

(2001) 12 BOM CK 0032

In the Bombay High Court

Case No : Writ Petition No's. 2961, 3306, 4001 and 4051 of 1987

Gandhi Sons

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 21-12-2001

Acts Referred:

Citation : (2002) 3 ALLMR 187 : (2002) 81 ECC 261 : (2002) 3 MhLj 239

Hon'ble Judges : V.C. Daga, J; J.P. Devadhar, J

Bench : Division Bench

Advocate : R.G. Sheth and A. Agarwal, for the Appellant; S.M. Shah, K.R. Chaudhari and R.C. Master, instructed by H.D. Rathod and Co., for the Respondent

Judgement

J.P. Devadhar, J.—Since the issues raised in these petitions are common, the same are disposed of by a common Judgment.

2. For the sake convenience, we have taken the facts in writ petition No. 2961 of 1987 while deciding the issues raised in these petitions.

3. The petitioner inter alia carries on business as exporter of spices. To encourage exports the Government has been announcing various schemes such as cash compensatory support (C.C.S.), duty drawback, etc.

4. On 30-6-1986, the Spices Export Promotion Council issued a circular to all registered exporters announcing revised rate of C.C.S. for the exports made on or after 1-7-1986 upto 31-1-1989. Under the said circular, the rate of C.C.S. for export of spices was 10% "for consumer packs under specified brand names" and 5% "for all others in consumer packs." It was clarified in the circular that while the Government intends to keep the above rates stable for the above period, the Government reserves the right to withdraw/alter them at any time as merited.

5. In the light of the above circular, the petitioner exported spices under their

own brand name and the petitioner was given C.C.S. at 10% in respect of export of spices under own brand name.

6. On 20-2-1987, the Spices Export Promotion Council circulated another circular of the Ministry of Commerce dated 13-2-1987, wherein it was stated that in amendment of the circular dated 30-6-1986, the C.C.S. on export of spices under brand names in consumer packs of 1 KG. or less weight made on or after 1-7-1986 will be at 7%. The said rate was to be valid till such time, the brand names are specified by the Government or 31-3-1989, whichever is earlier.

7. The petitioner made representation to the Board and pointed out that the decision to reduce the C.C.S. with retrospective effect was wholly arbitrary. However, from 13-2-1982, the respondent No. 2 granted C.C.S. at 7% and started adjusting the excess amount of C.C.S. of 3% already paid from the subsequent entitlements.

8. Thereafter, the respondents reconsidered the matter and issued a new circular on 16-7-1987, wherein it was stated that under the new circular brand names have to be registered with the Spices Boards and where the brand names are not so registered, the C.C.S. would be allowed at 5% only.

9. Challenging the action of the respondents in denying C.C.S. as per the circular dated 30-6-1986 and challenging the action of the respondents in seeking to recover the C.C.S. already granted, the present petitions have been filed.

10. All these petitions were admitted in the year 1987 and interim reliefs were granted. Challenging the order of granting interim relief in Writ Petition No. 4001 of 1987 GUM Export Corporation v. Union of India, the Government had filed an appeal before the Division Bench and the same was dismissed. The said decision of the Appellate Court is reported in Union of India Vs. Gum Export Corporation, .

11. By relying upon the aforesaid decision and several other decisions, Mr. Sheth, learned Counsel for all the petitioners submitted that the petitioners would be satisfied if their claim for C.C.S. on export of spices under their own brand name is upheld at 10% for the period from 1-7-1986 to 12-2-1987 and at 7% for the period from 13-2-1987 to 15-7-1987. The subject matter of all these petitions are for the period upto 15-7-1987 and not for the period after 16-7-1987 where the C.C.S. is governed by the Circular dated 16-7-1987.

12. Thus, the real issue required to be considered in these petitions is whether on 13-2-1987 the respondents are justified in retrospectively amending the Spices Board Circular dated 30-6-1986 and holding that C.C.S. on export spices under their own brand name during the period 30-6-1986 to 13-2-1987 would be restricted to 7%. In other words, the question is, when the Board Circular dated 30-6-1986 entitled the petitioner to obtain C.C.S. at 10% on export of spices under specified brand names and the petitioners have acted upon the said circular and obtained C.C.S. at 10%, whether the respondents are justified in holding on 13-2-1987 that the C.C.S. payable on such exports with retrospective

effect from 30-6-1986 would be at 7%.

