

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2011

CORAM

THE HONOURABLE MR. JUSTICE VINOD K.SHARMA

W.P.No.5688 of 2008
and
M.P.Nos.1 and 2 of 2008

M/s.Universal Mining Corporation,
Represented by its Partner
Mr.V.Venkatavaradhan,
No.18, Narayanasamy Nagar,
Third Street, Gandhi Nagar,
Asher Mills Backside,
Tirupur - 641 602.

.... Petitioner

.. Vs ..

1. The Additional Director General of Foreign Trade,
Ministry of Commerce and Industry,
Department of Commerce,
Directorate General of Foreign Trade,
Udyog Bhavan, New Delhi - 110 011.
2. Joint Director General of Foreign Trade,
1544, India Life Building (Annex-I),
First Floor, Trichy Road,
Coimbatore - 641 018.

... Respondents

Prayer:- Writ petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, calling for the records of the first respondent and quashing the order No.11/172/2006-07/ECA.1/3440 dated 24.11.2006 passed by the first respondent in File No.11/172/2006-07/ECA.1/3441 and directing the first respondent herein to consider the appeal dated 04.09.2006 filed by the petitioner on merits.

For Petitioner : Mr.S.Murugappan

For Respondents : Mr.K.Ravindranath,

Senior Central Govt. Standing Counsel

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O R D E R

The petitioner by invoking the writ jurisdiction of this Court has challenged the order passed by the Additional Director General of Foreign Trade/Appellate Authority, vide which, the appeal filed by the petitioner was ordered to be dismissed as time barred. The impugned order reads as under:-

"ORDER-IN-APPEAL

Passed by: Dr. (Mrs) Maya D.Kem
Addl. Director General of Foreign Trade

M/s. Universal Mining Corporation filed an appeal against the Order-in-Original 32/95/181/0004/AM05, dated 2.12.2005 passed by Joint DGFT, Coimbatore in terms of which a fiscal penalty of Rs.3,16,000/- was imposed on the appellant firm and its Directors/Partner/Proprietor for non-fulfilment of export obligation against Advance Licence No.P/L/297419 dated 5.10.1995.

2. The brief facts of the case are that M/s. Universal Mining Corporation obtained an Advance Licence No.P/L/297419 dated 5.10.1995 from the office of Jt. DGFT, Coimbatore for a CIF Value of 79000/- with a condition to export the resultant product for a FOB value of Rs.2,48,000/- within a period of 18 months from the date of issue of the licence. On expiry of the export obligation period, the appellant firm did not submit the required documents, (like Shipping Bills, Bank Realisation Certificate, DEEC Books - Import and Export duly logged by the Customs Authorities) to the licensing authority. Hence penal proceedings were initiated against them and the Adjudicating Authority, vide his impugned order dated 2.12.2005, imposed a fiscal penalty of Rs.2,48,000/- on the appellant firm and its Directors/Partner/Proprietor.

3. Aggrieved by the above mentioned order dated 2.12.2005, M/s.Universal Mining Corporation filed an appeal, which was received in this office on 13.9.2006. As per the provisions of Section 15 of the Foreign Trade (D & R) Act, 1992, any person aggrieved by any decision made by the Adjudicating Authority under the Act may file an appeal within a period of 45 days from the date of serving of the order. But in this case it has been observed that though the Order was passed on 2.12.2005, the appeal was filed on 13.9.2006. The appellant firm was given an opportunity of personal hearing on 13.11.2006. On that day Shri T.L.Bhandari, Consultant and duly authorised by the appellant firm appeared before me. But he could not give any

convincing reasons for the delay in filing the appeal. Thus the appeal is grossly time barred. So, in view of the facts explained above and in exercise of powers vested in me in terms of the provisions of Section 13 read with Section 15 of the Foreign Trade (D&R) Act, 1992, the following interim order is made.

ORDER

No.11/172/2006-07/ECA.1/3441 (dt 24.11.2006)
November 22, 2006

The appeal is rejected because it is grossly time barred.

