IN THE HIGH COURT OF KARNATAKA DHARWAD BENCH

THE HON'BLE MR.JUSTICE S.N. SATYANARAYANA

AND

THE HON'BLE MR.JUSTICE P.G.M. PATIL

W.A.NO.100127/2019 (GM-RES) DATED:04-09-2019

JMF AUTO LIMITED, REPRESENTED BY ITS GENERAL MANAGER MR.D.RAVI. MANAGER EXCISE, HAVING ITS OFFICE AT PLOT NO.224- A, KIADB, BELUR INDUSTRIAL AREA, GROWTH CENTER, DHARWAD-580011 VS. DIRECTOR GENERAL OF FOREIGN TRADE, UDYOG BHAVAN, NEW DELHI-110011. AND OTHERS.

JUDGMENT

S.N.SATYANARAYANA, J.,

The petitioner before the learned Single Judge in W.P.No.107971/2015 (GM-RES) has come up in this intra-court appeal impugning the order dated 13.02.2019.

2. Admittedly, the petitioner herein is a limited company having its registered office at Belur Industrial Estate in Dharwad. The petitioner company has projected themselves as an 100% Export Oriented Unit engaged in the manufacturing of Cups and Cones for industrial consumption. It is in this behalf they have secured Letter of Permission from the 1st respondent namely the Director General of Foreign Trade, Udyog Bhavan, New Delhi for the purpose of manufacturing of 6 "-12 " Cups and Cones.

3. The Letter of Permission issued in their favour on 08.10.2007, which is produced at Annexue- B would indicate that the same would be in force for a period of five years from the date of commencement of commercial production and one another condition was that within three years from the date of issue of Letter of Permission the project should be implemented for commercial production of the product for which permission was granted.

4. In the instant case, it is seen that even as on 25.04.2012 the appellant company had not commenced the commercial production pursuant to Letter of Permission issued on 08.10.2007.Hence, the show cause notice was caused on the appellant on 25.04.2012 under section 14 (b) and 11 of the Foreign Trade (Development and Regulation) Act, 1992 and also under Rule 17 of the Foreign Trade (Regulation) Rules, 1993 which were violated in non-implementation of the aforesaid Letter of Permission. Though a reply was tendered by the appellant herein on 06.07.2012, the contents of reply did not satisfactorily answer the inordinate delay in implementation of the project pursuant to Letter of Permission issued on 08.10.2007.

5. It is in this background, the 1st respondent proceeded to pass an order on 08.01.2013 in declaring that the supply effected by appellant herein to their principle M/ s TIMKEN India Manufacturing Private Limited through their customers does not amount to deemed export and that they have not fulfilled the conditions of

Letter of Permission dated 08.10.2007 issued in their favour. Accordingly, the same was cancelled with immediate effect. While doing SO, a fine of Rs. 5,00,000/-was also imposed for non fulfillment of conditions of Letter of Permission and penalty of Rs. 5,000/-for non filing of APR by the appellant herein under section 11 (2) of the Foreign Trade (Development and Regulation) Act, 1992.

6. The said order of the 2nd respondent-the Development Commissioner was subject matter of challenge before the 1st respondent namely-the Director General of Foreign Trade, Government of India, Ministry of Commerce and Industries in F.No.01/92/171/23/AM-16/PC-VI/100, which came to be dismissed by order dated 15.06.2015 in confirming the order of cancellation of Letter of Permission issued in favour of appellant and said order of the 1st respondent was subject matter of challenge before the learned Single Judge of this Court in W.P.No.107971/2015. The learned Single Judge on appreciation of the material available on record has categorically observed that the appellant herein who is the petitioner before the learned Single Judge has failed to comply with any of the obligations that have been imposed on it under the Letter of Permission in treating the Unit of the appellant's as Export Oriented Unit.

7. Since, the same was subject to condition imposed under clause (vi) of paragraph No.2 of the Letter of Permission. Therefore, the learned Single Judge was of the considered opinion that there was no error or perversity in the reasonings assigned by the Original Authority vide Annexure D to the writ petition or the Appellate Authority vide Annexure- A while arriving at the conclusion rendered by them. It was also held by the learned Single Judge that no material either produced or demonstrated before the learned Single Judge to conclude contrary to the finding of fact rendered by the Original Authority as well as the Appellate Authority which confirmed the same.

8. In that view of the matter, this court find that no grounds are made out to interfere with the order of the learned Single Judge which has confirmed the concurrent finding rendered by the 2nd respondent-Original Authority and as well as the 1st respondent-Appellate Authority in deciding that the withdrawal of Letter of Permission issued in favour of petitioner on 08.10.2007 which appears to be just and proper in the facts and circumstances of the case.

Accordingly, this intra-court appeal is dismissed as bereft of material to interfere with the same.