
(2001) 12 DEL CK 0048
In the Delhi High Court
Case No : CW No. 4743 of 1997

Bahubali Exports (India) and Another	APPELLANT
Vs	
Joint Director General Foreign Trade and Another	RESPONDENT

Date of Decision : 04-12-2001

Acts Referred:

Citation : (2002) 3 AD 970 : (2002) 143 ELT 54

Hon'ble Judges : Mukul Mudgal, J

Bench : Single Bench

Advocate : Harish Malhotra, for the Appellant; Pratibha M. Singh and N.K. Pandey, for the Respondent

Final Decision : Allowed

Judgement

Mukul Mudgal, J.—Rule.

2. With the consent of the parties, the matter is taken up today for final hearing.
3. This writ petition challenges the denial of the benefit to the petitioner of Clause 66 of the Export-Import Policy 1992-97 which reads as follows:

"Exports/supplies made from the date of receipt of an application under this scheme by the licensing authority may be accepted towards discharge of export obligation. If the application is approved, the license shall be issued based on the input/output and value addition norms in force on the date of receipt of the application by the licensing authority in proportion to the provisional exports already made till any amendment in the norms is notified. For the remainder of the exports, the Policy/Procedure in force on the date of the issue of the license shall be applicable. The conversion of duty free shipping bills to drawback shipping bills may also be permitted by the Customs authorities in case the application is rejected or modified by the licensing authority. The exports/supplies made in anticipation of the grant of a duty free license shall be entirely on the risk and responsibility of the exporter."

2. The case set out in the writ petition is:

That the petitioner made an application for the grant of Advance license under the Value Based Advance license Scheme (hereinafter) referred to as the "VABAL") on 18th of March, 1997. On 21st of March, 1997, the application was approved and sent for processing and on 22nd of March, 1997, the electronic goods were exported by the petitioner entitling it to Value Based Free license in the sum of US \$ 28,545. The customs clearance was obtained on 28th of March, 1997 and the goods were dispatched on 29th of March, 1997.

3. One of the significant pleas in the writ petition is at Para 11 of the petition which reads as under:

"That it is submitted that the said application of the petitioner was approved by the respondent No. 1 on 21st March, 1997 and the directions were issued for proceeding the grant of value based license to the petitioner."

4. The said averment was rebutted by the respondents in their counter affidavit in the following terms:

"The contents of Para 11 of the Petition are wrong and denied as the same are incorrect information."

Thus it is clear that there is no categorical denial of the petitioner's plea that the application of the petitioner was approved by the respondent No. 1 on 21st of March, 1997. However, without going into the veracity of the above, the petitioner's case purely turns on the interpretation of Clause 66 of the Policy.

4. Mr. Malhotra, the learned counsel for the petitioner has submitted that the phrase "If the application is approved, the license shall be issued based on the input/output and value addition norms in force on the date of receipt of the application" entitled it to avail of the value addition norms in force on the date of the receipt of the application irrespective of the date of the approval and it is indeed a vested right in the export license granted by the said policy. He submits that since there is no rejection of the petitioner's application whatever be the date of the approval, the petitioner is entitled to invoke the input/output and value addition norms in force on 18th of March, 1997. It appears that there was a change of policy on 1st of April, 1997 and the changed policy did not grant the Value Based Advance license and only approved the Quantity Based Advance license or duty drawback.

5. Ms. Pratibha M. Singh, the learned counsel, appearing for the respondents, however, has submitted that the petitioner had two option as per the Policy Circular dated 1st of April, 1997, the Para 3 of which reads as under:

"However, in respect of pending applications filed before 1.4.97 for issuance of Value Based Advance license where such licenses have not been issued before 1.4.97, the applicant shall have the option to convert their application into Advance license in accordance with the Exim Policy 1997-2002 and the Handbook

of Procedures (Vol. 1) and (Vol. 2) 1997-2002. Such application shall be considered by the licensing authority without calling for the application afresh in terms of Handbook of Procedures (Vol. 1) 1997-2002. Alternatively, the applicant in such pending cases, shall also have the option to claim drawback in lieu of issuance of advance license under Exim Policy 1997-2002."

Thus according to the learned counsel for the respondents, the petitioner was entitled to have option of either claiming drawback in lieu of issue of Value Based Advance license under the Exim Policy 1997-2002 or convert its application into Quantity Based Advance license.

6. She further submitted that the petitioner was entitled to avail of any of these options which it is not seeking in the present writ petition and only seeks a mandamus for issuance of Value Based Advance license in terms of its application dated 18th March, 1997. She has also relied upon Para 66 of the Exim Policy of the year 1992-97 to submit that if there is no approval, there cannot be any grant of license and the Policy clearly implies that exports undertaken in such a situation are at the risk of exporter in the event of the approval not forthcoming. She further relies upon Clause 7.14 of the Exim Policy of the year 1997-2002 to contend that export obligation has to be fulfilled within a period of 18 months which Clause clearly shows that approval means that it is only from the date of the grant of license.

7. The primary issue which arises in the writ petition is the interpretation of Clause 66 of the Policy by the respondents. The respondents' case seems to be that with effect from 1st of April, 1997, the petitioner was not entitled to invoke the earlier norms and was governed by the norms applicable from 1st of April, 1997. In my view, considering the Clause 66 and in particular the saving of the applicable norms with reference to the date of the application, the said interpretation does not represent the correct position of law. The petitioner is entitled to invoke the input/output and value addition norms in force on the date of the receipt of the application, subject to the approval of the application whatever the date of the approval and in fact that is the precise purpose of Clause 66. Furthermore considering the averments in paragraph 3 of the writ petition and its reply in the counter affidavit, the petitioner has demonstrated that its application under Clause 66 was approved.

8. In this view of the matter, the stand taken by the respondents, in so far as it rejects the petitioner's application for issuance of Value Based Advance license on the basis of the norms which came into force on 1st of April, 1997 cannot be countenanced by the provisions of Clause 66. Accordingly, the writ petition is entitled to succeed and is thus allowed, directing the respondents to process the application of the petitioner for approval in accordance with law and Clause 66 which states that in case the petitioner's application is approved, it shall be entitled to invoke the provisions of Clause 66 for issuance of a Value Based Advance license on the input/output and value addition norms in force on the date of receipt of the application, i.e., 18th of March, 1997. The petitioner's

application be processed within a period of eight week"s from the date of receipt of this judgment.

9. In view of the above, the writ petition stands allowed as indicated above with no orders as to costs.