

(2013) 11 DEL CK 0282

Delhi High Court

Case No: Writ Petition (C) 7514 of 2013 and CMs 16078-79 of 2013

K.T. Holidays Pvt. Ltd.

APPELLANT

Vs

Union of India and
Others

RESPONDENT

Date of Decision: Nov. 29, 2013

Acts Referred:

- Central Excises and Salt Act, 1944 - Section 32
- Foreign Trade (Development and Regulation) Act, 1992 - Section 11B, 14

Citation: (2014) 306 ELT 300

Hon'ble Judges: V.K. Jain, J

Bench: Single Bench

Advocate: V. Lakshmi Kumaran, Mr. M.P. Devnath and Mr. Abhishek Anand, for the Appellant; Sumeet Pushkarna, CGSC, Mr. Gaurav Sharma, Varun Dubey and Mr. Gobind Bannerjee, for the Respondent

Final Decision: Disposed Off

Judgement

V.K. Jain, J.

The petitioner-KT Holidays Pvt. Ltd. obtained EPCG authorization for duty saved amount of Rs. 23,07,800/- (Twenty Three Lac Seven Thousand and Eight Hundred) for import of two (2) motor cars. Under the condition of the said authorization, the petitioner was required to submit a bank guarantee as per the relevant customs notification, before the import consignment could be cleared. The petitioner submitted a forged Bank Guarantee while seeking clearance of the goods. On detecting the aforesaid forgery, a show cause notice dated 15.11.2010 was issued to the petitioner u/s 14 of the Foreign Trade (Development and Regulation) Act, 1992, to show cause as to why a penalty be not imposed on it. No reply to the said show-cause notice was furnished by the petitioner. The Foreign Trade Development Authority vide his order dated 19.7.2011, imposed a fiscal penalty of Rs. 46,15,600/- (Forty six lac fifteen thousand and six hundred) upon the petitioner. Being aggrieved from the aforesaid order, the petitioner preferred an appeal

before the prescribed Appellate Authority. The said appeal came to be disposed of vide order dated 22.6.2013. A perusal of the aforesaid order would show that despite repeated opportunities given by the Appellate Authority, there was no appearance on behalf of the petitioner to submit arguments on the appeal filed by it. It was in these circumstances that the Appellate Authority noticing that the petitioner had failed to produce any document or proof of payment of custom duty along with interest, dismissed the appeal filed by it. The case of the petitioner is that vide order dated 20.12.2011, the Settlement Commission, settled the liability of the petitioner as regards customs duty on payment of Rs. 40,28,680/- (Forty lac twenty eight thousand and six hundred eighty), which the petitioner deposited. The liability towards interest was settled at Rs. 11,90,311/- (Eleven lac ninety thousand and three hundred eleven), which was also paid by the petitioner. A fine of Rs. 10 lac in lieu of confiscation of the seized vehicles and immunity was also granted from the payment of fine in excess of the said amount. Individual penalties of Rs. 2,00,000/- and Rs. 50,000/- respectively were also imposed upon the petitioner and one Mr. Gautam Sapra respectively, who were granted immunity from payment of penalty in excess of the said amount.

2. The learned counsel for the petitioner has drawn my attention to Section 11B of the Foreign Trade (Development and Regulation) Act, 1992, which to the extent it is relevant, provides that the settlement of customs dues and interest thereon as ordered by the Settlement Commission as constituted u/s 32 of the Central Excise Act, 1944, shall be deemed to be a settlement under the said Act.

The contention of the learned counsel for the petitioner is that in view of the order passed by the Settlement Commission on 20.12.2011, the matter also stands settled for the purpose of the Foreign Trade (Development and Regulation) Act, 1992.

I find that the Appellate Authority has not considered the aforesaid plea raised by the petitioner. Presumably it happened since the petitioner repeatedly failed to appear before the Appellate Authority despite various opportunities granted to it in this regard. In my view it would only be appropriate that the contention raised by the petitioner is first examined by the Appellate Authority and not in this writ petition. Accordingly, it is directed that the impugned order dated 27.6.2013 passed by respondent no. 3 be kept in abeyance, subject to the petitioner depositing Rs. one lac as cost with Delhi High Court Legal Services Committee within two (2) weeks from today. The receipt of the deposit of the costs shall be submitted by the petitioner before the Appellate Authority. The petitioner shall also appear before the Appellate Authority for the purpose of hearing on 16.12.2013 at 11 am. The Appellate Authority may either hear the appeal on that date or fix an appropriate date for the purpose of hearing it. Only one opportunity shall be granted to the petitioner to make its submissions before the Appellate Authority and if the petitioner does not appear on that date, the order passed by the Appellate Authority shall revive without any further orders from the Court. In that event, the petitioner shall have no further right to impugn the said order. In case the petitioner appears before the Appellate Authority and makes its submissions, a fresh order shall be passed by the Appellate

Authority within four (4) weeks of hearing the submissions of the petitioner and in that case, impugned order dated 27.6.2013 passed by respondent no. 3 shall merge with the fresh order, which the Appellate Authority passes.

The writ petition stands disposed of in terms of this order.

There shall be no orders as to costs.

Dasti under the signatures of the Court Master.