

(1989) 12 MAD CK 0019

In the Madras High Court

Case No : Writ Petition No. 15966 of 1988

Computer Graphic Pvt. Ltd.

APPELLANT

Vs

Collector of Customs

RESPONDENT

Date of Decision : 08-12-1989

Acts Referred:

Constitution of India, 1950 — Article 14, 246, 73

Customs Act, 1962 — Section 25

Industries (Development and Regulation) Act, 1951 — Section 1, 10, 11, 11A, 13

Citation : (1989) 12 MAD CK 0019

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Advocate : Ramachandran, for K. Mani, for the Appellant; P. Narasimhan, Sr. Central Govt. Standing Counsel, K.K. Venugopal, for Anand Dass Gupta Sagar, Singhvi, for C. Rattanlal, for the Respondent

Judgement

1. This Writ Petition has to be dismissed on a very short ground even though arguments were addressed at some length covering a wider range.

2. The prayer in the writ petition is as follows :-

For the reasons stated in the accompanying Affidavit, it is prayed that this Honourable Court be pleased to issue a Writ of Mandamus or other

appropriate Writ, Direction or Order in the nature of a Writ directing the respondents to permit the petitioner to clear the consignment of imported

Jumbo Rolls of Graphic Art Film and Jumbo Rolls of Photographic Colour Paper certified in the Notification No. 216/88, dated 7th July, 1988, on

payment of the concessional rate of duty of 60% specified in the Notification No. 216/88, dated 7th July, 1988, or such other concessional duty

specified therein as amended from time to time and pass such further or other order or orders, as this Honourable Court may deem fit and

necessary in the circumstances of the case and Render Justice.

3. The notification referred to in the prayer reads thus :-

Customs Notification No. 216/88, dated 7th July, 1988 -

In exercise of the powers conferred by sub-section (1) of Section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being

satisfied that it is necessary in the public interest so to do, hereby exempts jumbo rolls of graphic art films and jumbo rolls of photographic colour

paper, of width 1 metre or more and of length 600 metres or more, falling within Chapter 37 of the First Schedule to the Customs Tariff Act, 1975

(51 of 1975), when imported into India, from so much of that portion of the duty of customs leviable thereon under the said First Schedule as is in

excess of the amount calculated at the rate of 60 per cent ad valorem, subject to the following conditions, namely :-

(i) the importer undertakes conversion of the said jumbo rolls by slitting or confectioning into finished products;

(ii) the importer holds an industrial licence under the Industries (Development and Regulation) Act, 1951 (65 of 1951), for slitting and

confectioning of photo-sensitised materials from jumbo rolls.

2. This notification shall be in force up to and inclusive of the 30th day of June, 1989.

Explanatory Note :

This notification seeks to prescribe a concessional rate of basic customs duty of 60% ad valorem on jumbo rolls of graphic art films and

photographic colour paper subject to certain conditions.

4. Even though the prayer in the writ petition reform to two types of goods viz., Graphic Art Film and Photographic Colour Paper, the petitioner

has no cause of action with respect to the letter as it has been granted industrial licence therefor. The petitioner is aggrieved because of the second

condition in the above notification insisting upon holding of industrial licence with reference to the graphic art films by virtue of which the Customs

Department is refusing to grant concession in the rate of duty under the notification.

5. The case of the petitioner in short is as follows :- It applied for industrial licence or rather C.O.B. Licence in January, 1987 to the Department of

Industrial Development, Government of India and by a letter dated 3-6-1987, the Ministry of Industry permitted it to carry on business with the Small Scale Registration till a regular C.O.B. licence is issued and the Ministry also expressed that it had no objection to the Customs clearing the petitioner's consignment of jumbo rolls. The permission granted in the said letter would tantamount to an industrial licence contemplated by the notification referred to earlier. Subsequently on 7-12-1988, the Ministry granted licence with reference to photographic colour paper only and its application for licence in so far as it related to the other categories including Graphic Art Film is still pending for consideration without disposal. The Customs authorities have granted the concession under the notification in the case of other manufacturers who carry on business similarly without a licence but with the permission of the Ministry granted under similar letters. The Customs authorities are not only guilty of discrimination but also have no jurisdiction to refuse to adopt the concessional rate for the petitioner, as the petitioner is entitled to carry on business until a regular C.O.B. licence is issued. At any rate, the principle of promissory estoppel will apply and it is not open to the authorities concerned to treat the petitioner as a person without a licence required by the notification.

