certificate was given on 26.3.1981 valid from 1.7.80 upto 30.6.83. The F.O.B. value of exports during 1979-80 was admitted as Rs. 72,46,000/-.

2. The grant of Export House Certificate confers certain privileges on the person. One such privilege is the right to obtain an additional import licence. On the basis of the Export House Certificate given to him, the petitioner applied for an additional licence against the export of finished leather and leather products. When that application was pending, on the ground that the Export House Certificate dated 26.3.1981 has been obtained on misrepresentation, the Chief Controller of Imports and Exports issued a show cause notice dt.29.5.1982 to the petitioner requiring him to show cause why action should not be taken to cancel the Export House Certificate. He was also required to surrender the additional licences which were granted for the earlier years along with the other benefits obtained against the Export House Certificate. He was further asked to state whether he wanted to be heard in person. Along with the show-cause notice, the 'statement of others' during 1978-79 which gave the particulars of names and addresses and the value of the

goods purchased by the petitioner, which were said to have been exported by him, and which statements were filed, and on the basis of which the Export House Certificate was issued, were also enclosed. These lists contain 29 names of firms. The show-cause notice stated that on an examination of the export of others for the year 1978-79, out of the 29 units shown in the statement, only four units had confirmed that they had supplied finished leathers to the petitioner. The letters sent to four other firms were received back undelivered and the remaining 21 units informed the Joint Chief Controller of Imports and Exports, who was asked to verify the same, that they had not supplied finished leather to the petitioner-firm. The petitioner submitted his reply to this show-cause notice on 20.7.1982 in which he contended that his statement that he had exported goods manufactured by him as well as goods purchased by him from other manufacturers was correct. He further stated that the show-cause notice had not given the details or the name of firms who had confirmed and those who had not confirmed, in order to enable him to submit his explanation in relation to the same. However, he was able to get from five of the firms and send their statements also for having supplied finished leather. He has specifically denied that he had made any misrepresentation of facts. The petitioner also made an oral representation to the Deputy Chief Controller of Imports and Exports in this regard. Again he was asked to see the Chief Controller of Imports and Exports by a letter dated 10.6.83 which he did. The discussion seems to have turned on the question whether what was exported by the petitioner was finished leather or leather goods. It appears that some of the goods exported by him was tanned suedes and tanned nappa and whether these could be termed as finished goods was the question. While denying the statement of some of the firms, that they had supplied only tanned suedes and tanned nappa, on the ground that the invoice given by them was entirely for finished goods, the petitioner contended that these tanned suedes and tanned nappa were also finished goods. Though originally the Central Leather Research Institute at Madras seemed to have taken the view that these tanned suedes and tanned nappa could not be considered as finished leather or leather goods, later they seem to have given an opinion that they are finished leather. There were certain further correspondence in this regard and ultimately by an order dt.22.9.1984, signed by one S. Kak, Export Commissioner, the Export House Certificate granted

to the petitioner was cancelled and he was required to surrender the certificates and all other benefits, including the additional licence obtained, if any, against the said certificate,

3. In the meanwhile, on the ground that his application for additional licence filed by him for the year 1980-81 had not been considered on merits, the petitioner filed W.P. No. 4683/84 praying for the issue of a writ of mandamus directing the respondents to issue an additional import licence to the extent of Rs. 28,27,770/- for the year 1979-80 and Rs. 24,15,305/- for the year 1980-81. When this writ petition was pending, since the Export House Certificate itself was cancelled, W.P. No. 10162/84 was filed by the petitioner praying for the issue of a writ of certiorari to quash the order dated 22.9.1984 cancelling the certificate. The consideration of W.P. No. 4683 of 1984 will materially depend on the disposal of the W.P. No. 10162/84, and therefore, I take up for consideration that writ petition first.

4. The learned Counsel for the petitioner contended that the competent authority to grant the Export House Certificate was the Chief Controller of Imports and Exports, and it was he, who granted the certificate to the petitioner, and that the cancellation of the said certificate by the Export Commissioner was without jurisdiction. I have verified the file produced in this case, and I find from the note file, that the order was actually signed by the Chief Controller of Imports and Exports, but after the draft order was made, it was signed by the Export Commissioner. Even then, the Export Commissioner should have signed as 'for the Chief Controller of Imports and Exports'. But, however, we cannot deal with the same in a hyper technical way. But once we come to the conclusion that the Chief Controller of Imports and Exports has applied his mind and directed the cancellation, merely because the order was signed by the Export Commissioner, we cannot interfere with that order.

