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Madras High Court

Case No: Writ Petition No. 15144 of 2011 and M.P. No. 1 of 2011

Victoria Marine and Agro Exports Ltd.	APPELLANT
Vs	
Joint Director General of Foreign Trade	RESPONDENT

Date of Decision: Aug. 19, 2011

Acts Referred:

- Foreign Trade (Development and Regulation) Act, 1992 - Section 15(1), 15(2)

Hon'ble Judges: T.S. Sivagnanam, J

Bench: Single Bench

Advocate: S. Murugappan, for the Appellant; F.X.A.F. Benny, CGSC, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

T.S. Sivagnanam, J.
By consent, the main writ petition itself is taken up for disposal.

2. The challenge in this writ petition is to a communication sent by the Respondent, dated 13.06.2011, informing the Petitioner that the request made on behalf of the Petitioner for copies of letters of the Directorate of Revenue Intelligence (DRI) cannot be provided, as they are copies of internal references, which relate to investigation carried out by DRI and not pertinent to the issue. In the same communication, the Petitioner was directed to submit their reply to the show cause notice within 15 days or appear for personal hearing before the authority.

3. The Petitioner is a company engaged in export of Marine products and on account of the exports done by them, they were the beneficiary of an incentive provided by the Government of India under a scheme called "Target Plus Scheme" announced during 2005. The Petitioner was issued a Target Plus licence for a credit amount of Rs.

4,56,52,295.70. It is stated that the Petitioner utilized the licence and imported various consignments. While so, the Respondent issued a demand notice dated 28.01.2011, directing the Petitioner to surrender the unutilized Target Plus licence and directed, payment of Customs Duty together with interest for the utilization made. The Petitioner by their letter, dated 10.01.2011, while stating that the demand notice is misconceived, requested to provide the copies of the report of DRI, to enable them to submit a detailed reply. It appears that no action was taken, pursuant to the said letter dated 20.02.2011, and the Respondent issued a show cause notice, dated 06.04.2011. After receiving the show cause notice, the Petitioner sent a representation on 25.04.2011, undertaking to file a reply, but sought for copies of DRI report and the documents verified by the DRI and other documents. The Respondent by their reply dated 04.05.2011 supplied the copy of the letter dated 07.12.2010 from the State Bank of India, Overseas Branch, Chennai, addressed to the Assistant Director, DRI alongwith a statement of bills. Once again, the Petitioner sent a representation on 09.05.2011, requesting for the records of the DRI report and stated that they are not secret proceedings or documents and therefore, they should be furnished the same. This request was negatived by the impugned communication.

4. The learned Counsel for the Petitioner submitted that the denial of documents is in violation of principles of natural justice and both in the demand notice dated 28.01.2011 and the show cause notice dated 06.04.2011, there are references to report of DRI with regard to the investigation conducted and failure to supply, copy of the report is arbitrary and violative of the principles of natural justice. It is further submitted that the Respondent having not conducted any separate investigation and having acted on the report of DRI, such document is required to be furnished. The learned Counsel for the Petitioner placed reliance on the decision of the Hon"ble Supreme Court in Kothari Filaments and Another Vs. Commissioner of Customs (Port) Kolkata and Others, . On the above grounds the learned Counsel prayed for setting aside the impugned communication.

5. The learned Central Government Standing counsel appearing for the Respondent, by relying upon the counter affidavit filed, submitted that the writ petition itself has been filed to cover up the fraudulent activities of the Petitioner and the same is not maintainable. It is further submitted that the Directorate of Revenue Intelligence (DRI) is a specialized investigating agency of the Ministry of Finance, Government of India, which will investigate smuggling, tax evasion and commercial frauds. The normal practice is, the DRI will investigate and share information on these activities with other concerned Government Departments.

6. It is further submitted that pursuant to the Petitioner"s letter dated 10.02.2011, the Respondent obtained details of the transaction from DRI, in which discrepancies were noticed and forwarded the same to the Petitioner and the bank details, contains the relevant particulars. It is further submitted that the DRI informed the Respondent"s office about the misutilisation and misrepresentation of the Target Plus scheme by the Petitioner and provided some documents. As these documents are internal

correspondence between two Government Departments, more specifically Investigating Agency and the Adjudicating Authority, it is the established practice not to provide them to the Petitioner, as it will certainly hamper the investigation process seriously. Further it is pointed out that if the Petitioner is aggrieved by an order passed by the Adjudicating Authority, the Petitioner can file an appeal in terms of Section 15(1) and (2) of the Foreign Trade Development Regulation Act. On the above ground, the learned Counsel prayed for dismissal of the writ petition.

