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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 4349/2018

EASTMAN INTERNATIONAL

..... Petitioner

Through: Mr. A.K. Prasad & Ms. Surabhi
Sinha, Advs.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Anurag Ahluwalia & Ms.
Avshreya Pratap Singh Rudy,
Advs.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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12.05.2023

1. One of the principal controversies involved in the present petition is whether the petitioner was impeded in utilizing the Duty-Free Import Authorizations (hereafter '**DFIAs**'), nine in number, which expired on or before 26.12.2010. The petitioner had applied to the Policy Relaxation Committee (hereafter '**the PRC**') seeking extension of the DFIAs; however, the petitioner's request was rejected.

2. The learned counsel appearing for the petitioner drew the attention of this Court to the minutes of meeting of the PRC held on 08.11.2011, whereby a report from the Jurisdictional Commissioner (Customs), Amritsar was sought. He also referred to the report dated 26.06.2012 issued by the Jurisdictional Commissioner (Customs) in response to the said direction. The relevant extract of the said report reads as under:

"6. The Department has been acknowledging to the trade including M/s. Eastman International that there were problems due to upgrading of Electronic Data Interchange (EDI) system from ICES 1.0 to 1.5 version during the period Jan-April, 2010.

In view of the above, the request of M/s Eastman International for revalidation of the licenses may be considered sympathetically to avoid any loss that may be caused to them for no fault of them."



3. Thus, *prima facie*, the petitioner's contention that there were some issues with the EDI system, as a result of which the petitioner was impeded in utilizing the DFIA's, is merited.

4. The respondents contest the said contention and had filed a short affidavit, which was taken note of by this Court in the order dated 05.03.2020. The said order reads as under:

"1. During the course of hearing, our attention has been drawn to the letter dated 26.06.2012 issued by the Commissioner of Customs, Amritsar. The stand taken by the respondents in their short affidavit *inter alia* is as follows:

"6. I say that the decisions of the PRC taken in its meeting held on June 6, 2017 clearly recorded that the requests for revalidation of the DFIA's on the ground of "change of Customs software from ICES 1. to 1.5 version" was not acceptable because these DFIA's were issued before April 1, 2009 and were therefore not transmitted to the Customs Department through the EDI mode.

7. I further say that the Petitioner has sought to paint a picture in the Writ Petition that the DFIA's could not be utilized during the period of January to March, 2010 because in that period the Customs Department's software was being upgraded from ICES 1 to 1.5 and hence could not be utilized.

8. I say that this picture is incorrect and distorted. As a matter of fact, all DFIA's issued prior to April 1, 2009 were in physical form and would not have been transmitted through the EDI mode. Since the nine DFIA's issued to the Petitioner are all prior to April 1, 2009, any problems encountered due to change in the Custom Department's software system from ICES 1 to 1.5 during the relevant extended period, i.e. between January to March, 2010, would not impede the Petitioner's utilization of the DFIA's in any manner whatsoever."

2. We direct the petitioner to specifically deal with the averments made by the respondents in their short affidavit as aforesaid by filing an affidavit in response within two weeks. We also direct impleadment of the Commissioner (Customs), Amritsar as a party respondent. The complete paper book along with the counter affidavit of the respondents and their short affidavit as well as the rejoinder that the petitioner will



file in terms of this order be served upon the Commissioner of Customs within four weeks. The Commissioner of Customs should respond to the stand taken by the petitioner as well as respondents and specifically state whether the DFIA's, which have been issued in physical form could have been utilised by the petitioner even during the period of upgradation of software from version 1 to version 1.5 i.e. between January to April, 2010.

3. List on 13.05.2020. The respondents should ensure that the counter affidavit as well as the additional affidavit are brought on record."

5. Pursuant to the said order, the Jurisdictional Commissioner (Customs), Amritsar was impleaded as respondent no.4. However, no response has been received from the said authority.

6. We are of the view that the response of respondent no.4 would be relevant to determine the controversy in the present petition. Accordingly, we direct respondent no.4 to file an affidavit, unequivocally stating whether it stands by the report submitted on 26.06.2012.

7. Let the same be filed within a period of three weeks from today.

8. List on 01.08.2023.

9. The learned counsel for the parties shall ensure that the copy of this order is served on respondent no.4.

10. *Dasti* under signature of Court Master.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

MAY 12, 2023

'gsr'