
(1998) 01 MAD CK 0035

In the Madras High Court

Case No : Writ Petition No. 1645 of 1987 and WMP No. 2508 of 1987

Emjey Enterprises

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 29-01-1998

Acts Referred:

Customs Act, 1962 — Section 129D

Citation : (1998) 61 ECC 50

Hon'ble Judges : N.V. Balasubramaniam, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

N.V. Balasubramaniam, J.—The writ petitioner is a partnership firm. The petitioner is an importer of various goods including drugs as per

the Imports and Exports Control Act, 1947 (hereinafter referred to as "the Imports and Exports Control, Act") and Imports (Control) Order, 1955

(hereinafter referred to as "the Imports Control Order"). An additional licence dated 24.6.1981 was issued in favour of one M/s. Abad Fisheries

for the import of certain items specified therein in accordance with the import policy for 1980-81. An additional licence dated 16.7.1981 was

issued in favour of M/s. Gujarat State Export Corporation for the import of items specified in accordance with the import policy, 1980-81. A

subsidiary additional licence dated 23.9.1981 was issued in favour of M/s. Abad Fisheries for the import of items specified therein in accordance

with the import policy 1980-81. Under the Import policy, 1980-81, Amoxycillin Trihydrate could be imported under the open general licence. By

a letter dated 30th September, 1981, M/s. Abad Fisheries issued a letter of authority in accordance with paragraph 382 of the Hand Book of the

Import Procedure 1981-82 in favour of the petitioner. Similarly, Gujarat State Export Corporation Ltd. by a letter dated 23.12.1982 issued a

letter of authority in favour of the petitioner. The petitioner placed orders/Indent No. 312 dated 23rd December, 1982 with one M/s. Anant-

Cynth-Chem Pvt. Ltd. of Bombay for the import of the quantity of the said goods as specified in the indent. The letter of credit was opened on 3rd

January 1983. The foreign supplier by 8 separate invoices sent the goods of the quantity and value set out therein to the petitioner. The petitioner

through its clearing agent filed eight bills of entries for the clearance of consignment of the Amoxycillin Trihydrate and the clearance was sought

against the additional licence No. 2871219 issued in favour of M/s. Abad Fisheries under the letter of authority to the importer and the additional

licence number is 2890574 dated 16.7.1981. The first licence viz., licence No. 2871219 was revalidated for 6 months from 27.9.1982 and was

alive at the time of import of the goods and the licence No. 2890574 dated 16.7.1981 was revalidated upto 27.12.1982. The licence was not

alive at the time of import. But, the petitioner claims the facility of the grace period provided in paragraph 209(3) of the Hand Book of the Import

and Export Procedures, 1982-83. Under this paragraph, the importers can avail of the grace period of 60 days in the case of revalidated licence.

The petitioner who placed orders on 23.12.1982, opened the letter of credit on 3.1.1983 after the expiry of the licence. It is relevant to notice that

both the licences were issued prior to 16.10.1981, the date on which Amoxycillin Trihydrate became a canalised item by a public notice No.

51/ITR-81. The licence was revalidated for various periods in 1982-83. The consignment of the goods arrived at the Port of Cochin on or about

25.2.1983/5.3.1983. The Collector of Customs allowed the clearance of goods under OGL on the ground that on the dates of issue of licences,

i.e. 23.9.1981 and 16.7.1981. Amoxycillin Trihydrate was an open general licence item, and any licence issued would be governed by the policy

prevailing on the date of issue and any further amendment to the policy made upto date would not apply to the licence in question.

2. The petitioner, before the Collector claimed clearance on the ground that in the case of R.E.P. licence, policy to be applied was the policy as on

date of issue of the licence and revalidation was done without attaching any condition to the same and in the case of second licence, the letter of

credit was opened during the grace period and order was placed before the grace period and the delay in opening the letter of credit was sought to be condoned.

3. The Central Board of Excise and Customs found that the order of the Collector was not legal and proper and accordingly, in exercise of power

u/s 129(D)(1) of the Customs. Act, 1962, the Central Board directed the Collector to apply to the Customs, Excise and Gold (Control) Appellate

Tribunal for the correct determination of the validity of the petitioner's import licences. An application was filed by the Collector to declare the

order of the Collector dated 12.4.1983 was not correct in law and the goods had been imported in contravention of the Imports Trade Control

Regulations and therefore, they were liable for confiscation. Before the Appellate Tribunal, the petitioner has also filed its objections.

4. The case of the first and third respondents before the second respondent was that Amoxycillin Trihydrate became a canalised item on

16.10.1981 and on the date of placing of order and opening of the letter of credit, the said good has become a canalised item. Under the

provisions of Section 3(1) of the Imports and Exports Act, Amoxycillin Trihydrate could not be imported under OGL licence, as the said item

became canalised item and brought under Appendix IX (iii)(2) of the Import and Export Policy, 1982-83 with effect from 16.10.1991. The case

of the first and third respondents was that the additional licence in question was not valid for the import of the goods in question. It is also stated

that by virtue of the public notice No. 11/82 dated 25.2.1982, import of O.G.L. item by export house under R.E.P. and additional licences was

restricted upto 31.3.1982 or the expiry of the validity of the licence (without any grace period) whichever is earlier. Though the licences in question

have expired on 26.3.1983 and on 27.12.1982, the import could have been made only upto 31.3.1982, whereas the shipment of the goods was

effected on 13.2.1983, long after the expiry of the date prescribed in the public notice. The further contention was that the endorsement for the

revalidation did not indicate any provision or condition for the goods in question. Hence, the contention was that the licences were not valid for the

import of the goods in question. Further, it was also pleaded that when the letter of credit was opened on 3.1.1983, the goods became a canalised

item and the petitioner should not have entered into any firm commitment for the import of the goods. It is also stated that under the provisions of

paragraph 231(3) of the Import and Export Policy, 1982-83, the petitioner could not import under the open general licence the goods in question.

5. The Appellate Tribunal overruled the preliminary objections raised by the writ petitioner that the application was not maintainable and heard the

matter on merits. The Tribunal following a decision of the Calcutta High Court in the case of Mangla Brothers v. Collector Of Customs and Ors.

AIR 1985 Calcutta 122 held that the import of the drug was not canalised on the date of issue of the import licence to the petitioner, but was

canalised only later on 16.10.1981 and no objection could be taken to the import made by the petitioner on the ground that there was subsequent

canalisation. The Tribunal, however, held that the Public Notice No. 11/82 enabled the writ petitioner to import the drug in question only upto

31.3.1982, and the public notice would apply to the petitioner's case and the petitioner's licence though was issued at the time when the

restrictions as to the time limit did not exist, the Tribunal came to the conclusion that the petitioner imported the drug long after the cut off date was

over and therefore, the import was held to be in contravention of the Import Control Regulations. The Tribunal also held that the restriction found

in para 231(3) of the Import Policy for 1982-83 would apply to the Import licences of the petitioner and the said licences were no longer valid for

import of the drug in question. The Tribunal, therefore, came to the conclusion that the order of the Collector dated 12.4.1983 was not legal and

proper and cancelled the same and the goods imported by the petitioner were liable for confiscation and the petitioner was liable to pay penalty. It

is this order that is the subject matter of the present writ petition.