6. On the other hand, the respondents contend as follows :- The petitioner is not a person eligible to apply for C.O.B. licence as it was not an

existing industrial undertaking at the relevant time and the petitioner ought to have applied for an industrial licence as a new industrial undertaking.

The letter dated 23-6-1987 relied on by the petitioner has been issued by a Desk Officer in the Ministry, who is in no way competent to grant

licence or permission to carry on business. There was no authorisation by any competent officer to the Desk Officer to write the letter dated 3-6-

1987 granting permission to the petitioner to carry on business. The letter, if at all, related only to one consignment and it cannot be used for

subsequent imports which are wholly illegal. In any event, it is not a licence within the meaning of the notification and the petitioner is not entitled to

concessional rates. The application of the petitioner for issue of licence has been disposed of by the Ministry by granting licence for photographic

colour paper only and rejecting the same with reference to graphic art film etc. There is no application of the petitioner pending in the Ministry and

the principle of promissory estoppel or any other estoppel will not apply. The same Desk Officer issued similar letters to two or three other

persons granting similar permission and on coming to know of the same, action has been taken not only against the parties concerned but also

against the Desk Officer. It is not correct to say that the Customs Department has discriminated between the petitioner and other similar

manufacturers without licence. The petitioner is not entitled to any relief in this writ petition. Besides dismissing the petition, the Court should also

direct the petitioner to surrender the goods already cleared and pay the differential duty immediately.

7. In the view I am taking on the question whether the petitioner satisfies the conditions prescribed in the notification under which the petitioner

claims the benefit of concessional rates, I do not think it necessary to consider any other question in this judgment. I am holding that the petitioner

does not hold an industrial licence as required in the notification and consequently not entitled to the relief prayed for in this petition.

8. The relevant provisions of law relating to the industrial licence referred to in the notification should now be adverted to herein. The Industries

(Development and Regulation) Act, 1951 (Act 65 of 1951), hereinafter referred to as the Act, came into force on May 8, 1952. It is an enactment

passed by Parliament. Section 2 thereof declares that it is expedient in the public interest that the Union should take under its control the industries

specified in the First Schedule. Entry 52 in List I of the Seventh Schedule to the Constitution of India pertains to industries, the control of which by

the Union is declared by Parliament by Law to be expedient in the public interest. The Act has been enacted under the said entry by the

Parliament. The resultant position is that the Parliament has exclusive power to make laws with respect to the industries specified in the First

Schedule to the Act as per the provisions of Article 246(1) of the Constitution of India. By virtue of Article 73 of the Constitution of India, the

executive power of the Union shall extend to matters relating to the said industries. Neither any State Government nor the Legislature of any State

will have power over matters relating to such industries. Item 20 in the First Schedule to the Act refers to any industry engaged in the manufacture

or production of photographic raw film and paper and (1) Cinema film, (2) Photographic amateur film and (3) Photographic printing paper. Section

11(1) of the Act provides that no person or authority other than the Central Government, shall, after the commencement of the Act, establish any

new industrial undertaking, except under and in accordance with a licence issued in that behalf by the Central Government. Under the proviso, a

Government other than the Central Government may, with the previous permission of the Central Government, establish a new industrial

undertaking. Sub-section (2) of Section 11 of the Act into the effect that a licence or permission under sub-section (1) may contain such conditions

including in particular, conditions as to the location of the undertaking and the minimum standards in respect of size to be provided therein as the

Central Government may deem fit to impose in accordance with the rules, if any, made u/s 30. Section 25 of the Act enables the Central

Government to delegate the power exercisable by it under the Act other than the power given to it by Sections 16, 18A, 18AA and 18FA to such

officer or authority including any Development Council, State Government or officer or authority subordinate to the Central Government, subject to

such conditions and in relation to such matters as may be specified. But, such delegation under the section shall be done only by a notified order.

