

Reasonable Period of Limitation–Analysis with respect to Directorate General of Foreign Trade (DGFT)

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In order to promote exports, the Government has been promoting various schemes like the Advance License Scheme. Even after fulfilment of the export obligation under this scheme, Assesseees are receiving Show Cause Notices for non-fulfilment of obligation after Five years or even a decade from the issue of advance licence. The system needs to be revamped and steps have to be taken to plug in the loopholes so that frivolous litigation may be avoided

India is one of the key players in world trade and it is imperative to foster the growth of exports and imports. While increase in exports is of vital importance, imports are equally vital for the stimulation of the economy. For this purpose, the Government has through the Ministry of Commerce, has set up the Directorate General of Foreign Trade (DGFT) which regulates the foreign trade mechanism. In order to promote exports, the Government has been promoting various schemes.

One of such schemes is the Advance License scheme. Under this scheme, an application for license has to be made. The licence provides permission for duty free imports with the condition of fulfilling the accompanying export obligation. After fulfilment of the export obligation, the proof of the same has to be submitted with the Department. In case there is any default, the DGFT can issue a Notice and initiate proceedings. However, lately it has been seen that Show Cause Notices are being issued by the DGFT to Assesseees after almost a decade of issue of Advance Licence and in some cases even more than that. Generally, the allegation is that of non-submission of documents showing the proof of completion of export obligation. It is interesting to note that after the lapse of such a long period of time, the Department suddenly requires all the documents which is nothing less than harassment for the Assesseees. Further, in many cases, despite the fact that the Assessee has submitted all the requisite documents, the Show Cause Notice would mention that no documents have been submitted and all the documents are required to be submitted.

The DGFT cannot simply wake up at any point of time and initiate the proceedings against Assesseees. A reasonable period of limitation always exists wherever no specific period of limitation is provided for. It is a settled position in law that wherever no specific period of limitation is provided, a reasonable period of limitation is applicable. The DGFT cannot initiate the proceedings arbitrarily at any point of time and a reasonable period of limitation has to be construed. In this regard, the decision of the Hon'ble Supreme Court in the case of *State of Punjab v. Bhatinda District Co-op Milk P. Union Ltd.*¹ is relevant wherein the court held that:

It is right that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors.

Further, the Hon'ble High Court of Punjab and Haryana in the case of *CCE v. Hari Contrast (P) Ltd.*,² is also relevant, wherein the Court with respect to initiation of penalty proceedings under Section 11AC of the Central Excise Act, 1944, held that

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Although there is no statutory period of limitation, yet reasonable period of limitation for initiating proceeding is five years.

Further, in the case of *In Sambhaji Shripati Bankar and Ganpat Shripati Bankar v. Keshav Rangnath Ekbote*,³ the Hon'ble High Court of Bombay held that:

The absence of specific period of limitation will not give a license to the competent authority to initiate action at any point of time though it had become too stale. The law does not expect keeping dominical's sword hanging on head of any litigant for perennial period.

It is evident from the above that wherever no specific period of limitation is provided, a reasonable period of limitation has to be construed. If the Show Cause Notice has been issued after a reasonable period of limitation, the same is liable to be set aside.

Another defence against such Notices could be that there is no statutory obligation to maintain records for an indefinite time. Various laws prescribe different time periods for which the records have to be maintained. However, it cannot be expected that an Assessee will maintain records for decades. The requirement of the Documents to be produced in original after such a long period of time is highly unreasonable. Neither the Assessee is under any legal obligation to maintain such documents for such time nor can the DGFT require such documents to be produced after the reasonable period of limitation has lapsed.

It is evident from the above discussion that there is an extra ordinary delay in the initiation of proceedings by the DGFT which is not only harassing the Assessee but also causing revenue loss to the Government. To avoid frivolous litigation between the Department and the Assessee, it is desirable that the whole process is undertaken in a speedy manner which will lead to a smoother and timely operation of the system.

Endnote

1 MANU/SC/8017/2007: 2007 (217) ELT 325 (S.C.)

2 2009 (242) ELT 12 (P&H)

3 MANU/MH/0159/2010
