$~R-61 (Part-IB)

*   **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+   **WRIT PETITION (CIVIL) No.646/1997**

Date of decision: 14th August, 2013

M/S YORK EXPORTS (P) LIMITED

..... Petitioner

Through Mr. Sandeep Sapra, Advocate.

versus

COMMISSIONER OF INCOME TAX, DELHI-III

..... Respondent

Through Mr. Sanjeev Sabharwal, Sr. Standing Counsel.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

SANJIV KHANNA, J. (ORAL):

M/s York Exports Private Limited has filed the present writ petition for quashing of order dated 19th December, 1996 read with order dated 17th August, 1995 passed by Commissioner of Income Tax, Delhi-III.

2. The petitioner is a limited company engaged in manufacture and export of woollen and cotton hosiery goods. During the period relevant to Assessment Year 1994-95, the petitioner had exported almost 100% of its produce to erstwhile USSR/Russia. The exports

were made on documents against collection basis and the expo proceeds were to be received in convertible foreign exchange.

3. The petitioner for the purpose of taxation wanted to claim benefit under Section 80HHC of the Income Tax Act, 1961 (Act, for short) in respect of profits derived from exports. As per clause 2(a) to Section 80HHC, the petitioner to avail of the said benefit was required to receive the sale proceeds in convertible foreign exchange within a period of six months from the end of the previous year. This Section also stipulated that on an application by assessee this period could be extended by the Chief Commissioner or Commissioner on being satisfied, for reasons to be recorded in writing, that the assessee for reasons beyond his control was unable to bring the convertible foreign exchange within the period of six months. No upper time limit was fixed under the said sub-section.

4. During the previous year between 1st April, 1993 to 31st March, 1994, the petitioner had received sale proceeds in convertible foreign exchange equivalent to Rs.3,67,21,421/- out of total export turnover of Rs.4,98,13,343/-, within the period of six months from the end of the previous year.

5. For extension of time to realise the balance amount of Rs.1,49,51,970/-, the petitioner had filed an application dated 12th September, 1996 under Section 80HHC(2)(a) of the Act. Extension of

time uptil 31st March, 1995 was prayed for. In the application, it w stated that due to disintegration of USSR, the economy and money market conditions in the said country had become very tight and the buyers were unable to remit the payment within time. Further the value of the Russian Rouble had depreciated substantially, from around 800 Roubles per Dollar to more than 2000 Roubles per Dollar. The buyers had to make arrangements for payment in convertible foreign exchange. The buyers were also facing difficulty as in some cases the goods exported had reached very late and by that time the season for the said goods was already over. The buyers were waiting for the next season, when the sales were possible before they could remit payments. It was highlighted that the Indian Government was conscious of the problem faced by the exporters to erstwhile USSR and the Reserve Bank of India had decided to sympathetically consider requests for extension of time for realisation of proceeds from countries, which were earlier part of USSR.

6. The aforesaid application remained pending and was not decided. The petitioner in the meanwhile moved another application dated 8th June, 1995 seeking further extension of time upto 31st March, 1996 enlisting almost identical reasons. In this application, it was pointed out that out of the balance sale proceeds of Rs.1,49,51,970/-, the petitioner had partly succeeded as proceeds amounting to

Rs.45,83,662/- had been received from the Russian buyers. The deta of the said export proceeds received was enclosed. It was stated that the petitioner was experiencing great problem in recovery of the export proceeds within the specified time on account of fluctuation in Russian currency and fall in value of Rouble against dollar etc. It was again highlighted that the petitioner had filed application with the Reserve Bank of India for extension of time due to the peculiar and difficult circumstances.

7. The two applications remained pending and were not taken up for consideration. The petitioner thereupon wrote letter/application dated 10th August, 1995. In this application, the petitioner gave full details, i.e., party-wise summary of unrealised export payments as on 1st September, 1994, party-wise exports for the year ending 31st March, 1994 and payments received upto 2nd August, 1995. It was stated that the petitioner had already received payments to the extent of Rs.4,37,85,885/- leaving an outstanding balance of Rs.60,27,458/-.