6. The main contention of the writ petitioner is that paragraph 185(7) of the Import Policy A.M. 1983 is applicable only to the licences issued

during the period of the Import Policy A.M. 1983 and it cannot have application on the import licences issued prior to that. According to the

petitioner paragraph 209(3) of the Hand Book of Imports and Exports Procedure 1982-83 clearly specifies the grace period of 60 days available

in respect of revalidated licences and in the case of petitioner's licences, they were revalidated upto 27.12.1982. According to the petitioner the

shipment was effected upto 27.2.1983 and the import of the drugs was before that date. According to the petitioner, para 207(3) of the Hand

Book of Imports and Exports Procedure, 1982-83 would prevail over para 185(7) of the Import Policy A.M. 1983. According to the petitioner,

public notices have only prospective operation and cannot have any right over the import licences issued prior to that. The case of the petitioner is

that the public notice No. 11 and public notice No. 51 do not deal with revalidated licences. The petitioner has pleaded that since the letter of

credit was opened on 3.1.1983 within the grace period prescribed under paras 231(3) and 209(3) of the Hand Book of Imports and Exports

Procedure, 1982-83, it cannot be stated that the import of the consignment of goods was contrary to public notice No. 11. Further, it is submitted

that the licences were revalidated and there was no mention of paragraph 186(7) of A.M. 1982 and since the revalidation has been done without

alteration or condition on the reverse of the import licence, the Tribunal was not correct in placing reliance upon paragraph 186(7) of A.M. 1982.

The case of the petitioner is that the policy in force at the date of the issue of the import licence when the condition attached to the reverse of the

import licence has not been amended would apply to the petitioner and the grace period applicable to revalidated licences would prevail over the

general paragraph pertaining to licences issued under and during the period of the policy. Therefore, it is prayed that the order of the Appellate

Tribunal is liable to be quashed.

7. In the counter affidavit filed by the third respondent, after setting out the facts relating to the import of the consignment of Amoxycillin Trihydrate,

it is stated that according to paragraph 231(3) of 1982-83 Imports Policy, R.E.P. licences or additional licences held by the export houses/trading

houses would cease to be valid for import of any item which would be imported under O.G.L. during 1981-82 policy period but no longer so

during 1982-83 period. Since Amoxycillin Trihydrate became a canalised item with effect from 16.10.1981 and continued to be so during 1982-

83 policy, the said importation under O.G.L. cannot be allowed as claimed by the petitioner. According to the third respondent, I.T.C. public

notice No. 11/82 dated 25.2.1982 restricted the import of O.G.L. items by export houses / trading houses against REP licences or additional

licences upto 31.3.1982 or till the expiry of the validity of the licence without grace period whichever is earlier, and the time prescribed was only upto 31.3.1982 and the shipment of the goods was made on 25.2.1983, and it was in violation of the import policy. Since the endorsement for revalidation did not indicate any special provision for importing the goods in question, the restrictions contained in public notice No. 11/82 and para 231(3) of 1982-83 would apply.

8. According to the third respondent, licence No. 2871219 was revalidated for 6 months from 27.9.1982 and licence No. 2890574 dated

16.7.1981 was revalidated upto 27.12.1982 and licence No. 2871219 was alive at the time of import of Amoxycillin Trihydrate and licence No.

2890574 was not alive at the time of import. According to the third respondent, the petitioner cannot claim the grace period as a matter of right

and at the same time, the letter of credit could not be opened during the grace period. According to the third respondent, the order was placed on

23.12.1982 and the letter of credit was opened on 3.1.1983, after the expiry of the licence. According to the third respondent, the article

Amoxycillin Trihydrate became a canalised item from 16.10.1981 and the said article cannot be imported without valid licences. Since there was

an information in the public notices with regard to the import of the canalised item or O.G.L., the petitioner's licences were not valid for the import

of the goods in question.

9. Mr. Habibulla Badsha, learned senior counsel appearing for the petitioner submitted that the public notice No. 51/ITC-81 dated 16.10.1981

and the public notice No. 11/ITC-82, dated 25.2.1982 read with public notice No. 64/ITC(TN)81, dated 16.12.1981 (hereinafter to be referred

to as public notice No. 11) have no retrospective effect. Learned senior counsel submitted that the import licence granted by the Chief Controller

of Imports and Exports is to be governed by the import policy as on the date of issue, and as such the subsequent amendment made to the import

policy has no effect to the import licence already granted. He relied upon a decision of the Supreme Court in the case of Bharat Barrel and Drum

Mfg. Co. (P) Ltd. Vs. The Collector of Customs, Bombay and Another, and a decision of Calcutta High Court in the case of Mangla Brothers Vs.

Collector of Customs and Others, and submitted that the licence issued during

the policy period is governed by the policy as amended upto the date of issue of the licence and any such subsequent amendment has no effect on the licence. He further submitted that the part of the order of the Appellate Tribunal has become final. Mr. Habibulla Badsha, learned senior counsel further submitted that the licence is issued on the basis of Import Control Order. He, therefore, submitted that the licence issued under the control order is statutory in nature, and it is not permissible to modify the statutory order by an executive public policy. He placed reliance on a decision of the Supreme Court in East India Commercial Co. Ltd., Calcutta and Another Vs. The Collector of Customs, Calcutta, and submitted that the public notices are not orders issued u/s 3(1) of the Imports and Exports Act, and whereas the licence issued u/s 3 has the statutory force. Therefore, he submitted that the public notice which came into effect subsequently canalising Amoxycillin Trihydrate with effect from 16.10.1981 has no effect on the import licence already granted. He, further submitted that in the case of first licence, it was valid for shipment upto 27.12.1982 and this licence was revalidated for six months from 27.7.1982 i.e. upto 31.3.1983 and subsidiary licence was also revalidated upto 27.12.1982. He submitted that at the time of revalidation no condition whatsoever was imposed regarding the import of the item, and the letter of authority was issued on 30.9.1981, but only on 16.10.1981, Amoxycillin Trihydrate became a canalised item by the public notice No.51/81. He submitted that the petitioner placed orders for Amoxycillin Trihydrate on 23.12.1982 and the petitioner filed application for opening the letter of credit on 30.12.1982 and the letter of credit was opened on 3.1.1983, and the bank was also informed by the petitioner that the letter of credit was established on 30.12.1982 and G.F.I, value for each of the licences is found in page 34 of the typeset. He, therefore, submitted that the licence was issued prior to the public notice and as per the endorsement of revalidation, the licences were valid upto 26.3.1983 and 27.12.1982. Amoxycillin Trihydrate was an O.G.L. item which continued to be in respect of licence issued prior to 16.10.1981. Though the public notice No. 11/82 restricted the import upto 31.3.1982 or from the expiry of the validity licence (without any grace period), the dates of the expiry of the validity licences were 26.3.1983 and 27.12.1982. Hence, it was

