

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Muhammad Junaid Ghaffar, J.
Agha Faisal, J.

CP D 6867 of 2019 : Pak China Steel & Others vs.
Collector of Customs Export & Others

For the Petitioners : Mr. Adnan Memon, Advocate

For the Respondents : Mr. Kafeel Ahmed Abbasi
Deputy Attorney General

Ms. Masooda Siraj, Advocate

Date of hearing : 16.03.2021

Date of announcement : 16.03.2021

JUDGMENT

Agha Faisal, J. The petitioner is a partnership firm (“Firm”) with four partners, three of whom have been named as petitioners through whom the Firm has preferred this petition and the fourth being the respondent no. 3 herein. Ostensibly on account of differences *inter se*, the respondent no. 3 wrote¹ to the respondent no. 1 (Collector Customs Exports) seeking a stoppage in respect of the Duty and Tax Remission for Export (“DTRE”) provisionally granted² to the Firm. Despite remonstrations of the Firm and without provision of any opportunity of being heard, the respondent no. 2 cancelled the DTRE approval of the Firm, vide the order dated 16.10.2019 (“Impugned Order”). Hence, the Firm preferred the present petition seeking recall of the Impugned Order.

2. The facts articulated before us are that the Firm consists of four partners, with the respondent no. 3 holding a minority share therein. In view of a dispute *inter se*, in respect whereof the said respondent has preferred a civil suit before the original civil jurisdiction of this Court, the respondent no. 3 wrote to the respondent no. 1, representing himself to be the majority partner, seeking stoppage of the DTRE approval of the Firm. The record demonstrates that the Firm wrote³ to the respondent no. 1 explicating that the Firm had never sought cancellation / suspension of the DTRE approval and that anything to the contrary was false, fabricated and illegal. However, without

¹ Vide letter dated 14.09.2019.

² Vide Approval no. KPQE/146/10042019; communicated vide letter dated 15.04.2019.

³ Vide letter dated 05.10.2019.

providing an opportunity to the Firm to state its position the Impugned Order was rendered.

3. The respondent no. 3 was served notice of the present proceedings; however, his counsel, post several appearances, filed an application⁴ to withdraw his vakalatnama. Consequently, this Court repeated notice upon the said respondent and the bailiff report demonstrates that it was duly served. Notwithstanding the foregoing, the said respondent has opted to remain absent / unrepresented without intimation or justification.

4. It is an admitted fact that the provisional DTRE was granted to the Firm, and not to any specific partner thereof. The dispute between partners is a domestic matter, apparently awaiting resolution before the fora of appropriate jurisdiction. In the comments filed by the respondent nos. 1 and 2, it is stated that a hearing notice was issued to the Firm, however, no corroboratory document in such regard has been placed on record. The said comments also make no mention of the Firm's letter, referenced supra, disavowing any request for cancellation of the DTRE approval. It would thus appear that the Impugned Order may have been rendered otherwise than in consonance with the law of natural justice, as persons prejudiced in such regard claim not to have been heard prior to rendering of the Impugned Order.

5. In view hereof, we consider it appropriate to dispose of this petition, along with pending applications, upon the terms delineated herein below:

a. The respondent nos. 1 and 2 shall issue a notice of hearing to the Firm and all its four partners, within three days from receipt hereof, for a hearing to be conducted within two weeks from the date of this order.

b. At the designated hearing, the Firm / partners shall be heard in respect of the issue of cancellation of the DTRE approval and an opportunity shall be provided to place written submissions on record, if the Firm / partners wish to do so. The petitioner (and its partners) shall remain at liberty to raise all the grounds raised before us and rely upon any appropriate documentation in support of their contentions.

c. Post conclusion of the aforesaid, the respondent nos. 1 and 2 shall revisit the issue of the DTRE approval of the Firm and render a reasoned speaking order, while deciding whether to maintain, alter or

⁴ CMA 4422 of 2021.

reverse the Impugned Order, within one week from the conclusion of the aforesaid hearing.

d. The parties shall remain at liberty to assail any order so rendered, if aggrieved, before the forum of appropriate jurisdiction.

6. The office is instructed to communicate copies hereof to the respondent nos. 1 and 2 for compliance.

JUDGE

JUDGE