Section 24 of the Act provides for penalties for contravention or attempt to contravene or abetting the contravention of the provisions of some of

the sections of the Act including Section 11. Section 29B of the Act empowers the Central Government to exempt by notification in the Official

Gazette any industrial undertaking or class of industrial undertakings or any schedule industry or class of scheduled industries from the operation of

all or any of the provisions of the Act or rule or order made thereunder subject to such conditions as it may think fit to impose.

9. By virtue of the power of exemption, the Central Government had issued a notification on 16-2-1973 exempting Small Scale Industrial Units

from the operation of certain provisions of the Act including licence by the Central Government. But, the exemption was confined to Small Scale

Units having investments in fixed assets in plant and machinery not exceeding Rs. 35 lakhs. According to respondents 4 and 5, the value of fixed

assets in the plant and machinery of the writ petitioner exceeded the limit of Rs. 35,00,000/- and it was not entitled to the benefits of the order of

exemption. I do not propose to consider that aspect of the matter as it is unnecessary for the purpose of this case.

10. The Ministry of Industry, Government of India, released a press note on 8-7-1986 in the following terms :-

"Subject : Inclusion of slitting/confectioning of Photos sensitized material from Jumbo Rolls in Schedule IV of the exemption notification dated 16th February, 1973.

It has been observed in the past that large number of small scale and medium scale units are being established for conversion of imported Jumbo

Rolls into Photo sensitized goods, based on imported Jumbo Rolls taking undue advantage of liberalised import policy. Besides, huge permanent

imports, there is poor quality production flooding the market as even conversion of Jumbo Rolls into photo sensitized goods, requires specialised

technical know how which is not really possible in the small-scale and medium scale sector. It has accordingly been decided to make it obligatory

for all applicants, including these in the small-scale sector to obtain an Industrial Licence under the provisions of the Industries (Development and

Regulation) Act, 1951 and to include the activity ""Slitting/Confectioning of photo sensitized material from Jumbo Rolls"" in the Ministry of Industry

exemption notification dated 16th February, 1973. A separate notification is being issued in this regard.

2. Consequently, all industrial undertakings, inc., including those in the small scale, intending to taking up the above-mentioned activity will require

an Industrial Licence under the provisions of the Industries (Development and Regulation) Act, 1951.

3. The existing industrial undertakings which are not having Industrial Licence but have taken the effective steps prior to the date of notification are

required to obtain a C.O.B. Licence within a period of 6 months from the date of issue of the notification. All others will have to obtain an

Industrial Licence for the purpose.

The notification proposed to be made in the Press Note was actually made on 18-7-1986. But, before the notification was issued on 18-7-1986,

the writ petitioner applied on 12-7-1986, for Small Scale Industries Registration to the Department of Industries and Commerce for the activity of

slitting, cutting, repacking of photographic colour paper, graphic art films and X-ray films only"". Provisional registration was granted on 21-7-

1986. The notification dated 18-7-1986 cancelling the exemption granted in 1973

fixed a period of six months from the date of publication of the notification in the Official Gazette as the period after the expiry of which no owner of any industrial undertaking which was previously exempted from the operation of Sections 10, 11, 11A and 13 of the Act and which is not so exempted by virtue of the said notification, shall carry on the business of such undertaking except under and in accordance with a licence issued by the Central Government, and in the case of State Governments, except under and in accordance with the previous permission of the Central Government. The Notification really added an entry after Entry No. 10 in Schedule IV to the Notification dated 16th February, 1973. By virtue of the said entry, slitting, confectioning of photo-sensitised material from Jumbo Rolls was excluded from the purview of exemption. As a result of the notification dated 18th July, 1986, it became necessary for industrial undertakings to obtain industrial licence or C.O.B. licence within a period of six months from the date of the notification. The last date was 17-1-1987. The writ petitioner sent an application on 19-1-1987 for issue of C.O.B. licence on the footing that it is an existing industrial undertaking which had taken effective steps prior to the date of notification dated 18-7-1986. The application was with reference to three products viz., graphic art film, photographic paper and X-ray films. As stated already, this case concerns only with graphic art film. Here again, the submission of the fourth and fifth respondents that the application for issue of C.O.B. licence was made by the petitioner beyond the time limit prescribed in the notification dated 18-7-1987 and was, therefore, not eligible to be considered by the Government, will not be considered by me, as I do not think it necessary for the purpose of this case.