open to the petitioner to import goods upto 31.3.1983. Since the licences provided for the import of the item on the date of the issue of the licences and since revalidation was made without any condition attached thereto, Mr. Habibullah Badsha, learned senior counsel submitted that the licences were valid since the letter of credit was opened during the currency of the first licence. In so far as the second licence is concerned, the letter of credit was opened during the grace period and hence, it cannot be stated that there was any contravention of the provisions of the Imports and Exports Act. The further submission of the learned Counsel for the petitioner was that, unlike in the case of Mangla Brothers, cited supra, the revalidation has been done without any restriction and therefore, it is open to the petitioner to import goods in question. In short, the amendment made in the public notice cannot affect the vested rights of the petitioner over the licences issued prior to the public notice. Further, it is permissible for the petitioner to avail the grace period found in paragraph 209(3) of the Hand Book of the Imports and Exports Procedure, 1982-83. Since the revalidation has been done without any condition, the import of the goods cannot be said to be in violation of the law and the public notice 185/7 of the import policy of A.M. 1983 has no effect and it is not applicable to the petitioner, since the petitioner has time till 27.2.1983 and the petitioner imported the goods before the date. He, therefore, submitted that the order of the Appellate Tribunal holding that the import was in contravention of the Imports and Exports Act is not sustainable in law. Mr. Habibulla Badsha further submitted that the decision of the Supreme Court in the case of D. Navinchandra and Co. and Others Vs. Union of India (UOI) and Others, and another decision of the Supreme Court in Union of India (UOI) Vs. Godrej Soaps Pvt. Ltd. and Another, are not applicable to the facts of this case. He submitted that in those cases, licence was issued on the basis of the orders of the Supreme Court in the year 1984, though in so far as the import policy of 1978-79 is concerned, goods in question were importable at the time of import. Subsequently, those goods became canalised items and when the licence was issued on the basis of the directions of the Supreme Court, the goods could not be imported on the date of issue of licence on O.G.L. basis. He, therefore, submitted that the law declared by the Supreme Court that the import policy prevailing at the time of import would govern the matter

was made on the facts of the case as the licence was issued during the currency of the period 1985-86 A.M. and during that period the goods

became canalised item, though the licence was granted for the period 1978-79. He, therefore, submitted that at the first sight, the decision of the

Supreme Court would appear to be against the petitioner, but, on a careful consideration, the decisions of the Supreme Court have no application

to the facts of the case. He also submitted that the decision of the Supreme Court in *Ms. Darshan Oil Pvt. Ltd. and Another Vs. Union of India*

and Others, has no application, because in that case, there was no licence issued, but the goods were imported on the basis of the import policy.

He submitted that in the instant case licences were issued and on the basis of the licence goods were imported. He strongly placed reliance on a

decision of this Court in *Rex Trading Co. v. Union of India* 86 E.L.T. 189 wherein a learned Judge has held that when there is conflict between the

exercise of subordinate judicial legislature u/s 3 of the Imports and Exports Act and the public policy, the public policy has no legal effect in

amending the OGL order. He also placed reliance on another decision of Bombay High Court in *Dowsyl Polymers v. M.G. Abrol*. Special

Secretary 31 E.L.T. 895 wherein the Bombay High Court held that the import policy cannot stand in the way of clearance of goods imported on

the basis of the licence. Therefore, learned senior counsel submitted that the import policy has no statutory force and is merely an intimation of the

policy. He, therefore, submitted that under the licence, the petitioner has right to import the items of the goods mentioned in the said licence, and

hence, the order of the Tribunal holding that there was a violation of the Imports and Exports Act is not sustainable in law.

10. Mr. V.T. Gopalan, learned senior counsel appearing for the respondents 1 and 2 submitted that the public policy issued has the force of law.

He further submitted that the public notices were issued when there was change in the public policy and the change in the public policy should be

given effect to. He referred to Section 3(1) of the Imports and Exports Act which empowers the Central Government to prohibit or restrict or

control by an order in import and export of any specified case or class of goods. He also referred to Rule 3 of the Imports Order and submitted

that no person shall import any good prescribed under Schedule-I except in accordance with the licence for the customs clearance granted by the

Central Government or by any notified officer. He referred to a decision of the Supreme Court in the case of Glass Chatons Importers and Users"

Association Vs. Union of India (UOI), . The canalisation of Import is in the interest of general public and a policy as regards import forms a

integral part of the general economic policy of the country. It is not only for the improvement of international trade of the country, but also on

monetary benefit, development of agriculture and industry and even on the political policy of the country. He, therefore, submitted that the policy of

the Government is that the import of Amoxycillin Trihydrate should be canalised. It is based on Section 3 of the Imports and Exports Act. He

referred to the import policy of 1982 A.M. and submitted that Amoxycillin Trihydrate was included as item No. 2 in Appendix IX and as a

canalised item it is not permissible for the petitioner to import the same under Open General Licence. He particularly referred to the Import Policy

of 1981-82 and referred to Clause 173 found in Chapter 18 relating to the export house and he referred to Clause 182 which refers to the period

of validity of the certificate. He also referred to Clause 183(5) and (7) of the Import Policy 1981-82 A.M. He referred to Clause 184(3) of the

same policy and submitted that the import of O.G.L. item by export house shall be subject to the condition that the shipment of the goods should

take place within the validity of the open general licence i.e. on 31.3.1982 or within the valid period of the import licence (without grace period)

whichever is earlier. He submitted that the restriction would apply to the licence issued before 1.4.1981 in respect of items classified under O.G.L.

in 1981-82 policy. He also drew my attention to Clause 186 and particularly Clause 186(7) of the Import policy 1981-82 A.M. and submitted

that the additional licence would also be valid for import of raw materials, components, consumables and spares which have been placed under

open general licence or actual licence. He referred to the transitory provision found in Chapter XXI and referred to Clause 222(3) of the Import

