(1993) 08 BOM CK 0045

In the Bombay High Court

Case No : Writ Petition No. 434 of 1984

Darshan Oils Pvt. Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 20-08-1993

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1993) ECR 575 : (1993) 68 ELT 57

Hon'ble Judges : M.L. Pendse, J;A.P. Shah, J

Bench : Division Bench

Advocate : Mrs. E.A. Gonsalves, for the Appellant; Shri L.S. Vyas, for the Respondent

Judgement

Pendse, J.—This petition is companion to Writ Petition No. 56 of 1984 in which we had delivered judgment on July 20, 1993. The facts which gave rise to the filing of this petition are as follows.

2. The petitioner No. 1 is a Private Company registered under the Indian Companies Act and carries on business as traders and general oil merchants. The Government of India had declared import and export policy for period April 1983 to March 1984. The import of split stearin fatty acid was not canalised when the policy was declared by Government of India. The petitioners entered into contract with M/s. Haji M. Moosa and Company, Singapore for purchase of 150 Metric Tonnes of split stearin fatty acid on August 1, 1983. In pursuance of the contract, the petitioners opened irrevocable letter of credit in favour of the vendor on October 3, 1983.

3. On November 11, 1983, the Government of India, Ministry of Commerce, issued a public notice providing for amendments to import and export policy for April 1983-March 1984. The amended policy, inter alia, provided that import of fatty acids and acid oils can only be through the canalising agency. A paragraph was added to Appendix 9 which sets out canalised items and the heading of paragraph was "Fatty Acids and Acid Oils". The paragraph provides that import

will be made only by State Trading Corporation of India under Open General Licence on the basis of foreign exchange released by the Government. The items of fatty acids and acid oils are then set out and Item No. 9 refers to other fatty acids, pure or mixed including acid oils, all types, Paragraph 3 of the Public Notice reads as follows:

"Import of items referred to in para 2 of this Public Notice shall not be allowed under any import licences already issued or under paras 31, 34, 37, 38, 138, 148, and 203 of the Import & Export Policy, 1983-84 or under any other provision of the Import & Export Policy 1983-84, except against shipments from the country of origin already effected before the date of this Public Notice."

It is not in dispute that the shipment of the fatty acids imported by the petitioners was in February 1980 (1984) from Singapore. In view of the Public Notice, the respondents declined to clear the consignment for home consumption and that gave rise to the filing of the present petition under Article 226 of the Constitution of India.

The petition was admitted by speaking order dated February 28, 1984 passed by learned Single Judge and the petitioners were permitted to clear the consignment on condition of furnishing personal bond for the value of the goods as per the Customs Rules. The petitioners were further directed to deposit in Court an amount equivalent to 2% of the c. i. f. value of the goods for the payment to State Trading Corporation of India in case the petitioners fail in the challenge to the Public Notice. The petitioners were ordered to furnish Bank guarantee in the sum of Rs. 1,50,000/-with a direction that the Bank guarantee should be kept alive for a period of four weeks after the date of disposal of the petition. The learned Judge permitted the respondents to commence adjudication proceedings in respect of the consignment imported by the petitioners but with the direction that the order passed on adjudication shall not be enforced pending disposal of the petition. Shri Vyas, learned counsel appearing on behalf of the Department, informs that adjudication proceedings are not over.

4. Mrs. Gonsalves, learned counsel appearing on behalf of the petitioners, submitted that it was not open for the Government of India to alter import and export policy to the detriment of the petitioners. The learned counsel urged that even assuming that it is permissible to amend import policy, still such amendments cannot affect the import in respect of which irrevocable letters of credit were opened before the date of publication of Public Notice. In support of the submission, reliance was placed on the decision of Delhi High Court reported in Kaptan''s Enterprises and Another Vs. Union of India, . It is not possible to accept the submission of the learned counsel. We have already held in the judgment delivered in the earlier petition that the import and export policy can be amended by the Government of India at any time taking into consideration the exigencies or the circumstances prevailing at a particular time. We have also held that the decision of the Delhi High Court is not accurate and the doctrine of promissory estoppel is not attracted in respect of policy matters. The amendment

to the Import Policy comes into effect on the publication of the Public Notice and it is not open for the petitioners to claim that even if the import of fatty acids and fatty oils is canalised with effect from November 11, 1983, the import can be permitted because letters of credit were opened prior to the date of Public Notice. The amendment of the Import Policy makes it clear that import cannot be permitted except, through canalising agency and the exception is in respect of import against shipments before the date of Public Notice. It is not in dispute that the shipment of the consignment imported by the petitioner was long after November 11, 1983. In these circumstances, the petitioners are not entitled to any relief and the petition must fail.

5. Shri Vyas, learned counsel appearing on behalf of the Department submitted that though the learned Single Judge permitted the respondents to commence adjudication proceedings, the same were not undertaken because the consignment was directed to be cleared. Shri Vyas submitted that as the petition has now failed, the respondents should be permitted to complete the adjudication proceedings and in case any redemption, fine or penalty is imposed on the petitioners, then the said amount should be paid out of the Bank guarantee furnished by the petitioners. Shri Vyas also submitted that 2% of the c. i. f. value deposited by the petitioners should be paid over to the State Trading Corporation of India as directed by the learned Single Judge by interim order. The submission is correct and deserves acceptance.

6. Accordingly petition fails and rule is discharged with costs. The State Trading Corporation is entitled to receive the amount of 2% of the c. i. f. value deposited by the petitioners in pursuance of the interim order. Liberty to the respondents to commence adjudication proceedings and enforce the order passed in such proceedings against the petitioners. The Bank guarantee furnished by the petitioners in pursuance of interim order shall continue for a period of four weeks from the date of adjudication order.