(1988) 04 BOM CK 0029

In the Bombay High Court

Case No : Writ Petition No. 2078 of 1982

Dhruva Woollen Mills Pvt. Ltd. — APPELLANT

Vs

Union of India — RESPONDENT

Date of Decision : 15-04-1988

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1988) 18 ECR 220 : (1988) 36 ELT 255

Hon'ble Judges : R.A. Jahagirdar, J

Bench : Single Bench

Judgement

1. The short question involved in this petition is whether the respondents, namely the authorities in charge of imports and exports joined in this petition as respondents Nos. 2 to 4, are entitled to forfeit the amount under a bond executed by the petitioner on 22nd of February, 1973. The petitioner is a woollen textile mill and it made an application for importing a permanent finishing and setting machine with a C.I.F. value of Rs. 1,65,870. The import licence was given subject to the condition, which condition was incorporated in the bond executed by the petitioner on 22nd of February, 1973, that "the said importers (the petitioners) shall within three years from the date of arrival of the last consignment or such further time as may be granted by the said Joint Chief Controller, export woollen fabrics of the value equal to the C.I.F. value of the imported goods to foreign countries excluding Nepal, Tibet, Sikkim, Bhutan." The averments in the petition show that the petitioner was not in a position to export woollen fabrics within the time mentioned in the said bond. However, the petitioner was able to supply the fabrics manufactured by it to another company called Messrs Miltons Limited which was able to manufacture garments out of the same having a blend of 65% polyester and 35% wool. Messrs Miltons Limited exported the garments manufactured by the petitioner and exported the same earning, as is mentioned in the petition, foreign exchange to the tune of Rs. 9,45,756. These facts have been recorded by Miltons Limited in two certificates - one by their Chartered Accountant and the other by their Executive - which are

at Exhibits ''D'' and ''E'' to this petition. These facts have also been stated on oath in this petition.

2. Since the petitioner did not directly export the fabrics as required by the condition of the bond, action was proposed to be taken against the petitioner for forfeiture of the amount under the bond. The petitioner has now approached this Court under Article 226 of the Constitution of India contending that the proposed action of the respondents is contrary to law and the respondents ought to be restrained from taking action forfeiting the amount under the bond.

3. Mr. Shroff, the learned Advocate appearing in support of the petition, has pointed out all the facts summarised by me above. He has also taken me through the petition as well as the relevant documents which are annexed to this petition. Being aware that there is no affidavit-in-reply to this petition and also being aware that nobody appears on behalf of the respondent, Mr. Shroff naturally pointed out all the documents, including the documents which were apparently against the petitioner.

4. Mr. Shroff in the first place contended that it is enough if the petitioner is able to export the woollen fabrics as required under the terms of the bond either itself or through an agency. In the instant case the exports have been effected through an agency, namely Miltons Limited. That this has been done has been stated in so many words in the petition and the averments in this regard are supported by documents, copies of which have been annexed to the petition. On first thought I was unable to appreciate this argument because if the bond imposes an obligation upon the petitioner to export the fabrics, then it could not be said that that obligation is discharged by the export through another company or agency. However, in the instant case, the respondents themselves had agreed to relieve the petitioner of this obligation. This has been done by a letter dated 23rd July, 1976 written by the Controller of Imports to the petitioner. In this letter it has been stated that the petitioner should furnish usual declaration stating that the "entire set of export furnished in fulfillment of export obligation against the bond has not been utilised in the past nor the same will be utilised in future for getting redeemed any bond or for getting no obligation endorsement on import documents". The petitioner was also required to satisfy that the goods exported were manufactured by them and not through an export house. They were further required to furnish a declaration from the buyer Messrs Miltons Pvt. Ltd. stating that the goods (woollen fabrics) containing not less than 30% wool sold by the petitioner at international price to them were exclusively utilised by them for export purpose and no portion thereof has been diverted to home consumption.

5. From the material which has been introduced in this petition, supported by documents copies of which have also been annexed to the petition, it is clear to me that the conditions mentioned in this letter of 23rd July, 1976 have been fulfilled by the petitioner. This should be read with a certificate dated 9th/10th September, 1980 issued by the Assistant Director in the office of the Textile Commissioner wherein it has been stated that "blended fabrics containing 35%

wool falls under the category of woollen fabrics". If this is so, I do not see how the petitioner can be said to have not complied with its obligation under the bond. I am, therefore, satisfied that there is no warrant, on the facts of this case and in the light of the material which has come on record and which has remained unrebutted, to take the proposed action against the petitioner.

6. In the result, the petition succeeds. Rule is made absolute in terms of prayer clause (c) of the petition.

7. There will be no order as to costs in this petition.