
(1981) 09 BOM CK 0020

In the Bombay High Court

Case No : Misc. Petition No. 752 of 1978

Balwantrai Maganlal Mehta

APPELLANT

Vs

M.C. Satyawadi and Two others

RESPONDENT

Date of Decision : 30-09-1981

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1982) 10 ELT 168

Hon'ble Judges : M.L. Pendse, J

Bench : Single Bench

Judgement

1. By this petition filed under Article 226 of the Constitution of India, the petitioner is challenging the legality of the order passed by the Under Secretary to the Government of India declining to interfere with the order of the Joint Chief Controller of Imports and Exports forfeiting the bond executed by the petitioner. The under Secretary conveyed the decision to the petitioner by letter dated December 22, 1977.

2. The facts which have given rise to this petition are as follows :

On November 20, 1972, the general trade arrangement was arrived at between the Government of India and the Government of Afghanistan, under which imports of certain goods from Afghanistan were contemplated against exports of specified goods from India. In pursuance of this arrangement, the Central Government issued a Public Notice No. 93/72 on June 30, 1972. By the said Notice the Government laid down the policy regarding the imports from Afghanistan against corresponding exports from India to that country, and vice versa. In accordance with the provisions of the said Notice, the petitioner applied to the Joint Chief Controller of Imports and Exports on December 18, 1972, for a Customs Clearance Permit for import of dry fruits from Afghanistan worth Rs. 50,000/- during the period 1972-73. The petitioner executed a bond on December 18, 1972, whereby the petitioner and the Indian Overseas Bank jointly bound themselves to the President of India in the sum of Rs. 25,000/-. The

petitioner was granted the Customs Clearance Permit dated January 8, 1973 for import of dry fruits from Afghanistan and in pursuance of that permit the petitioner imported almonds worth Rs. 47,970/- on February 20, 1973. In pursuance of the Public Notice, the petitioner was obliged to export goods falling under Schedule B-I to the said Public Notice worth 50 per cent of the value of the imported goods and also to export goods falling in Schedule B-II worth 50 per cent of the value. The Items under Schedule B-I was Indian Black Tea, while Item in Schedule B-II was Indian Art Silk Piece goods. The dispute in this petition is in respect of export of Silk Piece goods of the value of Rs. 23,985/-.

3. The export was to be completed within a period of six months from the date of import, but as the steamers were not available, the Government extended the period from time to time. The first extension was upto August 30, 1973 by Public Notice dated June 12, 1973. The second extension was upto November 30, 1973 by Public Notice dated September 4, 1973, while the last extension was upto March 31st, 1974 by Public Notice dated January 8, 1974. The petitioner filed the Bill of Lading on March 29, 1974 in respect of Silk Piece-goods and the shipment took place on May 4, 1974. In the meanwhile, the Joint Chief Controller of Imports and Exports, passed an order on December 21, 1973 forfeiting the bond executed by the petitioner for his failure to export the goods by the end of November 30, 1973. On the date when the order was passed by the Controller, the extension upto March 31, 1974 was not granted. The order passed by the Controller was communicated to the petitioner on February 27, 1974.

4. The petitioner was informed of the cancellation of the bond and was called upon, along with the guarantor Bank, to deposit the amount covered by the bond. The petitioner addressed a letter on September 27, 1974 enclosing the shipping bill and bill of lading and claimed that the period for export should be extended and the order of cancellation of bond should be reversed. The Joint Chief Controller declined to do so and thereupon the petitioner approached the Joint Secretary of the Government of India. The Under Secretary by his letter dated December 22, 1977 informed the petitioner that it is not possible to deviate from the action taken by the Joint Chief Controller. The petitioner has thereafter approached this Court by filing the present petition.

5. Shri Hidayatullah, the learned counsel appearing in support of the petition, did not dispute that on the date of the order passed by the Joint Chief Controller the extended time to export the goods was over. The learned counsel urged that after December 21, 1973 the time for export was extended upto March 31, 1974 and the petitioner did in fact filed the bill of lading prior to that date. The learned counsel relied upon the letter dated February 15, 1975 issued by the Controller of Imports and Exports to the President of Indo-Afghan-Chamber of Commerce in respect of Indo-Afghan Trade Arrangement period 1972-73. The letter inter alia mentions that representation was made to the Ministry of Commerce that some firms get their Export Promotion forms approved by Reserve Bank of India before March 31, 1974 and had filed the shipping bills with the Customs Authorities

before that date and the firms could not make physical exports and the Custom Authorities stopped allowing exports on the shipping bills filed with them on or before March 31, 1974. The letter further mentions that on the request being made that these firms be allowed to obtain fresh Export Promotion forms and effect shipments to counter-balance their imports made during 1972-73, the Ministry of Commerce has decided to allow such firms to obtain fresh N.P. forms against the cancelled forms so that exports could be made before February 28, 1975. Shri Hidayatullah submits that in view of this letter, the time for export was further extended and as the petitioner had already completed the export by May 4, 1974, the petitioner should be given advantage of the decision of the Ministry of Commerce and the forfeiture of the bond should be revoked. I find considerable merit in this submission. It is not in dispute that the two conditions mentioned in the letter dated February 15, 1975, i.e. (i) Export Promotion forms approved by Reserve Bank of India before March 31, 1974 and (ii) the shipping bills to be filed with the Customs Authorities before that date were complied by the petitioner and as such there is no reason why the advantage of the decision of the Commerce Ministry should be denied to the petitioner. In my judgment, the order passed by the Joint Chief Controller on December 21, 1973 forfeiting the bond executed by the petitioner, and the order passed by the Under Secretary on December 22, 1977 declining to interfere with the order of the Joint Chief Controller cannot be sustained.

6. Shri Mehta, the learned counsel appearing for the Department, very vehemently urged that the order passed by the Chief Controller was valid as no extension was given by the Government of India on December 21, 1973, and therefore, that order should not be disturbed merely because of certain subsequent events. The submission is without any merit. If subsequent decision of the Government of India assist the petitioner, then there is no rationale to decline the relief on a technical ground that the order of the Chief Controller was valid on the date when it was passed. In my judgment, the petitioner is entitled to the relief sought in the petition.

7. Accordingly, the petition succeeds and the orders of the Joint Chief Controller of Imports & Exports dated December 21, 1973, and that by the Under Secretary to the Government of India communicated to the petitioner by letter dated December 22, 1977 are quashed.

Though the petitioner has succeeded in the petition, I am directing the petitioner to pay the costs of the respondents, because the letter dated February 15, 1975, on which reliance was placed, was not annexed to the petition, nor was made available to the respondents till the arguments commenced. The matter was required to be adjourned to enable Shri Mehta to take instructions from his clients. As the petitioner has failed to produce the relevant letter at the time of filing of the petition or any time before the date of hearing, it is necessary that the petitioner should be saddled with costs.

The petitioner shall pay the costs of this petition to respondents Nos. 1 and 2.