11. I should, however, refer to one aspect of the matter to which my specific attention was drawn by learned Counsel for the fifth respondent, i.e., in Column 21 of the Application for Licence or Permission in Form EE, the petitioner has stated that the three classes thereof are not applicable.

That column requires the applicant to give certain particulars if sub-section (2) of Section 29B or the Act applies to the applicant. Under sub-

section (2) of Section 29B of the Act, where any notification under sub-section (1), granting any exemption is cancelled, no owner of any industrial

undertaking to which the provisions of Section 10, Section 11, Section 11A or

clause (d) of sub-section (1) of Section 1 would have applied, if the notification under sub-section (1) had not been issued, shall carry on the business of the undertaking after the expiry of such period as may be specified in the notification cancelling the exemption except under and in accordance with a licence issued in that behalf by the Central Government and, in the case of a State Government, except under and in accordance with the previous permission of the Central Government. By stating in the application form that sub-section (2) of Section 29B of the Act was not applicable to the petitioner, the provision relating to C.O.B. licence could not be invoked by the petitioner and inasmuch as the application was for issue of C.O.B. licence, it was not a valid one. I do not propose to consider this contention of the fifth respondent.

12. It is not in dispute that the petitioner was bound to apply for a licence under the provisions of the Act. Rule 7 of the Registration and Licensing of Industrial Undertaking Rules, 1952, framed under the Provisions of the Act, prescribes the procedure for an application for licence. Rule 8 provides that on receipt of the application, the receiving officer shall note thereon the date of its receipt, and shall send to the applicant an acknowledgment stating the date of receipt. Under Rule 9, the Ministry of Industrial Development or the authority appointed by it in this behalf may require the applicant to furnish within a period to be specified by it such additional information as it may consider necessary. Under Rule 10, the Ministry of Industrial Development shall refer the application to a Committee appointed under sub-rule (2) thereof. The Committee shall, after such investigation as may be necessary, submit a report to the Ministry as per Rule 11. If the Committee so opines, a public enquiry in respect of any application may be recommended. Rule 14 enables the Ministry to invite, by means of a notice published in the Gazette of India, applications for the grant of Licences for the establishment of new industrial undertakings in any scheduled industry. Considerable reliance is placed by the writ petitioner on Rule 15, which reads thus :-

15. Grant of Licence or Permission :

(1) The Ministry of Industrial Development shall consider the report submitted to it under Rule 11, and where it decides that a licence or permission, as the case may be, should be granted it shall inform the applicant

accordingly, not later than 3 months from the date of receipt of the application or the date on which additional information under Rule 9 is furnished, whichever is later.

(2) Where the Ministry of Industrial Development considers that certain conditions should be attached to the licence or permission or that the

licence or permission should be refused, it shall not later than three months from the date of receipt of the application or the date on which

additional information under Rule 9 is furnished, whichever is later, give an opportunity to the applicant to state his case, before reaching a decision.

(3) Where a licence or permission has been refused the applicant shall be informed of the reasons for such refusal.

(4) Licence or permissions shall be in Form F appended to these rules.

13. According to the writ petitioner, after his application for issue of C.O.B. licence reached the Ministry, the latter called for certain information

by letter dated 1st May, 1987. During the course of arguments, learned Counsel for the writ petitioner produced a xerox copy of the said letter. It

is signed by K. C. Kapoor, Desk Officer. The body of the letter is as follows :-

Subject :- C.O.B. Licence - Slitting/confectioning of Photo Sensitized material from Jumbo Rolls.

Sir,

I am directed to refer to your application mentioned above and to say that you may please let us know the date of opening irrevocable letter of

credit by you and also documentary evidence in this regard.

