
(2001) 01 BOM CK 0003
In the Bombay High Court
Case No : Writ Petition No. 286 of 1996

Chowgule and Co. Ltd.

APPELLANT

Vs

Asstt. Director General of Foreign Trade, Goa

RESPONDENT

Date of Decision : 31-01-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2002) 139 ELT 30

Hon'ble Judges : D.G. Deshpande, J;D.D. Sinha, J

Bench : Division Bench

Advocate : S.K. Kakodkar, R.V. Kamat and M.D. Salkar, for the Appellant; Joseph Vaz, A.C.G.S.C., for the Respondent

Judgement

Deshpande, J.—The petitioners in this petition have challenged the Order dated 12th January, 1986 passed by the Additional Director General of Foreign Trade, Ministry of Commerce, Directorate General of Foreign Trade, New Delhi.

2. The petitioners are a Company incorporated under the Companies Act having their office at Chowgule House, Mormugao Harbour, Goa. They are engaged in export of processed iron ore and are a recognised Trading House.

3. The petitioner filed an application for issue of additional licence for the licensing year AM 92 based on the export made during the preceding year AM 91 in respect of an item appearing in Appendix 12 of the Policy during AM 91. The export being processed iron ore. The claim of the petitioners was rejected on the ground that they were not entitled for the licence in question. The petitioners preferred second appeal but the same was also rejected on the ground that application for additional licence was time barred, the same having been filed after prescribed date, namely, 30th September, 1991. It was also the stand of the Department that facility of additional licence was discontinued vide Public Notice No. 277 dated 29th September, 1992 and new Policy came into force.

4. It appears from the record that the petitioners had filed a Writ Petition No.

629 of 1993 before this Bench of the Bombay High Court wherein the Order rejecting the second appeal was set aside with a direction that the second appellate authority will consider the second appeal within a period of 4 months and it will also consider the question of eligibility for additional licence or in lieu thereof 20% premium in the light of the observation made in the Judgment dated 13th September, 1995.

5. When the matter went before the Ministry of Commerce, that is, Directorate General of Foreign Trade, they decided the second appeal by their Order dated 12th January, 1996 negating and rejecting the claim of the appellants/petitioners and, hence, this petition.

6. We heard the counsel for the petitioners and respondents at length but, even after hearing the counsel for the respondents, we are unable to uphold the impugned Order which was passed in second appeal. The only and crucial question that was lost sight by the second appellate authority is whether the right accrued to the petitioners on the basis of export made during the licensing year AM 91 could be taken away or denied by the respondents by subsequent discontinuation of the Policy and/or on the ground of delay in making the application for the said benefit.

7. Regarding the objection of the respondents that the application for additional licence or for 20% benefit was time barred, we find that this point was not open for the second appellate authority because while remanding the matter this Court had in its Order dated 13th September, 1995 in Writ Petition No. 269 of 1993 observed as under :-

"Hence in the present case the Appellate Authority could not have rejected the application of the petitioner on the ground of limitation summarily. Even if it is barred by limitation, he could have considered granting of additional licence subject to 10% cut as mentioned above. Therefore, the impugned Order under which the application has been rejected summarily on the ground of limitation cannot be sustained and is liable to be set aside."

8. In view of this, the only question that remains is whether the appellate authority was justified in rejecting the claim of the petitioners on the ground that the Policy under which the petitioners were claiming was subsequently withdrawn or cancelled. But, even on that count, we are unable to agree with the reasoning given by the appellate authority and the objections raised by the respondents. In that regard the appellate authority has held and observed as under :-

"From the above, it is clear that though the item of export, processed iron ore, was eligible for the benefits in terms of the policy during the period 91-92, the claim of this party in this case is not eligible as the application was filed after the prescribed time limit and also after the withdrawal of the scheme for additional licence itself."

This finding or observation cannot be upheld on the principle that once a right

has accrued to the petitioners on account of the Policy that was existing, the same could not be taken away by withdrawal of the Policy or the Scheme.

9. Since it is not disputed by the respondents nor even in the second appellate authority's impugned Order that the appellants were eligible for the benefits under the Policy during the period of 91-92, there was no justification nor any legal basis for denying the claim of the appellants on the ground of withdrawal of the Policy in 92-93 by Public Notice dated 29th February 1992. Counsel for the respondents relied upon the Judgment of the Supreme Court in *Anant B. Timbodia Vs. Union of India and others*, , where the question in controversy was as under :-

"Whether the Cloves imported by the appellant fall within Item 169 in List 8 of Appendix 6 or fall within Paragraph 167 of Chapter XIII of the Import and Export Policy April, 1990 - March, 1993."

10. Even after going through this Judgment we are unable to find as to how it supports the objections raised by the respondents. To the contrary this case supports, though indirectly, the case of the appellants that the Policy that was in force in 91-92 has to be taken into consideration while deciding the claim of the appellants and not the subsequent withdrawal of the Policy in 92-93.

11. In the aforesaid case of the Supreme Court appellant had obtained a licence for import of Cloves as per Paras 220 (2) (3) (4) and (6) of the Import Policy 1990-93 Vol. I. On arrival of the goods at Bombay, the appellant filed Bill of Entry and the clearance was claimed on the additional licence on the ground that Cloves were covered under Item 169 of Appendix 6, List 8, Part I of the Import and Export Policy being "Drugs/Drug intermediate not elsewhere specified". Appellant filed a Writ Petition in the High Court for a mandamus against the respondent Union of India for clearance of the goods against the Bill of Entry. The High Court negated the contention of the appellant holding that Cloves cannot fall within the expression of "Drugs/Drug intermediate not elsewhere specified". This Judgment of the High Court was challenged before the Supreme Court and the appellant tried to rely upon the Import Policies of 1982-83 to 1985-86 where Cloves were specified as crude drug. However, the Supreme Court rejected the contention of the appellant on the ground that the Court was concerned with Import Policy of 1990-93 and not on any earlier Policy.

12. From the aforesaid Judgment of the Supreme Court what is clear is that the deciding factor in any such dispute is the Policy which was in force at the time when the right accrued. Therefore, as stated above this Judgment is of no help to the respondents and to the contrary it before the petitioners.

13. For all these reason the Judgment of the second appellate authority is liable to set aside and we pass the following Orders :

14. Rule is made absolute in terms of prayer Clauses (a) and (b). The Order of the Additional Director General of Foreign Trade dated 12th January 1996 is

quashed and set aside and the respondents are directed to pay to the petitioners the premium of Rs. 1,21,69,200/- with costs.

Prayer Clause (a) and (b):

(a) a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, direction or order under articles 226 and 227 of the Constitution of India against the respondents calling for the record of the case and upon considering the same quashing the order of the Additional Director General of Foreign Trade in Appeal No. 3/63/REP/93-App/dated 12-1-1996 (Annexure P2);

(b) a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, direction or order under article 226 of the Constitution of India commanding the respondents to forthwith pay to the petitioners the premium of Rs. 1,21,69,200/- (being 20% of Rs. 6,08,46,000/-, the value of the additional licence to which the petitioners are entitled for the licensing year AM 92).