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(1993) 10 CAL CK 0008

In the Calcutta High Court

Case No : Matter No. 292 of 1993

Enterprise International Ltd. APPELLANT

Vs

Collector of Customs RESPONDENT

Date of Decision : 12-10-1993

Acts Referred:
Imports and Exports (Control) Act, 1947 — Section 3

Citation : (1994) 46 ECC 310 : (1994) 69 ELT 453

Hon'ble Judges : Nure Alam Chowdhury, J;Ajit Kumar Sengupta, J

Bench : Division Bench

Advocate : Bhaskar Sen and S. Mehta, for the Appellant;A. Law and S.K. Sengupta, for the Respondent

Final Decision : Allowed

Judgement

1. This writ application has been referred to this Bench by a learned Single Judge of this Court. This question involved in this writ application is the scope and effect of a circular being Circular No. 19/92-97 dated 17th December, 1992 issued by the respondent authorities. The petitioners challenged the said circular as well as the refusal on the part of the respondent 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, consumables 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. 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 Iicences/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, 1993 against REP Licences and Exim Scrips.

6. From 17th Sep., 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 1990-93 Policy. If they were specially endorsed, clearance would be allowed against Exim Scrips/REP Licences.

8. In the Imports and Exports Policy, 1990-93 Raw Silk was allowed to be imported under REP licences/Exim Scrips by virtue of the paragraph 192 of Imports and Exports Policy, 1990-93. REP Licences/Exim Scrips were issued to exporters as export incentives and were freely transferable.

9. New Policy 1992-97 came in before expiry of Policy 1990-93. As indicated earlier the new policy provided that licences issued before commencement of new policy shall continue to be valid for import/export of the items permitted therein.

10. In our view, the respondent cannot refuse to release the subject goods on the plea of the amendment or clarification by the impugned circular. 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 not be deprived of such right

11. It is now well settled that till such time licence is cancelled, petitioners are entitled to import goods mentioned and/or allowed by the licence. In the present case, there is no dispute as to the validity of the licence.

12. The clarification sought to be made by the Director General of Foreign Trade is no clarification at all. The vested right of the petitioners cannot be taken away by virtue of a mere clarification. The Supreme Court in Bengal Iron Corporation and another Vs. Commercial Tax Officer and others, held:

"So far as clarifications/circulars issued by the Central Government and/or State Government are concerned they represent merely their understanding of the statutory provisions. They are not binding upon the Courts. It is true that those

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clarifications and circulars were communicated to the concerned dealers but even so nothing prevents the State from recovering the tax, if in truth such tax was leviable according to law. There can be no estoppel against the statute. The understanding of the Government, whether in favour or against the assessee, is nothing more than its understanding and opinion. It is doubtful whether such clarifications and circulars bind the quasi-judicial functioning of the authorities under the Act. While acting in quasi-judicial capacity, they are bound by law and not by any administrative instructions, opinions, clarifications or circulars. Law is what is declared by this Court and the High Court -to wit, it is for this Court and the High Court to declare what does a particular provision of statute say, and not for the executive. Of course, the Parliament/Legislature never speaks or explains what does a provision enacted by it mean. (See Sanjeev Coke Manufacturing Company Vs. Bharat Coking Coal Limited and Another, "

13. The clarification which is purported to have been made by the Circular is as follows :-

"Attention is invited to the scheme for issue of Exim Scrip (REP licences) during 1990-93 Policy Book.

2. A Clarification has been sought about the importability of items which were covered by Appendix 3 and 5 Part A of the Import & Export Policy for 1990-93 (Volume-I) and are now covered by the Negative List of Import of items as per Export & Import Policy for 1992-97 on the date of its actual imports.

3. In this connection, it is clarified as under:

(a) If the Exim Scrip/REP Licence is endorsed in generic terms for the import of items listed in Appendix 3 or Appendix 5 Part A of 1990-93 Policy, the import of items which are now covered by the Negative List of Imports under the Exports & Imports Policy 1992-97 shall not be allowed against such licences; and

(b) If the Exim Scrip/REP Licence carries the endorsement of a specific item of imports, then the import thereof shall be allowed irrespective of its inclusion in the Negative List of Import in the Export and Import Policy 1992-97.