This may be treated as immediate.

I have to point out an unusual feature in this letter. In an official correspondence if it is necessary to make a reference to any prior document, it will

be either mentioned under the Heading "reference" at the top of the letter or the details of the said prior document would be mentioned in the body

of the letter. In this letter dated 1st May, 1987, the subject alone is mentioned at the top. There is nothing by way of "reference". But, in the body

of the letter it is stated that the signatory is directed to refer to ""your application mentioned above"" while no application is mentioned at the top. It is

not necessary for me to probe further in this matter. Suffice it to point out the unusual feature in the letter which is supposed to be an official

correspondence. Nothing more may turn on it. The petitioner wrote a letter on May 9, 1987 giving the required information as to when letters of credit were opened. A request for issue of C.O.B. licence immediately without any further delay was made in that letter. On the same day, the petitioner wrote another letter addressed to Mr. Kapoor, Desk Officer, informing him that the Customs had detained one of the petitioner's consignments pending production of C.O.B. licence or a letter from the C.O.B. authorities to the effect that the concerned goods need not be detained as the issue of C.O.B. licence is under examination. According to the letter, the jumbo rolls imported are sensitised photographic films (graphic art films) and deteriorate rapidly unless kept in air-conditioned store room. The letter informed the addressee that the goods had already arrived and were with the customs in very high humidity and temperature conditions and if they deteriorate, it will be colossal loss in precious foreign exchange and delay in clearance would be a severe set back to the petitioner's industry. A request was made in that letter to give a letter to the petitioner or the customs authorities that the goods need not be detained. It was also stated therein that the customs had informed the petitioner that similar letters had been granted to India Cine Agencies, an SSI Unit also based in Madras and engaged in the same line of activity viz., conversion of sensitised photographic materials from Jumbo Rolls, and the C.O.B. licence of India Cine Agencies was also pending. That was followed by another letter dated 16th May, 1987 in which a reference was made to a personal discussion of the matter which the signatory of the letter had with Mr. Kapoor and the Director of the Industries Department. A fervent plea is reiterated for grant of C.O.B. licence immediately or use of a "No Objection Letter" for clearance of the goods from the Customs, Madras. The petitioner sent another letter dated 27th May, 1987, enclosing therewith photographs of the factory and photographs of slitting machine. Thereafter, the crucial letter dated 3rd June, 1987, was written by the Desk Officer, Mr. K. C. Kapoor, to the petitioner. The letter reads as follows :-

Subject :- Your C.O.B. application for slitting/confectioning of photo-sensitized goods.

Sir,

I am directed to refer to your letter dated the 9th May, 1987, on the subject mentioned above and to say that, your application for grant of a

C.O.B. licence for manufacture of slitting/confectioning of photo-sensitized materials is under consideration in this Ministry.

2. You can carry-on your business with Small Scale Registration till a regular C.O.B. licence is issued to you and this Ministry have no objection to

Customs clearing your consignment of jumbo rolls as per prescribed rules.

14. It is the contention of the petitioner that the said letter dated 3rd June, 1987, tantamount to an industrial licence under the Act for slitting and

confectioning of photo-sensitized materials from jumbo rolls as required by the Customs notification dated 7th July, 1988. I do not agree with this

contention. The letter itself expressly refers to the pendency of the application for grant of C.O.B. licence in the first paragraph. According to the

letter, the application is still under consideration in the Ministry. In the second paragraph, the Desk Officer has informed the petitioner that it can

carry on its business with the Small Scale Registration till a regular C.O.B. licence is issued. That again shows that the letter is not equivalent to a

licence. At any rate, it is not an industrial licence contemplated by the Customs notification dated 7-7-1988. The language in the said notification is

very clear in that the condition to be satisfied is the holding of an industrial licence under the Act. I have already referred to the relevant provisions

of the Act and the Rules. Under Rule 15(4) of the Registration and Licensing of Industrial Undertaking Rule, a licence or permission is to be in

Form F. This letter is nowhere near Form F. It is contended by learned Counsel for the writ petitioner that the form of it does not matter and if in

substance it is a licence granted to the petitioner that would meet the requirements of the Customs Notification. Such a contention could have been

accepted if the letter grants a licence by its terms though not in form. But, it does not do so. As pointed out already, the letter not only refers to the

factum of the application for licence being under consideration, thereby making it clear that the application has not been ordered, but also states

expressly that the petitioner can carry on business till a regular C.O.B. licence is issued. Thus, the letter cannot be trusted as a licence under the

Act in any sense of the term.