Policy 1981-82 and submitted that R.E.P. licence and additional licence held by export house will cease to be valid for import of any item which

could be imported under open general licence during 1980-81. So, In the import policy, 1981-82 for firm commitment, to be made for opening of

irrevocable letters of credit should be made to the authorised dealers to foreign exchange before 1.4.1981. He also referred to Clause 222(4)

which deals with additional licence. He also drew my attention to the relevant clauses of the import policy, 1982-83 A.M. which are in pari materia with the clauses found in import policy 1981-82 A.M. He referred to the additional licence found in page 10 of the type set and submitted that licences have been granted without prejudice to the application of any other prohibition or regulation affecting import of certain goods which may be in force at the time of their arrival. He, therefore, referred to the export house certificate and the certificate which is subject to the some amendment in the policy that has been made from time to time. He referred to Clause 182 of the Import and Export policy 1981-82. He referred to the public notice No. 11/I.T.C. (P.N. 82) Dated 25.2.1982 and submitted that export was also subject to the condition that the shipment of the goods should take place within the validity of the open general licence i.e. 31.3.1982 or within the valid period of the licence, without any grace period, whichever is earlier. He, therefore, submitted that Amoxycillin Trihydrate became canalised on 16.10.1981 and it is not permissible for the petitioner to import the same on the basis of the licence issued earlier. He strongly placed reliance on a decision of the Supreme Court in the case of Union of India (UOI) Vs. Godrej Soaps Pvt. Ltd. and Another, and another decision of the Supreme Court in Indo Afghan Chambers of Commerce and Another Vs. Union of India (UOI) and Others, and submitted that the petitioner was not entitled to import under the import policy, 1982-83 though the said goods were importable under the import policy 1981-82. Since the petitioner has failed to fulfil the tests laid down by the Supreme Court, the import was not in accordance with law. He also placed reliance on a decision of the Supreme Court in Ms. Darshan Oil Pvt. Ltd. and Another Vs. Union of India and Others, and submitted that the entitlement to import is governed by the import policy prevailing at the time of import. He further submitted that there is no question of promissory estoppel in this case and for that proposition, he relied upon decisions of the Supreme Court in Kasinka Trading and another, etc. etc. Vs. Union of India and another, and in the case of S.B. International Ltd. and Others Vs. Asstt. Director General of Foreign Trade and Others, . He also referred to a decision of the Supreme Court in the case of P.T.R. Exports (Madras) Pvt. Ltd. and others Vs. Union of India and others, and submitted that it is open to the Government to revise its policy and the

question of the application of doctrine of legitimate expectation does not apply. He submitted that the licence cannot be independent of the policy

and in the year 1981 when the goods became canalised, it is not permissible for the petitioner to import the same. He also referred to the public

notice found at pages 7 and 8 of the typed set and the order of the Collector found at page 59 and submitted that the Collector of Customs was

wrong in condoning the delay in opening the letters of credit and he has no power to condone the delay. Under para 183 of the import policy

1981-82, import of O.G.L. items should be done prior to 31.3.1982 or before the expiry of the validity of the licence without any grace period

whichever is earlier. He further submitted that the public notice has prescribed time and the petitioner imported the drug long after the cut off date

i.e. 31.3.1982 and hence, the import has to be held in contravention of import regulations.

11. Mr. Habibulla Badsha, learned senior counsel appearing for the petitioner submitted his reply that the export house certificate is different from

licence. He referred to Clause 2(7) of the Import Policy 1981-82 which define the export house certificate. He submitted that Clause 182 of the

same policy is confined to export house and it is not applicable to the licence. He submitted that the licence is traceable to Section 3(1) of the Act

and the order is only executive in character. He referred to Rule 9 of the Import Order and submitted that in the absence of cancellation of the

licence, the licence is valid for the import of goods. He referred to the grace period found in Clause 207(3) of the Hand Book of Import and

Export Procedure 1981-82 which provides that the importers can avail the grace period of 60 days against revalidated licence. Under Clause 209

of the said Hand Book, grace period is available even for revalidated licence. He further brought to my notice the Chapter VII of the Hand Book

of Import and Export Procedure which prescribed the period of validity and revalidation of licence. He placed reliance on a decision of the

Bombay High Court in the case of Hipin Chandra Vrajilal Ghelani v. Union of India 31 E.L.T. 694 and submitted that the import policy has no

statutory force and the policy is merely an intimation to the public regarding the conditions under which the licence should be issued under the

Import and Export Control Act and the Import Control Order, 1955. According to the learned senior counsel, if the licence is issued, licensee has

a right to import goods as mentioned in the said licence. So long as there is no prohibition as to the receipt of the said goods, the petitioner is

entitled to import the goods. He also referred to a decision of Bombay High Court in the case of Dowsyl Polymers Pvt. Ltd. and another Vs. M.G.

Abrol, Special Secretary, Ministry of Finance and others, and submitted that the Import Control Order has no force of law or create right

enforcible in law. He also referred to a decision of Bombay High Court in Lokash Chemicals Works v. M.S. Mehta, Collector of Customs

(Preventive) Bombay and Ors. 1981 E.L.T. 235 Bom. and submitted that once licence was issued, no authority can prevent the import of licenced

goods except by cancellation of the licence under the Control Order or the Import and Export Control Act and unless there is any statute or order

which prohibits the goods, it is not permissible to invoke the import policy for confiscation of the goods. He also submitted that the licence was

subject to the conditions in force relating to the goods covered by the licence as stated in the import rate control policy for the period during which

the licence was issued or the amendment made upto and including the date of issuing the licence. He, therefore, submitted that the law in force at

the time of arrival of goods cannot be applied because it is a well settled proposition that the law on the date of issue of the licence would govern

the case. He also referred to Clause 3 of the same licence which also provides that the law on the date of issue of licence or any amendment made

upto and including the date of issue of the licence would govern the case. In so far as clause that has been relied upon by the learned Counsel for

the respondent is concerned, the clause "without prejudice to the application of any other prohibition or regulation affecting the importation of the

goods", may be in force at the time of arrival and it prohibits or regulates other than the Import and Export Control Act and if it includes the

prohibition or regulation imposed by any law, then, the next clause would become otiose. He also brought to my notice a decision of the Supreme

Court in I.E. Newspapers (Bombay) Private Ltd. v. Union of India (1), (1986) 159 ITR 856 (SC) , in para 79 and submitted that the Government

should exercise the power in a reasonable manner and the court can exercise judicial control over the subordinate legislation. He has submitted that

no condition was imposed when the licence was revalidated, and it is not open to the respondent to rely upon the transitory rules found in

paragraph 222(9) of the Import and Export Policy, 1981-82 or paragraph 231(3) of the Import and Export Policy, 1982-83. In short, his

contention was that the goods have been imported on the basis of the licence issued by the authorities and the imports were valid.

12. I have carefully considered the submissions made by the learned Counsel for both the parties. There is no difficulty in accepting the submissions

of Mr. Habibullah Badsha that the licence is governed by the relevant policy under which it was issued subject to all amendments which had been

made upto the date of issue of licence. The decision of the Calcutta High Court in *Mangala Borthor*'s case, cited *supra*, is an authority for the

proposition that licence issued during the policy period is governed by the policy, as amended upto the date of licence and any amendment made

after the date of issue cannot have any effect on the licence. There cannot also be any dispute that public notices have no retrospective operation

and the decision of the Supreme Court in *Bharat Barrel and Drum Mfg. Co. (P) Ltd. Vs. The Collector of Customs, Bombay and Another*, is a

clear authority for the view that the public notices have no retrospective operation and could not be applied to the licence issued before the date.