5. The next contention of the learned Counsel for the petitioner is that the order is vitiated on the ground that it was made in violation of the principles of natural justice. This was on the ground that, though the show-cause notice was issued, informing the petitioner that four of the firms in the 'statement of others' alone confirmed, and 21 others did not confirm the sale of finished goods to the

petitioner, and the letters sent to four others were returned unserved, they had not given the details of the firms in order to enable the petitioner to submit an effective explanation. I think there is great force in this contention, especially when this allegation has not been refuted by any counter-affidavit. It is seen that the petitioner also met the Deputy Chief Controller of Imports and Exports, and later the Chief Controller of Imports and Exports, personally and made oral representations. The allegation in the affidavit is that, since the details about the firms had not been furnished to him, he could not make an effective explanation, and this allegation has not been denied by counter-affidavit. The respondents have not filed any counter-affidavit in W.P. No. 10162/84. The notice in the writ petition was served on the respondents and they entered appearance through their counsel on 13.2.1985. When the writ petitions came on for orders as to posting on 11.7.1986, before another learned Judge, both W.P. Nos. 4683/84 and W.P. No. 10162/84 were directed to be posed for final disposal on 29.7.1986. Thereafter, though they were not posted on that date, both the writ petitions were posted for hearing on 9.12.1986 and they were again listed on 10th, and on the 10th, at the request of the learned Counsel for petitioner, the case was adjourned by a week and finally it came on hearing today. Till today no counter-affidavit has been filed. Mr. Veeraraghavan, learned Counsel appearing for the respondents in W.P. No. 10162/84 has stated that he was under the impression that the counsel appearing in W.P. No. 4683/84 would also represent the respondents in W.P. No. 10162/84 but suddenly he was asked to appear for the respondents in W.P. No. 10162/84 and that is how he is arguing this case on behalf of the respondents in W.P. No. 10162/84. But we are not concerned who appears for the respondents and what arrangements have been made as between them, and we are only concerned with, whether any counter-affidavit has been filed or not on behalf of the respondents. If no counter-affidavit has been filed on behalf of the respondents, it makes no difference as to which counsel appears for the respondents. I have seen the counter-affidavit filed in W.P. No. 4683/84 and it relates to the allegations made in the affidavit filed in support of that writ petition. There is no statement as to whether the petitioner was aware of the persons who have denied having supplied finished goods to the petitioner or whether he was supplied with those particulars. In the circumstances, there is nothing for me to

disbelieve the statement of the petitioner that he was not supplied with those particulars in order to enable him to make an effective representation. There is one other serious allegation made in paragraph 19(f) of the affidavit. The petitioner has specifically stated therein that the cancellation of the Export House Certificate during the pendency of W.P. No. 4683/84 had been made with an ulterior purpose to defeat the claim of the petitioner for an additional licence which is the subject matter of the writ petition No. 4683/84, and thereby has suggested lack of bona fides in the cancellation of the certificate itself. This allegation has not been denied by counter-affidavit. Though a counter-affidavit in W.P. No. 4683/84 was filed during the pendency of W.P. No. 10162/84 and served on the respondents (sic) on 9.12.1986 this allegation has not been traversed in that counter-affidavit also. In the circumstances, therefore, we cannot ignore that allegation nor can we say that the allegation has not been substantiated.

6. The learned Counsel for the petitioner also contended that the order of cancellation was a non-speaking order and therefore it is vitiated. Though there is no discussion about the misrepresentation, or any finding in the impugned order in respect of the same, in the light of the fact that a show-cause notice was issued giving reasons as to why it should not be cancelled, an explanation was called for, I am unable to say that the order can be considered as a non-speaking order, and therefore, it [is] liable to be set aside. However, it may be mentioned that the file discloses two reasons for cancellation. One is that the 'statement of others' during 1978-79 filed by the petitioner was not fully correct. I also find no discussion in the file relating to the question, whether the goods exported by the petitioner was finished goods or goods which are not eligible for that Export House Certificate. The order does not make it clear as to whether the cancellation was on the misrepresentation relating to the statement of, firms, from which the petitioner purchased the goods and exported them, or in relation to the actual nature of the goods that were exported. In the circumstances, therefore, the order could be treated as a non-speaking in form. Here again I have to point out that even though it was assailed as a non-speaking order, no counter-affidavit has been filed to state as to how they can sustain the order and on what finding the order of cancellation was issued. The counter-affidavit filed in W.P. No. 4683/84 is to the effect that there has been a mis-declaration in the Chartered Accountant's

Certificate relating to the 'statement of others' during 1978-79 and that the Chief Controller of Imports and Exports cancelled the certificate as the same has been obtained by misrepresentation. There is another statement in the counter-affidavit that there is mis-declaration in the Chartered Accountant's Certificate. The grant of Export House Certificate as already stated, gives certain privileges and entitlements. In such circumstances, after granting the same, if the certificate is to be cancelled, it could not be treated lightly and due formalities of giving an opportunity, getting explanation, giving a finding and then cancelling the order should be strictly followed. I am not satisfied especially in the absence of a counter-affidavit that either the procedure followed or the consideration of the objections before the order of cancellation in any way satisfies the principles of natural justice or the legal formalities required in this regard.

7. W.P. No. 10162/84 is accordingly allowed and the order of cancellation of the Export House Certificate dated 22.9.1984 is set aside. There could be no doubt that if the order of cancellation is illegal and could not be accepted, the petitioner is entitled to an additional licence prayed for in W.P. No. 4683/84. Accordingly, W.P. No. 4683/84 is also allowed as prayed for. However, there will be no order as to costs in both the writ petitions.