

JUDGMENT

MIANGUL HASSAN AURANGZEB, J.---Through the instant writ petition, the petitioner, SKP Food and Trading, impugns the letter dated 06.01.2017 from respondent No.3 (Collector, Model Customs Directorate, Peshawar) to respondent No.1 (Chief (Export), Federal Board of Revenue, Islamabad). In the said letter dated 06.01.2017, respondent No.3 has expressed the view that export of 'same state goods' in their original and unprocessed form from Export Processing Zone could not be allowed for further export to Afghanistan. Furthermore, respondent No.3 requested respondent No.1 to confirm the said view expressed by respondent No.3.

2. Learned counsel for the petitioner submitted that the petitioner had been registered by respondent No.4 (Export Processing Zone Authority, Ministry of Industries, Government of Pakistan) on 16.06.2016; that by virtue of notification dated 14.11.2016, the land route was said to be available to the petitioner for the export of goods subject to the customs rules, procedures and prevailing regulations; that the petitioner is carrying on business under the names of "M/s SKP Food Industry" and "SKP Food and Trading"; that SKP Food Industry is situated at the Export Processing Zone at Risalpur and deals in the manufacturing of goods in accordance with the rules and regulations of the Export Processing Zone Authority ("E.P.Z.A."); that SKP Food and Trading is engaged in the business of import and export of goods; that the said two entities have separate forms of businesses; that according to the Export Policy Order, 2016, the petitioner exports goods from the E.P.Z.A., Risalpur to Kabul, Afghanistan via Torkham Border; that the petitioner made exports of various goods through commercial invoices dated 26.09.2016 and 08.10.2016 from E.P.Z.A., Risalpur to Kabul, Afghanistan; that the petitioner wanted to export goods by availing the benefit under Rules 228 and 229 of the Customs Rules, 2001; that due to the impugned letter dated 06.01.2017, a restriction has been imposed on the petitioner to export goods to Afghanistan; that the petitioner also wanted to export perishable goods but the imposition of the restriction due to the said letter dated 06.01.2017 has caused grave loss to the petitioner; and that the business of manufacturing at the E.P.Z.A., Risalpur, is carried out by SKP Manufacturing Industry, which is not involved in the business of export of goods.

3. Learned counsel for the petitioner further submitted that the imposition of the Said restriction is against the law and the petitioner's fundamental rights. Learned counsel for the petitioner prayed for the impugned letter dated 06.01.2017 to be set-aside.

4. On the other hand, learned counsel for respondents Nos.1 to 3 submitted that M/s SKP Food Industry was initially registered as a manufacturer of food products and subsequently it got itself registered as M/s SKP Food and Trading Warehousing Unit with E.P.Z.A. in June, 2016; that both the said entities are operating in the same premises at E.P.Z. Risalpur; that the Export Policy Order dated 18.04.2016, provides that a unit operating in E.P.Z.A. may export goods abroad as well as to the tariff area in accordance with the Customs Export Processing Zones Rules, 1981; that the petitioner exported two consignments of finished goods by misusing his unique user identifier and password; that finished goods imported without payment of duty and taxes at import stage for E.P.Z. without undergoing any process at E.P.Z. premises and without value addition cannot be exported to Afghanistan in the same state; that the export of the 'same state goods' imported by trading units in the E.P.Z., Risalpur can be allowed for clearance only for home consumption to the tariff area subject to the payment of customs duties and taxes; and that since the goods sought to be exported by the petitioner to Afghanistan have not undergone any value addition at the E.P.Z., Risalpur, their export to Afghanistan cannot be permitted under Rule 229 of the Customs Rules, 2001. Learned counsel for respondents Nos.1 to 3 prayed for the writ petition to be dismissed.

5. After hearing the learned counsel for the contesting parties, I felt the need to appoint an Amicus Curiae in this case. Hafiz Arafat Ahmed Chaudhary, Advocate, was requested to assist this Court as an Amicus Curiae. The learned Amicus Curiae rendered invaluable assistance to this Court.

6. I have heard the contentions of the learned counsel for the contesting parties, and have

perused the record with their able assistance.

7. The E.P.Z.A. was established under the provisions of the E.P.Z.A. Ordinance, 1980. "Zone" has been defined as such area as the Federal Government may, by the notification in the official gazette declare to be a Zone for the purposes of the said Ordinance. Under section 3 of the said Ordinance, every Zone shall be a bonded area. Section 11(3) of the E.P.Z.A. Ordinance, 1980, provides that materials and manufactured goods shall not be exported from the Zones into the tariff area except to the extent and in the manner to be specified by the Authority in each case with the prior approval of the Federal Government. "Tariff area" has been defined as any area in Pakistan outside the limits of a Zone.

8. The E.P.Z. at Risalpur was established as a joint venture between the E.P.Z.A. and the Sarhad Development Authority. It came in cooperation in 2002. On 16.06.2011, the E.P.Z.A. approved the Certified to investment proposal of M/s SKP. Food Industry at the E.P.Z., Risalpur. On 16.06.2016, E.P.Z.A. approved the investment proposal of M/s SKP Food Industry as a warehouse/trading unit for re-export of the items under the name of M/s. SKP Food and Trading at E.P.Z., Risalpur. The said letter dated 16.06.2016 expressly mentioned that exports to Afghanistan by land routes are not permissible at present. The petitioner's grievance is that the goods imported by the petitioner and warehoused at E.P.Z., Risalpur, are not being permitted for export to Afghanistan on the ground that no value addition to such goods has taken place at the E.P.Z. In other words, the petitioner wants to export to Afghanistan goods in the same state in which they were imported.