8. Respondent No. 1 vide his order dated 17th August, 1995 allowed the first application for extension of time upto 31st March, 1995 but rejected the second application for extension of time upto 31st March, 1996. The reason given by the Commissioner of Income Tax, Delhi-III was that the assesseee had not filed the return for Assessment Year 1994-95 as he wanted to file the same only after realisation of

export proceeds. However, the petitioner had filed audit report und Section 44AB of the Act, but the same was returned by the Assessing Officer because return of income was not filed. The second reason given was that in the first application dated 12th September, 1994, the petitioner had only sought extension of time upto 31st March, 1995, while the second application was filed on 8th June, 1995. Therefore, the first application should be considered.

9. We record and observe that the petitioner has stated that he had received and realised the entire export proceeds by February, 1996. The aforesaid factual position is not disputed and admitted.

10. It is clear from the impugned order, that the Commissioner of Income Tax, Delhi-III has not dealt with the real issue and controversy, i.e., the economic crises in countries which were part of USSR and the effect thereof on the Indian exporters. He has not rebutted or denied that the assessee petitioner was factually correct, when they had stated that due to the said economic crises, fall or depreciation in value of the Rouble, payments were not being received by the Indian exporters from buyers in USSR or countries which were earlier part of USSR. He has also not adverted to the fact and denied that the Reserve Bank of India had realised the problem and had taken notice of the unprecedented situation and hardship faced by the exporters from India. The question involved was whether or not, failure to realise the

export proceeds, was due to reasons beyond control of the petition[er]. Noticeably, if the conditions had persisted and continued upto 31st March, 1996, there could not have been a valid justification to restrict extension upto 31st March, 1995, unless there was valid ground or reason. There is no such reason stated or adverted to.

11. Punjab and Haryana High Court in ***Mayor and Company versus Commissioner of Income Tax and Another***, 2001 (248) ITR 162 (P&H) has examined a similar question in great length and referred to several earlier decisions and has observed as under:-

> "An analysis of the provisions quoted above shows that under sub-section (1) of Section 80HHC an assessee engaged in the business of export out of India of goods or merchandise to which the provisions of that Section apply is entitled to deduction of profits derived from the export of such goods or merchandise in computing his total income. Clause (a) of sub-section (2) of Section 80HHC lays down that the assessee is entitled to claim deduction of the profits derived by him from the export of specified goods out of India, if the sale proceeds of such goods or merchandise exported out of India received in, or brought into, India in convertible foreign exchange within a period of six months from the end of the previous year or within such further period as the Chief Commissioner or Commissioner may allow in this behalf on being satisfied that the assessee was unable to do so within the said period of six months due to reasons beyond his control. For exercise of this power, the Chief Commissioner or Commissioner, as the case may be, has to record reasons in writing. This means that the power vested in the competent authority to grant

extension of time, which necessarily includes the power to refuse extension of time beyond the period of six months, is quasi-judicial in nature. The statutory embodiment of the requirement of recording reasons in writing is clearly indicative of the Legislature's intention that the power vested in the Chief Commissioner or Commissioner to grant or refuse extension of time must be exercised reasonably and fairly and must not be exercised arbitrarily and the order passed by the concerned authority must reflect objective application of mind to the factors relevant to the determination of the issue as to whether the assessee could not bring or receive the sale proceeds of the exported goods due to reasons beyond his control. The expression "reasons beyond his control" has not been defined in the Act. Therefore, we shall have to interpret the same keeping in view the context in which it appears and by adopting that mode of interpretation, it can easily be said that the assessee can seek extension of time beyond six months only by showing that he had acted with due diligence and had taken the necessary steps for brining the sale proceeds within the stipulated period but could not do so due to reasons on which he did not have any control. The expression "such further period" has also not been defined in the Act. However, keeping in view the limitation prescribed under Section 153 of the Act for passing of the order of assessment, i.e., two years from the end of the assessment year, there is no difficulty in holding that the extension contemplated by Section 80HHC(2)(a) can be granted for the period ending with the expiry of two years from the assessment year. In other words, if the sale proceeds of the goods or merchandise exported out of India, are received, or brought into India by the assessee in convertible foreign exchange within the period of two years from the end of the assessment year and he shows that the amount could not be brought or received earlier

