(1993) 03 CAL CK 0036

In the Calcutta High Court

Case No : Matter No. ... of 1993

Enterprise International Ltd. APPELLANT

Vs

Collector of Customs RESPONDENT

Date of Decision : 09-03-1993

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1993) 68 ELT 304

Hon'ble Judges : Ruma Pal, J

Bench : Single Bench

Judgement

Ruma Pal, J.—In this writ application, the petitioners have challenged a Circular being Circular No. 19/92-97 dated 17th December 1992 as also the refusal on the part of the respondents-authorities to release raw silk imported by the petitioners under REP Licences/Exim Scrips.

2. It is the case of the petitioners that under the Import and Export Policy 1990-93 raw silk was allowed to be imported under REP Licences/Exim Scrips by virtue of paragraph 192 of Chapter XV of the Import and Export Policy. That paragraph declared that REP Licences/Exim Scrips are also valid for import of any other items of raw materials, components, tools, Consumable and packing materials listed in Appendices 3 and 5, Part A. It is not in dispute that raw silk was included in Appendix 5, Part A of the Import and Export Policy 1990-93.

3. On 1st April 1992 a new Import Policy being the Export and Import Policy 1992-97 came into force. Paragraph 4 Chapter I of the new Policy provided, inter alia, "licences issued before the commencement of this Policy shall continue to be valid for import/export of the items permitted therein."

4. The petitioners had purchased REP Licences/Exim Scrips issued under the old Policy. Between 19th November 1992 and 19th December 1992, the petitioners entered into contracts with foreign sellers for import of raw silk. The petitioners also opened irrevocable Letters of Credit in favour of foreign sellers in respect of

the contracts between 25th November 1992 and 22nd December 1992.

5. It is the admitted case, at least from the affidavits filed, that the Customs Authorities had allowed various raw silk consignments to be cleared between 1st April 1992 and August/September 1992 against REP Licences and Exim Scrips.

6. From 17th September 1992 till 3rd January 1993 the Customs Authorities released the raw silk only provisionally upon P.D. cum I.T.C. Bond.

7. It appears that on 17th December 1992 a Circular was issued by the Office of the Director General of Foreign Trade. The Circular stated by way of clarification that import would not be permitted against Exim Scrips/REP Licences if they were endorsed in general terms for import items listed in Appendix 3 or Appendix 5, Part A of 1990793 Policy. If they were specially endorsed, clearance would be allowed against Exim Scrips/REP Licences.

8. The writ petitioners have challenged this Circular on several grounds. Briefly stated the grounds are :

(1) The petitioners had a vested right to import goods in terms of the Exim Scrips/REP Licences read with paragraph 192 of the old Policy and that they could rot be deprived of such right except by way of an amendment of the Policy.

(2) It is stated that the clarification issued by the office of the Director General of Foreign Trade was not a clarification at all. In any event, the vested right of the petitioners could not be taken away by virtue of a mere clarification.

(3) The impugned clarification resulted in making the petitioners'' Exim Scrips/ REP Licences ineffective. Licences could only be cancelled or rendered ineffective in terms of paragraphs 9 and 10 of the Import Control Order. The impugned Circular did not come within any of those grounds.

(4) The impugned Circular was unreasonable as no grounds had been disclosed for limiting the benefit of the new policy to Exim Scrips/REP Licences which were specifically endorsed.

(5) The respondents-Authorities were, in any event, bound by the principles of promissory estoppel. They had represented to the petitioners that the raw silk would be permitted to be imported freely under the Exim Scrips/REP Licences. The petitioners had acted to their detriment of such representation by entering into contracts and by opening irrevocable Letters of Credit. It is stated that even after issuance of the impugned Circular the Customs Authorities had allowed the import of raw silk till 3rd January 1993.

(6) In any event, assuming the Circular to be valid, the Circular should not be given effect to until it was made known. Even the Customs authorities in Calcuttta did not know of the Circular till 3rd of January 1993. Protection should, therefore, be given not only to the shipments made prior to the date of making public the impugned circular but also to goods covered by irrevocable Letters of Credit opened before such date.