13. It is now necessary to consider the contention of Mr. V.T. Gopalan, learned senior counsel for the respondents 1 and 2 that the import and

export policy declared by the Central Government exercising powers u/s 3 of the Import and Export Control Act, 1947 has statutory force. As

already stated, he relied upon a decision of the Supreme Court in *East India Commercial Co. Ltd., Calcutta and Another Vs. The Collector of*

Customs, Calcutta, wherein the Supreme Court at page 1907 held as under:-

It is also clear that the orders issued u/s 3 of the Act, having statutory force, have to be repealed, if the new order in any manner modifies or

supersedes the provisions of an earlier order; public notices are issued periodically without repealing or modifying the earlier notices or

notifications. For instance, on December 7, 1955, the Central Government in exercise of the power conferred by Sections 3 and 4-A of the Act

made an order and under Clause 12 thereof the orders contained in Schedule IV were repealed; Schedule IV only mentioned five notifications

issued u/s 3 of the Act, but no public notice was included in that list. To put it differently, orders made u/s 3 of the Act have statutory force,

whereas public notices are policy statements administratively made by the Government for public information. The foreword to the Import Trade

Control Hand-Book of Rules and Procedure, 1952, under the signature of the Secretary to the Government of India, in the Ministry of Commerce

and Industry brings out this distinction thus:

In the past the half-yearly publication on Import Control, popularly known as the ""Red Book"", has included not only a statement of policy for the

ensuing six months but also a reproduction of various notifications relating to Import Control and detailed information on points of procedure.

It is true the Chief Controller made an affidavit in the High Court that the policy-statements are issued u/s 3 of the Act. But, as we have said, that is

only on information which has no support either in the form adopted or the practice followed or the matter incorporated in the notifications. We

have no hesitation in holding that public notices are not orders issued u/s 3 of the Act.

14. Mr. Habibullah Badsha, learned senior counsel relied upon a decision of this Court in Rex Trading Company Vs. Union of India, wherein a

similar contention was raised before the learned Judge on behalf of the respondents. It was contended before S.M. Ali Mohamed, J. that the

import and export policy was declared by the Central Government in exercise of its power u/s 3 of the Imports and Exports (Control) Act, 1947,

and therefore, it has statutory force. Reliance was placed on decisions of the Supreme Court in the case of East India Commercial Co.

Ltd., Calcutta and Another Vs. The Collector of Customs, Calcutta, and in Joint Chief Controller of Imports and Exports, Madras Vs. Aminchand

Mutha Etc., and in Liberty Oil Mills and Others Vs. Union of India (UOI) and Others, . Learned Judge after quoting a decision of the Supreme

Court in Union of India v. Anglo Afghan Agencies AIR 1968 SC 718 held that the Imports and Exports (Control) Act, 1947 was enacted with the

object of enabling the Central Government to continue to exercise the powers to prohibit or restrict or otherwise control imports and exports

which has till then been controlled by the order in exercise of the powers conferred by Rule 84 of the Defence of India Rules, 1939. Learned

Judge after quoting a decision of the Supreme Court in Union of India v. Anglo Afghan Agencies AIR 1968 SC 718 held that the order of the

Central Government can be issued in exercise of power u/s 3 of the Imports and Exports Control Act, and the orders issued may be either

executive or legislative in character. Learned Judge, on the facts of the case held that the policy issued which was the subject matter of

consideration in that case was in the nature of administrative instructions and it cannot prevail over open general licence issued in exercise of the

subordinate legislative power. The Bombay High Court in *Dowsyl Polymers Pvt. Ltd. and another Vs. M.G. Abrol, Special Secretary, Ministry of*

Finance and others, held that the Imports and Exports policy is a mere intimation to the public regarding when, in which event, and/or on what

basis and condition the licence would be granted under the Imports and Exports (Control) Act, 1947 and the Imports Control Order, 1955 and

Import Control Policy have no force of law.

15. It is now necessary to notice a decision of the Supreme Court in *East India Commercial Co. Ltd., Calcutta and Another Vs. The Collector of*

Customs, Calcutta, and in that case, the Supreme Court held that the Central Government makes a distinction in the form adopted for issuing the

notice and while the notification issued u/s 3 of the Act is described as orders, the notice is described as public notice. The Supreme Court held

that the notification u/s 3 of the Act regulates the rights of the parties and the public notice gives information to the public regarding the principles

governing the import licence for a specified period. The Supreme Court, therefore, held that the orders issued u/s 3 of the Act has statutory force

whereas the public notices or policy statements are administrative instructions made by the Government for public information. In that context, the

Supreme Court has held that the public notices are not orders issued u/s 3 of the Act.

16. The Supreme Court again considered the matter in the case of *Union of India v. Anglo Afghan Agencies* AIR 1968 SC 718 and the Supreme

Court held as under:

It cannot be assumed merely because the Imports Trade Policy is general in terms and deals with the grant of licences for import of goods and

related matters, it is statutory in character. The Imports and Exports (Control) Act, 1947, authorises the Central Government to make provisions

prohibiting, restricting or otherwise controlling import, export, carriage etc. of

the goods and by the Imports (Control) Order, 1955, dated December 7, 1955, and by the provisions which were sought to be repealed restrictions already imposed. The order was clearly legislative in character. The Import Trade Policy was evolved to facilitate the mechanism of the Act and the orders issued thereunder. Even granting that the Import Trade Policy notifications were issued in exercise of the power u/s 3 of the Imports and Exports (Control) Act, 1947, the order as already observed authorised the making of executive of administrative instructions as well as legislative directions. It is not the form of the order, the method of its publication or the source of its authority, but its substance, which determines its true character. A large majority of the paragraphs of the Import and Export Schemes are in the form of instructions to departmental officers and advice to persons engaged in the export and import business with their foreign counterparts. It may be possible to pick our paragraphs from the Scheme which appear in isolation to be addressed generally and have direct impact upon the rights and liberties of the citizens. But a large number of paragraphs of the Scheme refer to matters of procedure of departmental officers and heterogeneous material: it sets out forms of applications, the designations of licensing authorities, amounts of application and licensing fees, last dates for applications, intermixed with definitions of "Established Importers", "Actual users", "New comers" and others and details of different schemes such as Quota Registration Schemes, Export Promotion Schemes etc. There is no pattern of order or logical sequence in the policy statement: it is a jumble of executive instructions and matters which impose several restrictions upon the rights of citizens.