15. If at all, the letter could be treated as permission granted to the petitioner to

carry on business with the Small Scale Registration. That would not in any manner enable the petitioner to claim the benefits of the customs notification dated 7-7-1988. The notification in question is one granting exemption and the language thereof is very clear and it should be understood strictly in the plain meaning. The notification is referring only to an industrial licence under the Act and nothing short of it. Hence, any permission to carry on business with the Small Scale Registration will not fall within the scope of the Customs notification dated 7-7-1988.

16. I should refer herein to the contention raised by respondents 4 and 5 that the Desk Officer was not authorised by the Rules or by any provision of law to grant permission to the petitioner to carry on business as he has done. My attention is also drawn to the difference in the terminology between the first paragraph and the second paragraph of the letter. While the first paragraph refers to a direction supposed to have been given by somebody else to the signatory of the latter, the second paragraph does not make any such reference and it proceeds as if the permission to carry on business is being given by the signatory himself on his own. Detailed arguments were advanced to the effect that the rules of business should be strictly adhered to and the "Desk Officer is not one of the officials entitled to grant such permission. I do not think it necessary to consider the said contention as I have taken the view that the latter does not tantamount to an industrial licence contemplated by the Customs notification dated 7-7-1988.

17. There is yet another reason as to why the letter dated 3-6-1987 cannot help the writ petitioner to get the benefits of the Customs notification. It is very clearly stated in the letter that the Ministry have no objection to customs clearing the petitioner's consignment of jumbo rolls as per prescribed rules. That only means that the clearance of the consignment should be in accordance with the rules of the Customs with regard to the payment of duty, etc. There is no permission to the petitioner to clear the consignment on payment of concessional duty. If the rules of the Customs do not permit a concessional rate to the petitioner, it cannot by relying on the letter dated 3-6-1987 claim the benefit of a concession.

18. The fourth respondent's Counsel contended that the letter could if at all be said to have permitted the petitioner to clear only one consignment

referred to by the petitioner in its letters dated 9-5-1987 and 16-5-1987 and that the said letter cannot be used for clearing goods in any

subsequent consignment. The contention is certainly acceptable. As I have taken the view that the letter does not grant any permission to the writ

petitioner to clear the goods on a concessional rate, it is not necessary to rest my conclusion on the acceptance of the said contention.

19. It is contended by learned Counsel for the writ petitioner that even if the letter dated 3-6-1987 is not an industrial licence within the meaning of

Section 11 of the Act, the Ministry of Industry should be deemed to have granted licence under the provisions of the Act in view of the inordinate

delay caused in the matter of considering the application for issue of C.O.B. licence. It is for the purpose of substantiating this argument, reliance is

heavily placed on the provisions in Rule 15 of the Registration and Licensing of Industrial Undertaking Rules. Under the said rule, the Ministry shall

consider the report of the committee submitted to it under Rule 11 and if it decides that a licence or permission should be granted, it shall inform

the applicant not later than three months from the date of receipt of the application or the date on which additional information under Rule 9 is

furnished, whichever is later. According to the writ petitioner, additional information in this case was furnished by letter dated 9-5-1987 written by

the writ petitioner to the Desk Officer. According to him, the Ministry ought to have given information to the writ petitioner within three months

from that date whether it had decided to grant it or to refuse it. Under sub-rule (2) of Rule 15, the same period of three months is fixed for

conveying information of refusal of the application for licence or permission. Sub-rule (3) thereof in to the effect that reasons for refusal shall be

communicated to the applicant. The petitioner's Counsel contends that if the Ministry does not convey any information to the applicant for licence

or permission, it must be deemed to have granted the application. I do not agree with this contention. Unless there is an express provision to that

effects in any rule, no such presumption or legal fiction can be raised by a Court of law. The Court cannot add to the rules.