13. The only contention raised by Mr. Shah, learned Counsel, for the respondents in support of the retrospective amendment of the circular on 13-2-1987 is that there were representations received from exporters that in the absence of brand names being specified, the exporters were not getting any C.C.S. and since the brand names were not specified by the Government or any other authority, it was decided that the export of spices made after 1-7-1986 will be given C.C.S. at 1% and this decision was to be valid till such time as the brand names are specified by the Government or till 31-3-1989 whichever is earlier. Thus, the submissions of the respondents is that although the Circular dated 30-6-1986 permitted C.C.S. at 10% on export of spices in consumer packs under specified brand names, in the absence of any brand names being specified by any Government agency, the C.C.S. at 10% could not be given at all.

14. We are unable to agree with the submissions made on behalf of the respondents. The Division Bench of this Court in *Union of India Vs. Gum Export Corporation*, while dealing with the above issue held as under:--

"The expression "specified brand name" in the circular of 30th June. 1986, must be contrasted with the expression "all others in consumer packs". It must also be read in the context of the fact that there was no Governmental agency then specified and entrusted with the task of specifying brand names. It is therefore possible to argue with some authority that the expression "specified brand names" only meant brand names specified by the exporters themselves."

In the instant case even the implementing agency read the words in the Circular dated 30-6-1986 "specified brand names" as brand names specified by the exporters themselves and granted C.C.S. at 10% to the petitioners. Merely because some exporters had complained that in the absence of brand names being specified, they were not getting any C.C.S., the circular could not be amended retrospectively so as to deny C.C.S. at 10% to exporters who had exported spices under their own brand name. There was nothing in the circular dated 30-6-1986 to suggest that C.C.S. at 10% was to be restricted to exports of only those brand names which are specified by the Government or Government Agencies and there is nothing to show that till such time the Government specified the brand name, the Circular cannot be given effect to.

15. In our opinion, on the date of issuing the circular dated 30-6-1986, there being no mechanism set out for specifying any brand name by the Government or any Government agency, it has to be held that the said circular intended to grant C.C.S. at 10% on exports effected by the exporters under their own brand names. To accept the contention of the respondents, would render the circular dated 30-6-1986 meaningless because the very purpose of issuing the said circular was to boost exports and by the said Circular the exporters were told that for export of branded goods, C.C.S. will be at 10% and when exported, to tell that no C.C.S. would be available because the brand names are not specified,

would run counter to the very spirit of announcing the C.C.S. Scheme. Even the subsequent circular of the Government dated 16-7-1987 merely directs the Species Board to register the brand name of the exporters' goods so as to treat it as "specified brand name" under Circular dated 30-6-1986 and does not direct that any particular brand name should be specified. Therefore, it is reasonable to hold that the Circular dated 30-6-1986 envisaged C.C.S. at 10% on all branded goods exported by the petitioners. Accordingly, we hold that the petitioners are entitled to C.C.S. at 10% as per circular dated 30-6-1986 on spices exported under the brand names of the respective petitioners from 1-7-1986 till 12-2-1987. Thereafter, the C.C.S. for their branded goods will be at 7% from 13-2-1987 till 15-7-1987, as per circular dated 13-2-1987.

16. In our opinion, the respondents by the Circular dated 13-2-1987 could not retrospectively amend the circular dated 30-6-1986 and hold that the C.C.S. from 30-6-1986 would be 7%. A Division Bench of this Court in the case of Mazda International (P) Ltd Vs. Union of India, has held that it is not open for the authority issuing public notice to withdraw the benefit with retrospective effect. Similarly, in the case of Rajasthan Spinning and Weaving Mills Ltd Vs. Union of India, a Division Bench of this Court held that when the exporters have made firm commitment and C.C.S. has been paid on export, it is not equitable to seek refund of the C.C.S. already paid to the exporters. It is worthwhile to mention here that even under the subsequent circular dated 16-7-1987, all that the respondents have done is to authorise the Spices Board to register the brand names of spices of the exporters so as to treat it as "specified brand names" for the purpose of grant of C.C.S. Therefore, to deny C.C.S. at 10% during the period from 1-7-1986 till 12-2-1987 merely because there was no direction to register the brand name is totally improper and not contemplated under the Circular dated 30-6-1986. In our opinion, amendment of the circular with retrospective effect so as to take away the right conferred on the exporter, is neither in public interest nor legally permissible.

17. Accordingly, we direct the respondents to compute C.C.S. at 10% for the export of spices during the period from 1-7-1986 to 12-2-1987 and at 7% for export of spices during the period from 13-2-1987 to 15-7-1987 under the brand name of all the petitioners and after adjusting the amount of C.C.S. already paid or deducted, pay the balance amount to the respective petitioners within a period of 3 months from today.

18. The petition is made absolute in the above terms with no order as to costs.