(Maya D.Kem)
Addl. Director General of Foreign Trade"

2. The learned counsel for the petitioner challenged the impugned order on the ground that the appeal filed by the petitioner was not barred by limitation and in any case sufficient cause was shown in the grounds of appeal for condoning the delay in filing the appeal. The learned Appellate Authority has rejected the appeal without application of mind in a mechanical manner, without looking at the grounds of appeal and facts stated therein.

3. In support of the contention, the learned counsel for the petitioner submitted that due to the losses suffered by the Firm, it changed its address, therefore the copy of the order imposing penalty of Rs.3,16,000/- was not received by the Firm. It is also the case of the petitioner that on coming to know about the order, it applied for getting the order copy on the same day i.e., 24.07.2006 and the certified copy of the order was supplied to it on 31.07.2006. The appeal was thereafter filed within the statutory period of 45 days i.e., on 12.09.2006, which according to the respondents, was filed on 13.09.2006.

4. The contention of the learned counsel for the petitioner is that the appeal was within time. As in the absence of the delivery of the order, the limitation was start from the date of knowledge and not from passing of the order, and in any case, the Appellate Authority was to consider the averments made in the grounds of appeal for condonation of delay.

5. On the contention referred to above, the learned counsel for the petitioner prays that the writ petition be allowed and the impugned order be set aside, and the matter be remitted back to the Appellate Authority to decide the appeal on merits, in accordance with law.

6. The learned counsel for the respondents has opposed the writ by contending that the discretionary order passed by the Appellate Authority in not condoning the delay, cannot be subject matter of challenge in the writ petition, as there is no illegality in exercise of discretion as the appeal was admittedly time barred. It is also the contention of the learned counsel for the respondents, that the consultant of the petitioner participated in the enquiry, therefore the order was within the knowledge of the petitioner. The Appellate Authority was fully justified in disposing the appeal as time barred.

7. It is also the contention of the learned counsel for the respondents, that litigant cannot claim the condonation of delay as a matter of right, as it is the discretion of the Appellate Authority to condone the delay or not to condone the delay.

8. On consideration, I find force in the contention raised by the learned counsel for the petitioner. The list of events placed on record in this Court by the respondents shows that the impugned order was not served on the petitioner but was received back. The facts disclosed in the dates and events also show that the petitioner was not available at the address on which the order was sent. Therefore, it cannot be presumed that the order was within the knowledge of the petitioner, as it is not disclosed, as to whether the Consultant of the petitioner, was present on the date of passing of the final order.

9. In the counter also, it has only been mentioned, that the Consultant of the petitioner had attended the proceedings, but not on the date when the order was passed, as admittedly order was passed in absence of the petitioner.

10. It is well settled law that in case the party is not aware of an order then the limitation is to be counted, from the date of knowledge, and not from the date of passing of the order.

11. The petitioner got knowledge of the order on 24.07.2006 and had thereafter took immediate steps to get a certified copy of the order. The appeal was thereafter filed within the limitation.

12. The appeal therefore could not be treated to be barred by limitation. The facts averred about non supply of order and knowledge have not been specifically denied in the counter filed.

13. Consequently, this writ petition is allowed, the impugned order passed by the Appellate Authority is set aside and the case is remitted back to the learned Appellate Authority for adjudicating the appeal on merit, by treating it to be within limitation.

14. The parties through counsel are directed to appear before the Appellate Authority on 15.03.2011 at 10.00 a.m.

15. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

jrl

To

1. The Additional Director General of Foreign Trade,
Ministry of Commerce and Industry,
Department of Commerce,
Directorate General of Foreign Trade,
Udyog Bhavan, New Delhi - 110 011.
2. Joint Director General of Foreign Trade,
1544, India Life Building (Annex-I),
First Floor, Trichy Road,
Coimbatore - 641 018.

+2ccs to Mr.K.Ravindranath, Advocate Sr 6730
+1cc to Mr.S.Murugappan, Advocate Sr 6720

KK(CO)
km/9.2.

सत्यमेव जयते

W.P.No.5688 of 2008

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