7. The contention of the Petitioner is that in the absence of any investigation, conducted by the Respondent Department, they having relied upon the investigation conducted by DRI, such report which was the basis of the demand notice and the show cause notice should have been provided to the Petitioner, to enable them to submit their reply to the show cause notice and failure to comply with the request is arbitrary. In this regard, reliance was placed on the decision of the Hon''ble Supreme Court in case of Kothari Filaments and Anr., referred supra. In the said case, the show cause notice revealed that the contents of the documents were not verified and the enquiry was yet to be completed and therefore, the disclosure of the evidence was denied. The Hon''ble Supreme Court held that though the oversees enquiry was not conclusive, yet the Commissioner of Customs has made liberal use thereof and in the said background, the matter was remitted to the Commissioner, to consider the matter afresh and in the event, the Commissioner relies on the documents, may supply relevant copies thereof or atleast allow the Appellant to inspect the same.

8. In the case on hand, the allegation against the Petitioner in the show cause notice is that the DRI took up the exercise of verifying from the bankers of the Petitioner (State Bank of India) and the Petitioner''s bankers informed DRI that the bills of exchange corresponding to the subject exports were negotiated and the amount advanced by debit to "Foreign Currency Sight Bills A/C" (in case of demand bills) or Bill of Exchange A/C (in case of usance Bills) as the case may be and was credited to the Petitioner''s account maintained with them and the bills were thereafter sent to the buyer''s bank for realisation that the export proceeds were credited in State Bank of India''s Nostro account maintained by SBI, NY of through Bank of America, NY that the proceeds were negotiated and realized by the Petitioner through them; that the bills were negotiated and proceeds credited to the Petitioner account. It has also been stated that M/S. Jindal Drugs Ltd., Mumbai, M/S. Aditya Enterprises, Mumbai and M/S. Ruchi Worldwide, Mumbai were not maintaining any account with their branch. Based on these records obtained from the Petitioner''s Bank, it was alleged that the export proceeds were realised directly by the Petitioner and such proceeds during certain licencing year was higher than export performance during the subsequent year. Therefore, it was stated in the show cause notice that the Petitioner is not eligible for duty credit benefit under Target Plus Scheme. Therefore, it is evident that the show cause notice has been issued based upon the information furnished by the Petitioner''s bankers namely, State Bank of India. It is an admitted fact that the copy of the letter written by the Petitioner''s banker to DRI, dated

07.12.2010, along with its annexures has been furnished to the Petitioner and the same has been filed by the Petitioner in the typed set of papers. Perusal of the said communication dated 07.12.2010, reveals that among other details and information the details regarding bank realization certificate, bills negotiated and detail of amount advanced by debit to foreign currency export proceeds credited with State Bank of India, New York, through Bank of America New York, along with bill numbers, invoice number, date of negotiation, amount in US dollars and amount in India Rupees have been furnished.

9. Therefore, it is clear that the relevant bank records have been furnished to the Petitioner. In such circumstances, the stand taken by the Respondent in the impugned communication, appears to be perfectly justified, as the Petitioner is not entitled to, as a matter of right to seek for internal communications or inter departmental communications that to at the stage of show cause notice and more so when, such internal communication emanating from a specialized investigating agency. As noticed above, the facts of the case in Kothari Filaments and Anr., supra, are couched on entirely different set of facts and the said judgment does not render any support to the case of the Petitioner. It is evident that the show cause notice is based on the records obtained by DRI from the Petitioner"s bankers, copies of which along with all relevant details have been furnished to the Petitioner. Therefore, there is no arbitrariness or unreasonableness in the stand taken by the Respondent and it is not a case, where there is violation of principles of natural justice.

10. In the light of the above, no case has been made out for interfering with the impugned communication. Accordingly writ petition fails and it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

11. The Petitioner is granted further time of 15 days from the date of receipt of copy of this order, to submit their reply to the show cause notice.