(7) Finally, it is submitted that the Circular is issued by the Director General of Foreign Trade who had no authority to issue any clarification by virtue of the Foreign Trade (Development and Regulation) Act, 1992.

9. In the meantime, a writ application was filed by one Prakash Overseas Co. (P) Ltd. and another in the High Court under Article 226 of the Constitution challenging the impugned Circular. The learned single Judge before whom the application was moved did not pass any interim order but gave directions for filing of affidavits. From the refusal of the learned single Judge to pass any interim order, Prakash Overseas Co. (P) Ltd. preferred an appeal. The appeal was disposed of by an order dated 25th January 1993. By that order the respondents were directed to release 80 per cent of the goods covered by REP Licences/Exim Scrips upon payment of duty on the entire consignment and upon furnishing of I.T.C. Bond for the entire consignment after provisional assessment of duty 20 per cent of the goods were directed to be retained by the respondents in a bonded warehouse until the matter was finally disposed of by the Trial Court. Liberty was also given to the respondents to adjudicate whether the goods were covered by the licences or not.

10. It does not appear that the respondents-authorities preferred any appeal from the order dated 25th January 1993.

11. The matter of Prakash Overseas Co. (P) Ltd. was disposed of by a judgment dated 17th February 1993 by S.C. Sen, J. His Lordship upheld the validity of the impugned Circular but restricted its operation to shipments made after the date of the impugned Circular.

12. Although an affidavit has been filed by the respondents-authorities, the respondents-authorities prayed for time for the purpose of arguing the matter in full. The question, therefore, is as to what interim relief should be granted to the petitioners. It may be mentioned that the matter was specially fixed today at the top of the list irrespective of any other matter as the Court had not granted any interim relief to the petitioners when the application was first moved.

13. In my view, having regard to the circumstances of the case, the petitioners are entitled to the same interim relief as was granted by the Appellate Court in the matter of Prakash Overseas Co. (P) Ltd. by reasons for saying so are threefold:

(1) The argument put forward by the petitioners appear prima facie to be of substance. The authorities cited by the petitioners also appear to support the submissions made.

(2) The relief granted by the Appellate Court in Prakash Overseas Co. (P) Ltd. made no reference to the date of shipment at all. Therefore persons similarly situated as that of the petitioners whose consignments may have been shipped subsequent to 17th December 1992 were granted the benefit of the Appellate Court''s order.

(3) In the judgment dated 17th February 1993, S.C. Sen, J. was not called upon to consider many of the points raised by the petitioners in this petition. In particular, His Lordship was not called upon to determine whether the cut off date should be the date on which the clarification was made known. In paragraph 10 of the affidavit in opposition filed by the respondents-authorities, it has been stated that the Customs authorities had allowed the goods to be released against Exim Scrips/REP Licences upto 3rd January 1993. They must have done so because they were not aware of the clarification contained in the impugned Circular. In fact, in paragraph 14 of the petition the petitioners had specifically averred that the Customs authorities came to know of the impugned Circular only on 3rd January 1993. This has not been specifically denied by the respondents. Therefore, even if the'' Circular had been issued on 17th December 1992 and was by way of clarification I am inclined to hold at least at this stage that the impugned Circular should not be permitted to affect the rights of the parties who may have acted on the basis of the position as prevailing till 3rd of January, 1993. If the Customs authorities did not know of the Circular till 3rd of January 1993, it would be impossible for the general public to be aware of any internal Circular which might have been issued by the Department.

14. For the reasons aforesaid, I direct that the respondents will release 80 per cent of the goods covered by REP Licences/Exim Scrips of the petitioners upon payment of duty on the entire consignment and upon furnishing of I.T.C. Bond for the entire consignment after provisional assessment of duty. Such release shall be made at the latest by 12th March 1993.20 per cent of the raw silk shall be retained by the respondents in a bonded warehouse until this matter is finally heard and disposed of. Liberty is also given to the respondents to adjudicate whether the goods are covered by the licences or not.

15. The matter is adjourned till 15th March 1993. Affidavit in reply if any, is to be filed by 12th March 1993.

16. Let it be made clear that this order is limited to the writ petitioners.

17. All parties to act on a signed copy of this dictated order on the usual undertaking.