The Supreme Court observed that in various decisions, it dealt with the matters which impose restrictions upon the rights of the citizens and some matters which were merely executive instructions found in the Import trade policy. The question whether the import trade policy is legislative in character has not been expressly dealt with in any decision of the Supreme Court and it appears to be presumed in several cases that it is executive in character. Hence, it is necessary to examine in each case whether a particular paragraph found in import trade policy is executive in character or statutory in nature. In the light of the above principle, if we examine paragraph

231(3) of the Import and Export Policy, 1982-83, the said paragraph restricts the rights of an importer to import any item which could be imported under O.G.L. during 1981-82. In other words, the said paragraph regulates the rights of the parties, prohibits or restricts the import of all goods and provides that if the licence holder has a licence to import certain items which were under O.G.L. during 1981-82, he can no longer do so in the Import and Export policy, 1982-83. The power to impose such a restriction on Import is traceable only to Section 3 of the Imports and Exports (Control) Act. The said paragraph 231(3) cannot be regarded as mere executive instruction regulating the grant of licence under import control order. It imposes or curtails the right of the importer to import certain goods which were under O.G.L. during 1981-82. In short, it creates new liabilities and imposes certain restrictions. Therefore, paragraph 231(3) of the Import and Export Policy, 1982-83 cannot be regarded as purely executive in nature; but when the power to issue certain restrictions is traceable to Section 3(1) of the Imports and Exports (Control) Act, and the paragraph 231(3), in my view, should be regarded as statutory in nature. Hence, I am not inclined to accept the contention of Mr. Habibullah Basha, learned senior counsel for the petitioner that paragraph 231(3), of Import trade policy has no statutory force. The Import trade policy contains jumble of instructions and they may either executive or legislative in character and in each case, it has to be examined, whether the particular paragraph is legislative or executive in nature or not. The policy formulated by the Import trade policy can be regarded as executive in nature; so also, it cannot also be assumed that all the statement should be regarded as executive in character. I am of the view that in each case, the statement of policy has to be examined with reference to the statement made in the import trade policy, and if it imposes restrictions or prohibition on the import of certain goods, it should be regarded as statutory in nature. That apart, paragraph 231(3) applies only to a licence issued earlier during the policy period 1981-82 and cannot be regarded as mere instructions given to the executives for the issuance of licences. It is addressed to the importers imposing certain restrictions on the rights of the importers to import certain goods under O.G.L. during the policy period 1982-83. Therefore, in my view, the decision of S.M.

Ali Mohamed, J. in Rex Trading Company's case, cited supra and the decision of the Bombay High Court in Dowsyl Polymers Pvt. Ltd. case,

cited supra are not applicable to the facts of the case. I, therefore, hold that paragraph 231(3) of the Import and Export Policy, 1982-83 should

be regarded as statutory in nature and would apply to the licences issued during the policy period 1981-82. That apart, when the licences were

issued, the licences contained specific clause prohibiting application of any prohibition or regulation affecting the import of the goods which may be

in force at the time of arrival. Since I have held that paragraph 231(3) of the Import and Export Policy 1982-83 is statutory in nature and it

imposes or prohibits the import of Amoxycillin Trihydrate under O.G.L. the importation must be held to be contravention of statutory provisions of

Imports and Exports (Control) Act. It is not pleaded by the petitioner that the said policy was not published in the Official Gazette and in the

absence of any plea, this Court has not examined the question whether the said policy was published in the Official Gazette as required u/s 3 of the

Imports and Exports (Control) Act, 1947.

17. Even assuming that the said policy is executive in nature, it has been held in Mangala Brothers' case, cited supra, that a time limit can always to

be prescribed in the policy. I am in entire agreement with the view of the Calcutta High Court in Mangala Brothers' case that it is open to the

Central Government to prescribe a time limit by the Import policy. As already seen, the goods in question were canalised items from 16.10.1981

and under paragraph 185(3) of the Import Policy 1981-82, time limit has been prescribed for the import of O.G.L. items under the provisions of

import policy 1981-82. It would be valid for open general licence upto the end of financial year i.e. 31.3.1982 or within the validity period of

import licence (without grace period) whichever is earlier. The public notice No. 11/ITC dated 25.2.1982 merely reiterated the time limit

prescribed in paragraph 184(3) of the Import Policy, 1981-82. As already seen, Amoxycillin Trihydrate has become canalised item from

16.10.1981 and that was also published in public notice No. 51/ITC-81 dated 16.10.1981. As a result of the public notice No. 51, Amoxycillin

Trihydrate became canalised item and it should be imported only through State Trading Agencies. The relevancy of paragraph 185(3) of the

Import Policy 1981-82 as well as paragraph 185(7) of the Import Policy 1982-83 is that the Government has prescribed time limit within which

the import of canalised items should be made under a valid licence. So also paragraph 231(3) of the Import and Export Policy 1982-83 imposed a

time limit for the validity of the licence and additional licences. I, therefore, hold that the public notice which merely reiterated the import policy is

legal and applies to the licence issued in favour of the petitioner. Since the petitioner imported the goods long after the cut off date, i.e., 31.3.1982,

the import must be held to be in contravention of Import Control Regulations. Viewed from any angle, whether paragraph 231(3) of the Import

and Export policy 1982-83 is statutory in nature or even assuming that it is administrative in nature, on the basis that it is always open to the

Central Government to prescribe time limit by the import policy, the import of Amoxycillin Trihydrate by the petitioner, after the cut off date of the

additional licence issued under paragraph 185 of the Import Policy, 1981-82, would be subject to the conditions laid down in paragraph 185 of

the said policy. I, therefore, hold that on the date when the goods were imported by the petitioner, the imports were made beyond the cut off date.

Even though the contention of Mr. Habibullah Badsha is that the public notice is not retrospective is acceptable, the Central Government has

power to prescribe period within which goods should be imported under the licence covered by the import policy during a particular period.

Otherwise, the whole purpose of canalising the items would be lost, and it would be against the public interest to allow the import of the goods

after the goods were declared as canalised items.

18. That apart, of the two licences, first additional licence was revalidated for a period of 6 months from 27.9.1982 on 5.11.1982 and on the date

of renewal the goods in question have become canalised items. It is stated that the second licence was also revalidated upto 27.12.1992. Though

the date of revalidation is not stated from the terms of licence, it is clear that it was after 16.10.1981. Though, it is a case of renewal of licence, the

renewal would in law amount to issue of a new licence granted by way of renewal. The Supreme Court in Gajraj Singh etc. Vs. The State Transport

Appellate Tribunal and others etc., , after noticing P. Ramanatha Aiyar's "the Law Lexicon" (Reprint Edn. 1987) and an earlier decision of the

Supreme Court in Provash Chandra Dalui and Another Vs. Biswanath Banerjee and Another, held that the grant of renewal is a fresh grant though

it breathes life into the operation of the previous lease or licence granted as per the existing appropriate provisions of the Act, rules or orders or

acts intra vires or as per the law in operation as on the date of renewal. Therefore, when the licence was renewed on 5.11.1982, the licence was

issued subject to the conditions in force relating to the goods governed by the licence as on the date of issue of licence, unless otherwise specified.

Therefore, when Amoxycillin Trihydrate became a canalised item on 16.10.1981, the renewal was made subject to the condition of the canalised

item already made on 16.10.1981. It is no doubt true, neither the Central Government, nor the Appellate Tribunal has decided the question on the

basis of the law as on the date of renewal. When the Supreme Court held that the grant of renewal would be subject to the law in operation as on

the date of renewal, the decision of the Supreme Court has to be given effect to.