> on account of reasons beyond his control, then the Chief Commissioner or the Commissioner, as the case may be, is obliged to grant extension of time. The discretion conferred upon the Chief Commissioner or the Commissioner under Section 80HHC(2)(a) is not unbridled or unguided. Rather it is limited to the consideration of the plea of the assessee that the sale proceeds could not be brought into or received in India within six months due to reasons not attributable to him and once the assessee satisfied the Chief Commissioner or the Commissioner that the sale proceeds could not be brought within the stipulated period, due to reasons beyond his control, the extension contemplated by Section 80HHC(2)(a) has to be granted as a matter of course, unless there are other cogent reasons for not doing so. This interpretation of sub-section (2)(a) of Section 80HHC is consistent with the object sought to be achieved by incorporating Section 80 HHC, i.e., to encourage export of goods and merchandise out of India for earning foreign exchange."

12. Delhi High Court in ***Kausales Exports (India) versus Commissioner of Income Tax and Another***, 1999 (240) ITR 108 had allowed the writ petition after noticing that the importer in London was facing financial stringency due to recession in the market and, therefore, had not remitted the payment. It was held that when there was sufficient material to demonstrate that the assessee was regularly following up the matter, relief could not be denied only because there was a delay in filing the application for extension of time. In ***Narinder Kumar Arora and Another versus Commissioner of Income Tax***,

2000 (245) ITR 10 (Del) it was observed that the application f extension of time could be filed even after six months and it was not necessary that the application should be filed within or before six months period stated in Section 80HHC(2)(a). In ***Vikram Overseas Private Limited versus Commissioner of Income Tax and Others***, 1996 (222) ITR 253, Delhi High Court referred to decision of the Supreme Court in ***CIT versus Ajanta Electricals***, 1995 (215) ITR 114 (SC) and dealt with the question whether the Commissioner or Chief Commissioner could reject an application on the ground that no provision for extension of time was specifically incorporated, where the application was moved after the said period of six months as assessment cannot kept pending for an indefinite period. It was held that this observation and reason of the Commissioner was irrelevant and extraneous as the parameters, which govern the exercise of power under Section 80 HHC(2)(a), stand stipulated in the provision itself, i.e., whether or not for reasons beyond the control of the assessee, the sale proceeds in convertible foreign exchange had not been brought in India after expiry of the period of six months from the end of previous year. Mere fact that the extensions were granted from time to time could not be a reason to decline the assessee's request because no outer time limit had been fixed.

13. We note in the present case that the assessment order was passed

on 13th March, 1996. Thus, the petitioner had received the remaining amount of sale proceeds from abroad before the expiry of time limit for completing the assessment.

14. Madras High Court in ***Sarathy Palayacat Company versus Chief Commissioner of Income Tax and Others***, 2001 (248) ITR 484 has observed that wide discretion is vested with the Commissioner/Chief Commissioner and the time can be extended on more than one occasion. In ***Leather Trends Private Limited versus Commissioner of Income Tax and Another***, 1995 (215) ITR 690 Allahabad High Court has held that discretion given to the Commissioner is to be exercised in judicial manner and rejection of the application should be after giving valid reasons. Another decision of Allahabad High Court in ***Azad Tobacco Factory Private Limited versus Commissioner of Income Tax and Others***, 1997 (225) ITR 1002 takes an identical view and it has been observed that no time limit has been mentioned for moving an application for extension of time under Section 80HHC(2)(a) and it is not necessary that the application should be moved within six months from the end of previous year.

15. In view of the aforesaid discussion, we allow the present writ petition and quash the two orders dated 19th December, 1996 read with order dated 17th August, 1995 and grant extension of time upto 31st March, 1996. As it is an old matter, we are not remitting the matter to

the Commissioner/Chief Commissioner. Further, it is noticed that sa proceeds have been duly received. If any refund is due to the petitioner, the same will be paid within a period of two months from the date, copy of this order is received by the Assessing Officer. No order as to costs.

SANJIV KHANNA, J.

SANJEEV SACHDEVA, J.

AUGUST 14, 2013
VKR