
(1994) 05 DEL CK 0038
In the Delhi High Court
Case No : L.P.A. No. 23 of 1994

Collector of Customs

APPELLANT

Vs

Prashant Glass Works

RESPONDENT

Date of Decision : 18-05-1994

Acts Referred:

Citation : (1995) 78 ELT 12

Hon'ble Judges : A.D. Singh, J

Bench : Single Bench

Advocate : Shri Madan Lokur, for the Appellant; S/Shri V. Sridharan and B.P. Singh, for the Respondent

Judgement

CM 988/94

1. We have heard learned counsel for both the parties. We are satisfied that there is sufficient Explanation given for not filing the appeal within limitation. Delay in filing the appeal is condoned. CM stands disposed of.

CM 23/94

2. The matter arose under the relevant provisions of the Import & Export Policy of the Union of India. As we are affirming the judgment of the learned Single Judge, we shall be brief in our order.

3. The appellant contends that inasmuch as the licenses do not refer to any specific item but use the word Unil, it is permissible to issue restrictions later and that does not amount to taking away vested rights. On the other hand, respondent (writ petitioner) contends that the license refers to the current policy and the items mentioned in the policy must be deemed, in law, to have been incorporated in the licenses.

4. So far as the contention of the appellant with regard to licenses issued in October, 1991 and December, 1992 is concerned, no doubt, we find the same are silent as to the items allowed for import. But, in our view, we have to read the

said license in combination with the current Import, and Export Policy as stated in the licenses themselves.

5. Then the question which arises is whether the current imports and exports cover these items. A copy of New Trade (IMPFX) 1992-93 Volume I is placed before us. It is mentioned in para 185(1) R.P. that licenses issued against export of products listed in Column 2 of Appendix 17 Part-I will be valid for import of any item listed in Appendices 3, 5, Part-A and items listed in List 8 Part-I and List 10 of APP. 6 of the policy. Therefore, the above said items must, in our opinion be deemed to have been specified in the licenses issued to the respondent. It is not in dispute that the import was in respect of an item listed in Appendices 3, 5 Part-A. By reading the licenses together with the policy declared as declared as mentioned above, we hold that under the licenses several items are to be allowed mentioned in Appendices 5 Part A are to be deemed as listed items, as contended by the respondent-writ petitioner.

6. If that be so, under the policy of 1992-1997, and the specific saving provision in clause 4 of the 1992 policy, it is clear that the said transitory clause is attracted. The said clause is extracted in the judgment of the learned Single Judge. In that clause it is stated that licenses issued before the commencement of the 1992 policy would continue to be valid for import/export of the items permitted therein, notwithstanding the change in policy. The words "permitted therein" in Clause 4 must, in our view, be referable to items in the licenses. As already held by us, the licenses must be deemed to cover specific items and in regard to those items, the vested rights are kept alive by Clause 4 of the 1992 policy, which is the transitory provision. The learned Single Judge was, Therefore, right in holding that the import was so protected.

7. Learned counsel for the appellant has pointed out that a doubt had arisen with regard to interpretation of the policy under Clause 20 of the 1990-92 Import Policy and, Therefore, a clarification was issued saying there was no vested right. If any such clarification is issued by the concerned authority, the same is not binding on the Court but is binding only on subordinate authorities. In view of what is stated above, the said clarification cannot effect the rights of the petitioner in this case before us.

8. After considering the relevant provisions, we are of the view that the right of the respondent under the licenses cannot be restricted by the clarificatory order issued in this case. The appeal fails.

9. It appears that the goods have been lying with the Customs Authorities for a quite long time. If the petitioner completes the other formalities, the goods will be released as expeditiously as possible, dusty.