

(2016) 06 MAD CK 0117
In the Madras High Court
Case No : Writ Petition No. 15979 of 2016

Bora Agro Foods	Vs	APPELLANT
Narcotics Commr., CBN		RESPONDENT

Date of Decision : 20-06-2016

Acts Referred:

Citation : (2016) 340 ELT 273

Hon'ble Judges : M. Sathyanarayanan, J.

Bench : Single Bench

Advocate : Shri R. Govindasamy, Spl. Government Pleader, for the Respondent; Shri P.S. Raman, Senior Counsel assisted by M/s. Lakshmi Kumaran, Counsel, for the Petitioner

Final Decision : Disposed Off

Judgement

M. Sathyanarayanan, J. - The petitioner claims that it has been a regular importer of poppy seeds and also given the details of the imports made by them in Paragraph No. 1.1 of the affidavit filed in support of this writ petition. The petitioner would state that poppy seeds are classified under EXIM Code 1207-91-00 of the ITC (HS) and could be imported freely into India subject to satisfaction of policy principles in Chapter No. 12. The policy conditions are as follows :

"Policy condition of this Chapter

(3) Import of Poppy seeds (Exim Code 1207-91-00) shall be allowed subject to the following conditions :

(a) Import permitted only from Australia, Austria, France, China, Hungary, The Netherlands, Poland, Slovakia, Spain, Turkey and Czech Republic,

(b) The importer shall produce an appropriate certificate from the competent authority of the exporting country that Opium Poppy have been grown licitly/legally in that country as per requirements of International Narcotics Control

Bureau

(c) All import contract for item shall be compulsory be registered with the Narcotics Commissioner, Central Bureau of Narcotics, Gwalior prior to import.

2. The first respondent had also issued a Public Notice No. 1/2016, dated 27-1-2016 detailing the process and conditions for registration of import contract of Poppy seeds. It is further stated by the petitioner that the constitutional validity of the above said Public Notice was put to challenge in W.P. No. 5019 of 2016 and this Court vide order dated 5-4-2016, *Green Globe Trading Company v. Union of India*, [2016 (338) E.L.T. 696 (Del.)], had set aside the Public Notice dated 27-1-2016. The petitioner after the said order entered into a sale contract No. KLD-7627 with Lanzhou Keyleader, Import and Export Company Limited, China for import of 425 MT denature white poppy seeds from China and also filed an application dated 18-4-2016 enclosing 11 documents. The supplier had also informed the petitioner vide communication dated 19-4-2016 that poppy seeds have been packed and ready for shipment and requested them to furnish shipping instructions. The grievance expressed by the petitioner is that in respect of the above said application, no orders have been passed and consequently, the petitioner is being threatened with arbitration and other actions as per the contract on account of the delay and therefore, came forward to file this writ petition.

3. Mr. P.S. Raman, learned Senior Counsel assisted by M/s. Lakshmi Kumaran, learned counsel appearing for the petitioner has drawn the attention of this Court to the order dated 5-4-2016, made in W.P. No. 5019 of 2016 [*M/s. Green Globe Trading Company, Chennai v. The Union of India, Represented by its Secretary, Department of Revenue, Ministry of Finance, North Block, New Delhi-110 001 and Others*] and would submit that this Court in the above cited order in Paragraph Nos. 19 and 21 had held that the first respondent herein/4th respondent has to confine the exercise of his power only in relation to the duties and responsibilities spelt out in Chapter 12 of EXIM Code 1207-91-00 relating to import of poppy seeds and except imposition of the three conditions, the fourth respondent is estopped from imposing any other conditions as it will run contrary to the policies framed by the Central Government under EXIM Code and since the said order is not put to challenge so far, the respondents are under obligation to consider the application submitted by the petitioner and prays for appropriate orders.

4. Per contra, Mr. B. Rabu Manohar, learned Senior Counsel who accepts notice on behalf of the second respondent, has produced a written communication dated 14-6-2016 in F. No. II(26)3/CHN/Bora/2015 and would submit that in the light of the order passed in W.P. No. 5019 of 2016, the second respondent is taking steps to come out with the policy decisions within a short period and it is taken on file and placed on record.

5. Mr. Vijay Narayan, learned Senior Counsel assisted by Dr. S. Krishanandh

seeks permission of this Court to intervene on behalf of the petitioner in W.P. No. 5019 of 2016 and would submit that until the new policy is taken by the second respondent, the application submitted by the petitioner need not be processed.