20. This contention of the petitioner that the licence or permission is deemed to have been granted is unsustainable on the facts of this case. Even

the petitioner never thought so. The petitioner has written several letters to the Ministry after the issue of the Customs notification dated 7-7-1988

requesting the Ministry to grant C.O.B. licence immediately or alternatively issue a provisional C.O.B. licence. One such letter is dated July 18,

1988, in which a specific reference is made to the Customs Notification dated 7-7-1988. The relevant portions of the letter read as follows :-

We have applied for the above C.O.B. licence in January."87. You have, vide your letter dated June 3rd, 1987 permitted us clearance of jumbo

rolls of graphic arts film and photographic colour paper through customs on the strength of our current permanent SSI registration till a C.O.B. is

granted.

* * * * *

After the issue of this notification the customs at Madras have not permitted us to clear our jumbo rolls of sensitized materials under concessional

duty because we do not have any licence for confectioning and slitting under the IDR Act as on 7th July, 1988. They do not accept your

department's letter dated June 3, 1987 as an industrial licence.

We have still not received our industrial licence (carry on business) under the IDR Act for confectioning and slitting of jumbo rolls of photographic

colour paper and graphic arts film even though we have applied for such a licence eighteen months ago.

* * * * *

Under these circumstances we plead with you to arrange to give us C.O.B. licence immediately or alternatively issue us a provisional C.O.B.

licence till such time the C.O.B. licence is granted to us to enable us clear our consignments at concessional rate of duty.

21. By letter dated 19-7-1988 the Assistant Collector of Customs, Group-II, informed the petitioner unequivocally that the applicability of the

benefit of the, notification dated 7-7-1988 is subject to the petitioner's production of the industrial licence. Thereafter, the petitioner addressed a

letter to the Minister, Ministry of Industries, on 28-7-1988 praying for issue of licence at the earliest. Similar letters were written on 27-8-1988

addressed to the Desk Officer Mr. Kapoor and on 18-7-1989 addressed to the Secretary, Ministry of Industrial Development, New Delhi. It is to

be noted that the last letter was written during the pendency of the writ petition. It should also be recollected that on 7-12-1988, the Ministry of

Industry granted the application of the petitioner in so far as it related to

confectioning/splitting of jumbo rolls of photographic colour paper.

22. When the licensing authority has expressly confined the grant to one of the three items with reference to which the application was made by the

petitioner, it is too far-fetched to contend that the licence is deemed to have been granted with reference to the other items. On the other hand, the

only inference possible is that the application has been rejected with reference to the other two items and in particular with reference to graphic art

film, with which this writ petition is concerned.

23. It is next contended that the Ministry of Industry, which has been impleaded as the fifth respondent, is estopped from contending that the

petitioner has no industrial licence under the Act. In support of this argument it is submitted that letters similar to the one issued on 3-6-1987 to the

petitioner have been issued to other manufacturers enabling them to clear imported goods from customs. It is also sullied that the licensing authority

has kept quiet knowing fully well that the petitioner is carrying on business by importing jumbo rolls and manufacturing the products mentioned in

the application and allowed the petitioner to clear the goods from the Customs. According to learned Counsel, the entire correspondence between

the writ petitioner and the Ministry should be considered in this context and if the matter is viewed in the background of the said correspondence, it

will be clear that a promise has been made by the Ministry that the licence would be granted to the writ petitioner as applied for and based on that

promise, the writ petitioner has been inventing ginormous amounts of money in the business and consequently, the industry is estopped from

denying the petitioner's holding of a licence. Reliance is placed on the judgment of the Supreme Court in Motilal Padampat Sugar Mills Co. Ltd.

Vs. State of Uttar Pradesh and Others, . Learned Counsel drew my attention to the following passage in the judgment;

.... Mr. justice Denning, however, pointed out : The law has not been standing still since Jordon v. Money 1854 (5) HLC 185. There has been a

series of decisions over the last fifty years which, although they are said to be cases of estoppel are not really such. They are cases in which a

promise was made which was intended to create legal relations and which, to the knowledge of the person making the promise, was going to be

acted on by the person to whom it was made, and which was in fact so acted on,

In such cases the courts have said that the promise must be honoured.