14. 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.

15. That apart, 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.

16. The respondent-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

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into contracts and/or by purchasing the licences.

17. The Division Bench of this Court has held in Sandip Agarwal Vs. Collector of Customs, that impugned clarification and/or notice is no statutory force as against licences which have statutory force and issued under the Import Control Act. By impugned circular right under the licences cannot be taken away.

18. In the Import and Export Policy 1990-93 import of silk was mentioned in Appendix 5 Part A and the same was allowed to be imported on REP licence/Exim Scrips. In this connection paragraph 192 (1) of Import and Export Policy 1990-93 is set out herein below.

"192(1) REP licences issued against export of products listed in Appendix 17 Part 1 and licences issued under para 184(4) of this book, are also valid for import of any other items of raw materials, components, tools, consumables and packing materials listed in Appendices 3 and 5 Part A and instruments (other than those included in Appendices I Part A 2 Part B and 8) in this policy provided import of a single item of components and tools does not exceed Rs. 10 lakhs. However, import of raw materials, listed in Appendices 3 and 5 Part A, and Instrument will not be subject to any single item value restrictions."

19. In the new policy i.e. Export and Import Policy 1992-97 silk is permitted to be imported against a licence.

20. In further exercise of powers conferred u/s 3 of Imports and Exports (Control) Act, 1947, all goods save and except goods falling under prohibitive list were allowed to be imported against REP licences/Exim Scrips. REP licences can be utilised for import of any goods not falling under the prohibitive list. REP Licences/Exim Scrips are transferable in the market and can be purchased and/or sold in the open market.

21. In exercise of powers conferred u/s 3 of the Imports and Exports (Control) Act, 1947, the Central Government notified the Export and Import Policy for the period 1992-1997. The new policy came into effect from April 1, 1992. Inasmuch as the Exports and Imports Policy for the period 1992-97 came into effect on April 1,1992, a transitional arrangement was made for the licences issued before the commencement of the Exports and Imports Policy, 1992-1997. The transitional arrangements were required for the reasons that the traders who had purchased the REP licences/Exim Scrips from the market and/or exporters who have exported the goods considering the premium on REP licences/Exim Scrips while settling the price will suffer irreparable loss and injury if the REP licences/ Exim scrips issued prior to the present existing policy were set at naught.

22. ''Considering the aforesaid situations, the Chapter 1 of the Exports and Imports Policy 1992-97, it was stipulated that licences issued before the commencement of the new policy shall continue to be valid for import/export of the items permitted thereunder. Under the circumstances aforesaid REP licence/ Exim Scrips issued prior to the commencement of the current policy can be used

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for import of silk during current policy inasmuch as silk was allowed to be imported under REP licences/Exim scrips in the previous Policy for 1990-1993. In this connection paragraph 4 of Export and Import Policy 1992-1997 is set out hereinbelow:

4. "Any Notification made or Public Notice issued or anything done under the previous Export-Import policies, and in force immediately before the commencement of this Policy shall, in so far as they are not inconsistent with the provisions of this Policy, continue to be in force and shall be deemed to have been made, issued or done under this Policy. Licences issued before the commencement of this Policy shall continue to be valid for import/export of the items permitted therein."

23. Time to time Export and Import Policy for 1992-97 has been amended. Last amendment has been made on 31st March, 1993. But the paragraph 4 of the new policy remains unchanged. It is, therefore, evident that there is no ambiguity in the said paragraph and as such there could not be any question of making any clarification. Paragraph 4 does not admit of any ambiguity. Therefore, the clarification is meant only to prevent import which cannot be done by this process unless the statutory rules are amended by competent authority. The valuable right conferred on the importer under the policy in respect of REP Licences/Exim Scrips cannot be taken away.

24. For the reasons aforesaid this application is allowed. The impugned circular is set aside and quashed. By the order dated 22nd March, 1993 80% of the goods were directed to be released. The balance 20% of the goods shall be released to the writ petitioner within 3 weeks from date.

25. All parties to act on a signed Xerox copy of this Dictated Order on the usual undertaking.

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