6. This Court has considered the rival submissions and also perused the materials placed.

7. It is relevant to extract Paragraph Nos. 19 and 21 of the order dated 5-4-2016 made in W.P. No. 5019 of 2016 (cited supra) :

"19. On a reading of Sections 3, 5 and 6 mentioned above, it is evident that even for regulating or effectively implementing the policy of the Central Government, the fourth respondent has no power to impose any other conditions other than the one prescribed in EXIM Code 1207-91-00 relating import of poppy seeds. There is no delegation of power in favour of the fourth respondent to impose the conditions in the impugned public notice. There is no order passed by the Central Government by publishing it in the official gazette specifically authorising the fourth respondent to exercise such power as are necessary for prohibiting, restricting or otherwise regulating the import of poppy seeds in compliance with Section 5 of the Foreign Trade (Development and Regulation) Act, 1952. Therefore, I hold that the fourth respondent has to confine the exercise of his power only in relation to the duties and responsibilities spelt out in Chapter 12 of Exim Code 1207-91-00 relating to import of poppy seeds and they are (i) whether the import of the poppy seeds is from one of the designated countries (ii) whether the importer has a certificate from the competent authority of the exporting country to the effect that opium poppy seeds have been legally grown in that country as per the requirements of International Narcotic Control Bureau and (iii) whether the import contract is registered with him prior to import. Except imposition of the above three conditions, the fourth respondent is estopped from imposing any other conditions as it will run contrary to the policies framed by the Central Government under the EXIM Code. It is needless to mention that the fourth respondent has overstepped and exceeded his jurisdiction in imposing the conditions over and above the conditions which are stipulated in Chapter 12 of Exim Code 1207-91-00 mentioned above, in the impugned public notice relating to drawal of lots, restricting the quantity of import, prescribing time frame for receipt of applications etc., and such conditions would only amount to varying, modifying and virtually amending the policies of the Central Government to which the fourth respondent is not empowered to.

21. Admittedly, the three conditions imposed in Chapter 12 of Exim Code 1207-91-00 have not been amended by the Central Government by issuing a notification in the official gazette. However, the learned Additional Solicitor General placed reliance on a letter dated 22-1-2016 issued by the Government of India, Department of Revenue enclosing a copy of the revised guidelines approved by the competent authority for registration of sales contracts for import of poppy seeds from China and Czech Republic. By placing reliance on the above

letter dated 22-1-2016, the learned Additional Solicitor General traces the power of the fourth respondent to impose the conditions in the public notice, which is impugned in this writ petition, as a measure of regulating and controlling the import of poppy seeds. I am unable to accept this contention. It is well settled that circulars, administrative instructions or letters of authorisation cannot override the statute. The Export-Import Policy announced by the Central Government in exercise of power under Section 5 of the Foreign Trade (Development and Regulation) Act has statutory force and the power to amend the policy is within the exclusive domain of the Central Government. While so, without making any amendment to the Export-Import Policy framed by the Central Government, even the Central Government cannot delegate power to the fourth respondent to exercise such powers which are not available in the Export-Import Policy. In such circumstances, the letter dated 22-1-2016 relied on by the learned Additional Solicitor General will not confer any power on the fourth respondent to impose the conditions in the impugned public notice."

8. The petitioner had submitted an application dated 18-4-2016 praying for necessary permission to import poppy seeds from the supplier of China and it was also acknowledged by the first respondent on 21-4-2016. It is pertinent to point out at this juncture that the order dated 5-4-2016 passed in W.P. No. 5019 of 2016 (cited supra) so far not put to challenge by either of the respondent in the form of appeal. In the above cited order in Paragraph No. 19, this Court has made it very clear that except imposition of three conditions, the first respondent herein is estopped from imposing any other conditions as it will run contrary to the policies framed by the Central Government under the EXIM Code.

9. Though it is open to the second respondent to come out with the policy decisions in the light of the said order, the fact remains, as on today, the above cited order passed in W.P. No. 5019 of 2016 holds the field.

10. Insofar as the submission made on behalf of the intervenor viz., M/s. Green Globe Trading Company, this Court is of the view that the remedy if any, open to them is to approach the second respondent for expediting the issue of the new/fresh policy decision and therefore, they cannot have any say in this writ petition.

11. This Court, in the light of the above facts and circumstances and without going into the merits of the application submitted by the petitioner, directs the second respondent to entertain the application dated 18-4-2016 in accordance with law in the light of the order dated 5-4-2016 made in W.P. No. 5019 of 2016 and pass orders within a period of three weeks from the date of receipt of a copy of this order and communicate the decision taken to the petitioner.

12. This writ petition is disposed of accordingly. No costs.