9. Rules 228(5) and 229(1) of the Customs Rules, 2001, provide as follows:-

"228(5.) The units established in the Export Processing Zones excluding M/s Al-Tuwairqi Steel Mills Karachi shall export only upto 20% of the total production to tariff area in Pakistan while 80% shall be exported to other countries "(emphasis added)"

"229(1). Removal of the imported raw materials, imported goods in the name state and goods produced by investors in a Zone to tariff area for home consumption may be allowed subject to the import restrictions and formalities applicable to imports from abroad, customs duties and other taxes levied on imports into tariff area from the Zone shall to the same as duties and taxes levied on similar imports from abroad"

10. The conjoint reading of the above referred rules show that 80% of the goods which are "produced" in E.P.Z. can be exported to other countries, whereas 20% of such goods can be used for home consumption in the tariff area. Goods that are imported from abroad and taken to E.P.Z., but not subjected to any manufacturing process or value addition cannot be exported to other countries. Such goods can also not be taken from the E.P.Z. to the tariff area without the payment of taxes and duties in accordance with the law. In order for a registered unit in the E.P.Z. to export 80% of the goods to other countries, it is essential for such goods to have been subjected to a manufacturing process or value addition. Indeed, if any person were allowed to export imported goods into Afghanistan without any value addition or without subjecting such goods to a manufacturing process, the very purpose behind establishing E.P.Z., would be defeated. The purpose of establishing E.P.Z. is for a manufacturing process or value addition of goods to take place therein so that the export of such goods is encouraged. It is for this very purpose that concession is given on the import of raw material and goods that are subjected to a manufacturing process or value addition in E.P.Z. The applicable rules only permit the removal of goods (in the same state in which they were imported), from an E.P.Z to tariff area on the payment of all duties and taxes. For the removal of such goods (i.e. without any value addition) from an E.P.Z. for export to any other country, there is no prescription. Therefore, it is my view that the petitioner cannot make any grouse against any restriction imposed by the respondents on the removal of imported goods (which are not subjected to any manufacturing process or put in production) from the E.P.Z. for export to a foreign country without the payment of all taxes and duties.

11. Learned counsel for the petitioner did not dispute that the goods which the petitioner was intending to remove from the E.P.Z., Risalpur, for export to Afghanistan were 'same state goods', and had not been subjected to any value addition after their import. Learned counsel

could also not dispute respondent No.3's view that at the petitioner's premises there was only one small machine for packing bubble gum. The petitioner admitted that it had importer consignments of hair oil, shampoo, hair cream, washing powder, soap, and tooth paste to be warehoused for further export to Afghanistan by taking the benefit of Rule 228 of the Customs Rules, 2001. The petitioner's premises at the E.P.Z., Risalpur, has no facilities for the value addition or manufacturing process for the said items. Therefore, the petitioner's grievance against the respondents for not permitting the 'same state goods' to be removed from the E.P.Z. for export to Afghanistan, is unjustified.

12. Another aspect of the case which needs to be considered is that the impugned letter dated 06.01.2017 is not addressed to the petitioner. Learned counsel for the petitioner could not explain as to how the petitioner obtained a copy of the said letter. The impugned letter contains the view point of respondent No.3. Such a document could also not have been obtained by the petitioner under the provisions of the Freedom of Information Ordinance, 2002, since it only contains an intermediately opinion or recommendation. In the case of *M/s. Gul Industrial Concern v. Collector of Customs Collectorate* (2008 PTD 337), it has been held inter alia that a writ petition against a letter, which was an internal communication and not addressed to the petitioner, was premature and liable to be dismissed.

13. The learned counsel for the petitioner was asked time and again to produce the registration/approval by E.P.Z.A. for the petitioner (i.e. SKP Food and Trading), but the same was not produced. It was explained that due to the approval by E.P.Z.A. to SKP Food Industry, investment proposal for setting up a warehouse/trading unit for the re-export of goods under the name of M/s SKP Food and Trading, the petitioner should be considered as having been granted registration by the E.P.Z.A. The learned counsel for the petitioner submitted that since SKP Food and Trading is one of the businesses/branches through which SKP Food Industry carries on business, SKP Food and Trading should be considered as registered with the E.P.Z.A. This, I am afraid is a farfetched submission. Additionally, even if the E.P.Z.A.'s letter dated 16.06.2016 is considered as an approval for registration of M/s SKP Food Trading (the petitioner) in the said letter, it is clearly mentioned that exports to Afghanistan by land routes are not permissible. Therefore, the petitioner on the basis of the said letter dated 16.06.2016, cannot assert a right to export goods (which have not been subjected to any manufacturing process) to Afghanistan.

14. Even if such a contention is to be accepted, the fact remains that the petitioner has been described as a 'company' in the petition. During the course of the arguments, learned counsel for the petitioner submitted that the petitioner was not a company but a 'firm'. Learned counsel for the petitioner was asked to produce the petitioner's registration certificate as well as partnership deed (registered or unregistered), but the said documents were not produced at any material stage. Since it has not been shown that the petitioner is invested with any legal personality so as to enable it to sue or the a petition, I am left with no option but to hold that the petitioner (M/s SKP Food and Trading) does not have the requisite legal personality so as to enable it to file writ petition. Only a natural or a juristic person can sue or to be sued in its own name. Since the petitioner has not been able to show that it is a partnership firm, it is clearly not a juristic or juridical person. Consequently, I am constrained to hold that this writ petition is not maintainable.

15. In view of the above, I do not find any merit in this petition, which is accordingly dismissed with no order as to costs.

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