The principle formulated by Mr. Justice Denning was, to quote his own words, ""that a promise intended to be binding, intended to be noted on and in fact acted on, is binding so far as its terms properly apply.

The facts of that case are entirely different and the principle of promissory estoppel is not applicable to this case. In view of the facts of this case,

there is no question of any promise or representation on the part of the Ministry made to the petitioner herein. I have already dealt with the

contents of the letter dated 3-6-1987. It cannot by any stretch be said to amount to a promise on the part of the Ministry to grant a licence as

prayed for by the petitioner or a representation on the part of the Ministry that the licence would be issued to the petitioner in due course of time. It

is contended that the rule of estoppel will apply at least to a limited extent for clearing the goods at a concessional rate and it is not open to the

Customs authorities to claim duty at the full rate. This argument is also fallacious. I have already referred to the fact that the letter permitted the

petitioner to clear the goods from the Customs only as per prescribed rules. As such, there is no representation, express or implied, on the part of

the Ministry that it could get the benefit of concessional rates.

24. I do not agree with the contention of learned Counsel for the petitioner that the application for grant of C.O.B. licence is still pending with the

Ministry of Industry. The fact that the application has been granted on 7-12-1988 with reference to only one of the items mentioned in the

application proves clearly that the application is rejected with regard to the other items. The stand taken by the fifth respondent that there is no

application of the petitioner pending with the Ministry for issue of C.O.B. licence is correct.

25. It is then contended that Rule 15 of the Registration and Licensing of Industrial Undertaking Rules should be construed in favour of the subject

and inasmuch as the Ministry and failed to take action from 3-6-1987 to 7-12-1988 and the petitioner was allowed to carry on business, there

should be a presumption that the licence has been granted. Learned Counsel also contends that the subsequent letters written by the petitioner to

the Ministry for grant of licence was only for issue of a regular licence as

indicated in the letter dated 3-6-1987. I do not find any substance in any of the contentions. I have already expressed the view that there can be no presumption in favour of the grant of licence in the absence of any rule.

26. Learned Counsel for the respondents denies that in fact the Customs authorities permitted other manufacturers to clear goods at concessional rates even without their holding an industrial licence as required by the notification dated 7-7-1988. There is nothing on record to prove that such

clearance was permitted by the Customs authorities. Even assuming for the sake of arguments that such permission was granted, it would only

mean that the authorities have violated the relevant rules and the provisions of law and the petitioner cannot back a writ from this Court to compel

the authorities to violate the provisions of law once again in the case of the petitioner. There cannot be an equality in illegality. The contention that

the authorities discriminated between the parties is wholly without any substance. Article 14 of the Constitution of India cannot be invoked in such

cases. The language of the Article proves that there should be equality only before the law and the State shall not deny equal protection of the

laws. Equality before law does not mean equality in violating the law. If any official or authority has said against law, it cannot be contended that he

should do so uniformly with reference to all persons concerned. I do hereby direct the Union Government to take action against erring officials and

if any of them had violated the provisions of law or permitted such violation, appointment proceedings should be initiated against them.

27. Hence, I conclude that the petitioner herein is not holding an industrial licence under the Act as required by the Customs notification dated 7-7-

1988 and consequently it is not entitled to get the benefit of concessional rates of duty.

28. I have not considered the other questions raised by respondents 4 and 5, as, in my view, they would fall outside the scope of this writ petition.

It is open to the Government of India to take appropriate proceedings against the petitioner, if the petitioner is guilty of any offence or violation of

the relevant rules and provisions of law, in the matter of manufacture of the products in question or import of the raw material therefor. If and when

such proceedings are initiated against the petitioner, it will be open to the petitioner to defend the same and that is why I have not decided any of

these questions in this writ petition.

29. In the result, the writ petition fails and it is dismissed with costs. Advocate's fee Rs. 2000/-.