
(1987) 10 DEL CK 0015

In the Delhi High Court

Case No : Civil Writ Petition No's. 2564 of 1984 and 1537 and 2169 of 1985

Ajanta Tubes Ltd.

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 27-10-1987

Acts Referred:

Citation : (1988) 34 DLT 110 : (1988) 15 ECC 83 : (1987) 32 ELT 470 : (1988) RLR 103

Hon'ble Judges : N.N. Goswamy, J

Bench : Single Bench

Advocate : G.L. Rawal, Neeraja Mehra and W. Singh, for the Appellant;

Judgement

N.N. Goswamy, J.

(1) This judgment will also dispose of C.W.P. No. 1537 of 1985 and C.W.P. No. 2169 of 1985 as the common question involved in all these petitions is regarding the application of clause 6 of the Imports (Control) Order, 1955, hereinafter called the Order. The challenge in these petitions is to the debarring order dated 17.2.1985 read with debarring circular dated 2.3.1984 and the consequential letters issued by the respondents.

(2) M/S. Jain Sudh Vanaspati Company Limited imported certain amount of Beef Tallow. A show cause notice dated 14.11.1983 was issued to the said company. The operative portion of the show cause notice is contained in paragraph 3, Which is to the following effect:-

"Therefore, in exercise of the powers vested in me, under clause 8(g) of the Imports (Control) Order, 1955. as amended, I hereby direct you in terms of clause 10 of the said Order to show cause by 30th November, 1983, why action should not be taken against you/ your directors under clause 8(i)(g) for having committed breach of clause 3(i) of the Imports (Control) Order, 1955, as amended and why you and your directors should not be debarred from importing any goods or receiving licenses/CCPs or allotment of the imported . goods

through S.T.C., M.M.T.C. or any other similar agency."

After considering the aforesaid show cause notice and providing hearing to M/s. Jain Sudh Vanaspati Company Limited, the Deputy Chief Controller of Imports & Exports passed an order on 17.2.1984 debarring M/s. Jain Sudh Vanaspati Company Limited and its nine directors from importing any goods and from receiving import licenses/CCPs and allotment of imported goods through S.T.C., M.M.T.C. and other similar agencies. At the end of the said order it was further mentioned that the provision of clause 6(d)(dd) and (e) of the Imports (Control) Order will also be applicable to this case.

(3) As a consequence of the aforesaid order the three petitioner companies who had some of the directors common to M/s. Jain Sudh Vanaspati Company Limited were also debarred from getting any import licenses under clause 6 of the said order on the ground that some of the directors were common as they were also the directors of M/s. Jain Shudh Vanaspati Company Limited. The respondents went to the extent of informing the banks dealing with the petitioner companies and instructed them not to open any L.Cs. for import of goods and also issued circulars to the various agencies without specifically mentioning the names of the companies or its directors. The consequence of this order and the various letters has been that the working of the petitioner companies has been prejudiced to a very great extent.

(4) These petitioners have to succeed on the short ground that principles of natural justice have been violated. Admittedly neither any show cause notice has been issued nor any hearing has been provided to either of the three petitioner companies or its directors for involving the provisions of clause 6. The contention of the learned counsel for the respondents is that the statute does not provide for any such notice or hearing and wherever the Legislature has intended any hearing it has said so in the statute itself. It was pointed out that the Legislature thought it fit to comply with the rules of natural justice while passing an order under clause 8 of the Order and as such provided for it in clause 10 of the order. According to the learned counsel there was no provision in the Order for affording any such opportunity when an action has to be taken under clause 6 of the Order. This contention is completely misconceived inasmuch as by now it is well settled that the silence of a statute has no exclusionary effect except where it flows from necessary implication. It cannot be doubted for a moment that the order has serious civil consequences and it has immediate and grave prejudicial repercussions on the persons concerned. It is unnecessary to deal with all the cases laying down such a principle and it would be enough to refer to *Swadeshi Cotton Mills Vs. Union of India (UOI)*, and *Liberty Oil Mills and Others Vs. Union of India (UOI) and Others*, . In the first case the Supreme Court had dealt with the provisions of Section 18-AA of Industries (Development and Regulation) Act, 1951. It was noticed that the said provision did not provide for any show cause notice or hearing but the Supreme Court held that the provision does not expressly in unmistakable and unequivocal terms exclude the application of the