19. Further, in so far as the other subsidiary licence is concerned, it was revalidated only upto 27.12.1982 and the petitioner relied upon the grace

period provided under paragraph 207(3) of the Hand Book of Import and Export Procedures, 1981-82. But, paragraph 207(4) of the same

policy clearly shows that the grace period cannot be claimed as a matter of right, and no letter of credit should be opened during the period of

grace. As already stated, letter of credit was opened only during the grace period, and it is not open to the petitioner to claim the grace period as a

matter of right for the import of the goods in question. Therefore, on the date when the goods were imported by the petitioner licence has already

expired in one case and in the other case, on the basis of the renewal, it is not proper for the petitioner to import Amoxycillin Trihydrate.

Admittedly, shipments were made after the expiry of the period prescribed. Hence, the view of the Appellate Tribunal that the petitioner's licences

were not valid to cover the import of the goods in question is perfectly in order.

20. The next ground relied upon by the Appellate Tribunal to hold that the import was in contravention of the regulations was with reference to

paragraph 231(3) of the Import Policy for 1982-83. It is already seen, when the revalidation was made, it was done without reference to any

paragraph of the Import and Export Policy. 1982-83. In other words, it was a

general revalidation and there was no reference to any specific provision in the Import and Export Policy, 1982-83 made at the time of revalidation. The Appellate Tribunal invoked the restrictions imposed under paragraph 231(1), 231(2), 231(3) and 231(4) of the Import and Export Policy, 1982-83. The decision of the Calcutta High Court in Mangala Brothers Case is distinguishable as there was a specific omission to refer to paragraph 231(3) and because of the omission, the restrictions found in paragraph 231(3) was held to be not applicable to the licence in that case.

21. Mr. Habibullah Badsha, learned senior counsel submitted that on the facts of the case, revalidation was done without reference to any of the restrictions found in paragraph 231 and therefore, the restrictions found in paragraph 231(3) of the policy would not apply to the facts of the case.

I am unable to accept the submissions of the learned senior counsel for the petitioner for the reason that when the licence was revalidated, the law or the policy in its entirety would apply, unless there is an express exclusion of a particular provision of the import policy or unless it is possible to transfer such an exclusion. No doubt, there is no express exclusion or restriction imposed by the paragraph 231 of the policy as a whole. It is also not possible to infer that the paragraph 231 in its entirety was excluded even impliedly. Therefore, when there is no express or implied exclusion of the restrictions found in paragraph 231 of the import policy of 1982-83, all the restrictions found in paragraph 231 which were prevalent at the time of renewal of the import licence would apply to the licence in question. Therefore, the restrictions found in paragraph 231(3) have to be applied to the import licences and the licences were no longer valid for the import of Amoxycillin Trihydrate in question,

22. It is next contended by the learned senior counsel for the petitioner that the decision of the Supreme Court in Union of India v. Godrej Soaps Pvt. Ltd. AIR 1987 S.C. I 75 and the decision of the Supreme Court in D. Navinachandra & Co. v. Union of India AIR 1987 S.C. 1794 would not apply to the facts of the case. The Supreme Court in Godrej Soaps Pvt. Ltd. case has held that the items had to pass two tests and they should have been imported under the import policy of 1978-79 and they are importable also under the import policy of the year under report. The same

view was reiterated in M/s. D. Navinchandra's case by the Supreme Court in the following terms:

The items had to pass to two tests, firstly they should have been importable under the Import Policy 1978-79 and secondly they should also have

been importable under the Import Policy 1985-88 in terms of the Order dated 18th April, 1985 and if one may add, in such terms "in accordance

with the import rules" whether canalised or not canalised. It must be emphasised that in this case also, the Court had no occasion to consider the

significance of the words, "whether canalised or otherwise" mentioned in the Order dated 18th April, 1985 because that point did not arise in the

case before it. What did the Court then intend by these words used by the Court? We have seen that diamond exporters could import the items

which they were entitled to import under the Import Policy 1978-79 provided they were importable also under the import policy ruling at the time

of import. These are items which were open to import by Export Houses holding Additional Licences for sale to the Actual Users (Industrial).

These are items which were directly imported, for example, items in Part 2, List 8 of Appendix 6 of Import Policy, 1985-88. These are items

which are not canalised. Canalised items are those items which are ordinarily open to import only through a public sector agency. Although

generally these are importable through public sector agencies, it is permissible for any import policy to provide an exception to the rule and to

declare that an importer might import a canalised item directly. It is in that sense and that sense only that the Court could have intended to define

the entitlement of diamond exporters. They would be entitled to import items which were canalised or not if the import policy prevailing at the time

of import permitted them to import items falling under such category. This was also viewed in that light in the case of Indo Afghan Chambers of

Commerce and Another Vs. Union of India (UOI) and Others, .

23. Mr. Habibullah Badsha learned senior counsel for the petitioner sought to distinguish the decisions of the Supreme Court on the ground that

though the policy related to the year 1978-79, when the Supreme Court on 18.4.1985 directed the Union of India to issue the necessary export

certificate for the year 1978-79, it was done in the import policy of 1984-85. Therefore under the Import Policy of 1984-85 and 1985-88, the

goods became canalised items. He, therefore, submitted that the Supreme Court held that though the items were importable under the Import

Policy 1978-79, they were not importable in the Import Policy 1985-88. He, therefore, submitted that the decisions of the Supreme Court in M./s.

D. Navinchandra's case as well as M/s. Godrej Soaps Pvt. Ltd.'s case turned on the scope of interpretation of the orders of the Supreme Court

and it cannot be said that for every import, the importer must satisfy both the tests as it has been importable during the currency of import policy of

the year issued and import was valid at the time of import. However, I am not able to accept the submission of Mr. Habibullah Badsha, learned

senior counsel on the ground that when the Supreme Court has laid down that the items should pass two tests viz., the goods should be importable

under import policy and also they should be importable at the time of import of the goods, the said tests have to be applied for all cases.

Government of India has given sufficient time to the importers to import the goods, when there was a change of policy on the basis of the licences

already issued and if the importers fail to import the goods within the time limit extended by the Government of India, the importers cannot

complain that the goods can be imported on the basis of licences, notwithstanding the subsequent restriction or prohibition of the import of such

goods, as the case may be.

24. The Supreme Court in Ms. Darshan Oil Pvt. Ltd. and Another Vs. Union of India and Others, has reiterated its earlier view and held as

under:-

In D. Navinchandra and Co. and Others Vs. Union of India (UOI) and Others, , it was clearly held that the entitlement to import items which were

canalised or not is governed by the Import Policy prevalent at the time of Import. In the present case, the import of a canalised item being made

after amendment of the policy by the public notice dated 11.11.1983 in a manner not permitted by the amended policy, the appellants cannot claim

to avoid the logical consequences of the import being made contrary to the import policy prevailing at the time of import of the goods. Exemption

under the amended Policy being limited to shipments already made cannot be termed unreasonable or unduly restrictive.

