HIGH COURT OF GUJARAT (*D.B.*)

SHREEJI INDUSTRIES LIMITED
Versus
ADDITIONAL DIRECTOR GENERAL OFFOREIGN TRADE

Date of Decision: 09 December 2015

Citation: 2015 LawSuit(Guj) 2578

Hon'ble Judges: Akil Kureshi, Mohinder Pal

Eq. Citations: **2016 332 ELT 251**

Case Type: Special Civil Application

Case No: 2550 of 2012

Acts Referred:
Foreign Trade (Development And Regulation) Act, 1992 Sec 14, Sec 13, Sec 11(2)

Advocates: R C Jani & Associate

Akil Kureshi, J.

[1] Petitioner has challenged the Order-in-original dated 10.2.2010 passed by the Joint Director General of Foreign Trade and the appellate order dated 8th December, 2011.

[2] Brief facts are that the petitioner had imported certain consumables without payment of duty with an export obligation of granite tiles for an FOB value of Rs.13,13,928/-. One of the conditions of the license under which such import was allowed to be made was that the export obligation would be fulfilled within the prescribed time limit and the petitioner would submit the documents within one month from the date of expiry of the export obligation period. When the petitioner failed to produce such evidence, show cause notice was issued asking the firm to submit the documents showing export obligation fulfillment. Since the firm failed to produce any such documents, it was declared as a defaulter. Subsequently, show cause notice was issued under Section 14 of the Foreign Trade (Development & Regulations) Act why action under Section 11(2) should not be taken. Even in response to such show cause notice, no documents were produced discharging export obligation before the

authorities. However, it was conveyed that the documents were lost and therefore, FIR was lodged at Abu Road Police Station for such purpose.

[3] The adjudicating authority, however, by impugned order, proceeded to impose penalty of Rs.1313400/- making following observations.

> "7. It is observed from the licensing file that the firm has not submitted any of the export documents towards fulfillment of export obligation. They have not submitted any export documents towards fulfillment of export obligation such a Shipping bills, Bank realization certificate. Thus the firm has failed to fulfill the export obligation in toto.The firm has also not furnished the details of imports made by them and therefore, the adjudicating authority has no option but to believe that the notice firm has imported in full and therefore the firm has to pay the customs duty + interest @ 15% towards the imports made by them.
>
> 8. Therefore, the undersigned has reasons to believe that the noticee firm has not utilized the license for the purpose for which it was granted to them and therefore, the noticee firm and its Directors will be liable to pay the amount of customs duty together with interest @ 15% p.a.on the excess imports made by them. Moreover, the noticee firm has not submitted any evidence of exact amount of duty benefits obtained by them and therefore, the adjudicating authority is constrained to decide the penal amount on the basis of CIF value of the license. In my view, the appropriate amount of penalty in this case will be four times the cif value of the license and therefore the noticee firm is liable to pay penalty of four times the value of the license i.e. Rs.1313400/- (Rs.328350/- X 4).
>
> ORDER
>
> I, therefore, in exercise of powers as conferred in me under Section 13 of the Foreign Trade (Development & Regulation) Act, 1992, order as under:-
>
> 9.1 To Recover / payment of penalty amount of Rs.1313400/- (Rupees thirteen lakh thirteen thousand four hundred only)
>
> 9.2 Immediately after recovery / payment of the amount as indicated in paras 9.1 above, the Show Cause Notice will be treated as withdrawn and case will stands as closed/discharged/regularized.
>
> 11) This order is issued without prejudice to any other action that may be taken under any other Act, Rule or Regulation, in force".

Appeal against such order came to be dismissed. Hence, this petition.

[4] When the petitioner failed to produce any documents whatsoever of having discharged the export obligation, we see no infirmity in the orders passed by the authorities below. By merely stating that the FIR was lodged for lost documents, petitioner cannot substitute the requirement of production of documents demonstrating export obligation. We may recall even this reaction from the petitioner came long after the period for filing relevant documents before the authorities had lapsed. The firm, in the meantime, was already declared defaulter for being unable to fulfill export obligation. It was only in response to show cause notice issued by the authorities that for the first time, the petitioner took the stand that the documents could not be produced since they were lost. Under the circumstances, this petition is dismissed.

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