audi alteram pattern rule at the pre-decisional stage and as such the action without observing the principle of natural Justice was uncalled for. Similarly in the later decision the Supreme Court was dealing with the provisions of clause 8-A, 8-B and 8-C of the same Order, namely, the Imports (Control) Order, 1955. It noticed that clause 8-B did not specifically provide for an opportunity of person[a] hearing but while interpreting the clause the Supreme Court held that the consequences were rather serious and in this situation it was necessary to provide for a pre-decisional hearing and in any case at least a post-decisional hearing.

(5) Mr. Wazir Singh, the learned counsel for the respondent contended that it was open to the petitioners to make a representation to the respondents and if such a representation was made, the respondents would have granted hearing which would have been in the nature of a post-decisional hearing. This argument has also been advanced overlooking the fact that a detailed representation was made by the petitioners in C.WP. 1537/85 and the respondents did not even care to deal with the said representation which has remained pending till date.

(6) Besides the settled law it will be useful to refer to the Guide Lines issued by the Government of India, Ministry of Foreign Trade & Supply which is called Enforcement Guide Lines No. 6-69 (Annexure L to the petition). While dealing with the application of clause 6 it is laid down.

"Under Sub-clause 6 (d) and 6 (e) of the Imports (Control) Order 1955, import licenses can be refused to parties which have an interest in a company/firm placed on debarment, suspension or abeyance. ... For the purpose of the preceding paragraph, while deciding whether sub clauses 6 (d) and (e) of the Imports (Control) Order should apply or not, the enforcement sections concerned should keep in view that action under clause 6 should be attracted only in these cases where a company or a firm has substantially benefitted from the offence committed by the accused party as revealed from the report of the investigation made by the C.B.I, or the sponsoring authority concerned or where a company or firm has a director or a partner who is the major accused and has a controlling interest in the affairs of the associated company and his expulsion from such a company or firm would be desirable."

(7) A reading of the aforesaid Guideline makes it absolutely clear that before applying clause 6 it is to be found as to whether the firm or company has substantially benefitted from the offence committed by the accused party, namely, M/s. Jain Such Vanaspati Company Limited and as to whether a director or a partner is a major accused and has a controlling interest in the affairs of the associated company. These findings cannot possibly be recorded without hearing the party to which the provision of clause 6 arc being made applicable. There is no finding recorded by the respondents to the effect that the petitioner companies have benefitted at all from the offence committed by M/s. Jain Shudh Vanaspati Company Limited. The finding regarding the substantial controlling interest is also missing. It was not disputed during the course of hearing that the

petitioner companies are engaged in entirely different trade than the one being carried on by M/s. Jain Shudh Vanaspati Company Limited. Mr. Wazir Singh, the learned counsel for the respondents contended that at the time of passing of the order the respondents were not aware of the other companies which were associated with M/s. Jain Shudh Vanaspati Company Limited and as such no detailed orders could be passed. This contention further strengthens the ease of the petitioners to the effect that the orders suffer from non-application of mind. The law laid down by their Lordships of the Supreme Court and the Guidelines laid down by the department itself have not been observed and as such the order applying the provision of clause 6 to the petitioner companies has necessarily to be struck down on the ground of non-application of mind and for violation of principles of natural justice.

(8) For the reasons recorded above the rule is made absolute and the debarment order to the extent of application of clause 6 on the petitioner companies are hereby quashed. The effect would be as if no debarment under clause 6 has been passed on either of the petitioner companies. In the circumstances the parties are left to bear their own costs.