Mr. Habibullah Badsha learned senior counsel submitted that in the case of

Darhsan Oils Pvt. Ltd., cited supra, there was no import licence, but the goods were imported on the basis of the policy. But, the stress laid down by the Supreme Court is that after the amendment of the policy by public notice, it is not permissible to import the goods in the manner not permitted by the amended policy. The Supreme Court in *Kasinka Trading and another, etc. etc. Vs. Union of India and another*, has held that there is no question of promissory estoppel against the Government while withdrawing exemption and the Supreme Court held as under:

The withdrawal of exemption "in public interest" is a matter of policy and the courts would not bind the Government to its policy decisions for all times to come, irrespective of the satisfaction of the Government that a change in the policy was necessary in the "public interest". The Courts, do not interfere with the fiscal policy where the Government acts in "pubic interest" and neither any fraud or lack of bona fides is alleged much less established. The Government has to be left free to determine the priorities in the matter of utilisation of finances and to act in the public interest while issuing or modifying or withdrawing an exemption notification u/s 25(1) of the Act.

25. The decision of the Supreme Court in *S.B. International Ltd. and Others Vs. Asstt. Director General of Foreign Trade and Others*, relied upon by the learned Counsel for the respondents is not of much assistance. The case deals with the right of an applicant to obtain a licence. No doubt, the Supreme Court has observed that the policy is statutory in nature, but the observation was made on the facts of the case. The other decision relied upon by Mr. V.T. Gopalan, learned senior counsel is *P.T.R. Exports (Madras) Pvt. Ltd. and others Vs. Union of India and others*, wherein the Supreme Court held that the Government is not bound by the previous policy and it is open to the Government to revise the policy as under:

The Court leaves the authority to decide its full range of choice within the executive or legislative power. In matters of economic policy, it is a settled law that the Court gives the large leeway to the executive and the legislature. Granting licences for import or export is by executive or legislative policy. Government would take diverse factors for formulating the policy for import or export of the goods granting relatively greater priorities to various items in the overall larger interest of the economy of the

country. It is, therefore, by exercise of the power given to the executive or as the case may be, the legislature is at liberty to evolve such policies.

There is no dispute about the proposition that it is permissible for the Government to withdraw or modify the policy and the question is what is the effect of the withdrawal of the policy. Therefore, the decision in P.T.R. Exports (Madras) Pvt. Ltd. case has to be confined to the facts of the case.

26. It is now necessary to consider one of the submissions made by the learned senior counsel for the respondents. He referred to the terms on the

basis of which the licence was granted and he submitted that the licence was granted without prejudice to the application of any provision or

regulation affecting the importation of the goods which may be in force at the time of arrival. I have already taken the view that paragraph 231(3)

of the Import policy, 1982-83 is statutory in nature and the import licence issued was without prejudice to the operation of other laws for the

import of the goods. The contention of Mr. Habibullah Badsha, learned senior counsel for the petitioner is that this clause has no application to the

facts of the case. He relied upon a decision of the Bombay High Court in Lokash Chemical Works v. M.S. Mehta, Collector of Customs

(Preventive) Bombay and Ors. 1981 E.L.T. 235(Bom), wherein the Bombay High Court has held that the policy statement and public notice

cannot confer any right enforceable in law and since the prohibitions or restrictions are already covered by the Import Control Order, 1955 and

Import and Export Control Act, 1947, any instruction or direction in the public notice which is in effect cancelling or making the licence already

granted ineffective would be in order. There is no quarrel about the proposition that the public notice is a policy statement and the public notice has

no effect on the licence issued. I have held that the public notice issued was in terms of paragraph 184(3) of Import Policy 1981-82 and paragraph

231(3) of the Import Policy 1982-83 and It imposed restrictions on the import of Amoxycillin Trihydrate under O.G.L. issued during 1981-82. If

it is merely a public notice, the decision of the Bombay High Court would squarely apply. However, the view I have taken is that the paragraph

231(3) of the Import Policy 1982-83 can be taken as a statutory in nature and it is referable to Section 3(1) of the Import Control Act and

therefore, the decision of Bombay High Court in Lokash Chemical Works case, cited supra, does not apply to the facts of the case, the decision of

the Supreme Court in I.E. Newspapers (Bombay) Private Ltd. v. Union of India (1), (1986) 159 ITR 856 (SC) that the Court should require the

Government to exercise the power in reasonable way has no application to the facts of the case. As already seen, the canalisation was examined

by the Supreme Court in D. Navinchandra and Co. and Others Vs. Union of India (UOI) and Others, wherein the Supreme Court has held that

the policy of canalisation is a high public policy and the purpose of canalisation was the policy for import and export of the country not only with

reference to international trade, but also on monetary policy, development of agriculture and industries and even on the political policy of the

country. The decision to canalisation is made in the interest of general public and the policy of canalisation is based on public policy. The Supreme

Court in Glass Chatons Importers and Users" Association Vs. Union of India (UOI), has held as under:

If therefore a canalization of imports is in the interests of the general public the refusal of imports licences to applicants outside the agencies or

channels decided upon must necessarily be held also in the interests of the general public. The real question therefore is: Is the canalization through

special or specialised agencies or channels in the interests of the general public?

A policy as regards imports forms an integral part of the general economic policy of a country which is to have due regard not only to its impact on

the internal or international trade of the country but also on monetary policy, the development of agriculture and industries and even on the political

policies of the country involving questions of friendship, neutrality or hostility with other countries. It may be difficult for any court to have adequate

materials to come to a proper decision whether a particular policy as regards imports is, on a consideration of all the various factors involved, in

the general interests of the public. Even if the necessary materials were available it is possible that in many cases more than one view can be taken

whether a particular policy as regards imports-whether one of heavy customs barrier or of total prohibition or of entrustment of imports to selected

agencies or channels--is in the general interests of the public.

The Import and Export policy of the Government is based on the available foreign

exchange requirement of goods of foreign origin, economic progress of the country and other related matters. The Government on the basis of the available materials may modify or adjust the export policy or import policy as may be necessary. Therefore, when the Government on the basis of the materials available on record has arrived at a policy decision to canalise the import of a particular item from a particular date, the decision has to be given effect to. No doubt, the question what would be the effect of the policy on the licences already issued is a question that arose before this Court on the facts of the case. But, the Government has inserted necessary provisions which are transitory in nature and issued public notice in terms of the import policy for the relevant year prohibiting the import of the goods after the cut off date. Hence, it is not permissible for the petitioner to rely upon the licence already issued to import the goods. I, therefore, hold that the Tribunal has come to the correct conclusion in holding that the imports made by the petitioner were in violation of the import control regulations and there is no infirmity in the order of the second respondent. Accordingly, the writ petition is liable to be dismissed, and it is dismissed. There will be no order as to costs. Consequently, W.M.P. No. 2508 of 1987 is dismissed.