(1995) 06 BOM CK 0019

In the Bombay High Court

Case No : Writ Petition No. 132 of 1986

J.B. Rupani APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 08-06-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1996) 81 ELT 56

Hon'ble Judges : S.H. Kapadia, J;M.L. Pendse, J

Bench : Division Bench

Advocate : Shri E.P. Bharucha, instructed by M/s. Narendra and Co, for the Appellant; Shri J.P. Deodhar, for the Respondent

Judgement

Pendse, J.—On June 9, 1978 Government of India issued Notification No. 117 of 1978 exempting specified goods from payment of customs duty if the goods are imported against advance licence. The petitioner who was carrying on business in the name of M/s. Bharat Export Corporation secured advance import licence on January 28, 1981 for import of polyester fibre with duty entitlement certificate. The value of the two licences was Rs. 30,48,606/- and Rs. 25,95,187/-. Against the advance licence dated January 27, 1981 the supporting manufacturer was shown as M/s. Silver Cotton Mills Company Limited, Ahmedabad, but subsequently the name of the manufacture was deleted and the name of M/s. Super Spinners was substituted. In respect of the other advance licence dated June 3, 1981 M/s. Super Spinners were mentioned as supporting manufacturers.

2. The first import consignment arrived at Bombay Port on December 16, 1981 and the last consignment on September 22, 1982. The Customs authorities, on investigation found that M/s. Super Spinners were non-existent unit and Super Spinners was the unit of the petitioner and was closed down in year 1978-1979. The authorities also found that the petitioner, instead of utilising the imported goods for manufacture of goods to be exported, sold out the entire polyster fibre to twenty one mills. As the petitioners failed to carry out the export obligation,

the authorities served notice on April 4, 1983 for violating the provisions of export obligation. The petitioners filed a reply and claimed that due to textile strike which commenced in Bombay in year 1981 and which led to closure of mills for about two years, the export obligation could not be honoured. The petitioner further claimed that on November 25, 1982 the Textile Commissioner granted permission to sell the fibre in India. The Additional Chief Controller for Imports and Exports came to the conclusion that the advance licences were secured by fraud and misrepresentation and the conditions of the licences were openly flouted. The authorities further came to the conclusion that the petitioner tried to export cotton yarn by misrepresenting that the same was synthetic polyester blended yarn. The authorities cancelled the two advance licences abinitio and rendered them ineffective under clauses 9(1)(a)(c)(d) and (e) of the Imports (Control) Order. The petitioner challenged Order dated June 22, 1983 by filing Appeal. The Appellate Authority by an Order dated June 14, 1984 concurred with the finding that the petitioner is guilty of fraud and misrepresentation. The Appellate Authority came to the conclusion that the licences could not be cancelled abinitio, but the Order of cancellation in respect of the balance value of the two licences could be sustained. The Appellate Authority then observed that Additional Chief Controller''s Order may amplified inasmuch that the regularisation of the licences in question to the extent of the value of the goods already imported and cleared by the petitioner would be subject to fulfilment of export obligation. In respect of this latter direction the petitioner has preferred the present Writ Petition under Article 226 of the Constitution.

3. Mr. Bharucha, learned counsel appearing on behalf of the petitioner submitted that in view of the direction to regularise the import under the two licences to the extent of the value of the goods already imported subject to the fulfilment of the export obligation, it is incumbent for the authority to issue the requisite direction to enable the petitioner to fulfill the export obligation. Mr. Bharucha submitted that as required directions are not issued, it is imperative that this Court should issue a Writ directing the authority to permit the petitioner to fulfil export obligation. It is impossible to accede to the submission of the learned counsel. In first instance as both authorities have found that the petitioner had secured the two advance licences by playing fraud and by misrepresentation and as that finding cannot be seriously disputed, the petitioner cannot expect any relief in Writ jurisdiction. Secondly, the Customs authorities have already levied fine and penalty for breach of conditions of licences. The present Writ Petition is obviously filed to avoid the consequences flowing from those Orders. Mr. Bharucha very frankly conceded that the value of the imported goods was Rs. 42,93,876/-, but the petitioner disposed of the goods in Indian market for a value of more than rupees two crores. The anxiety of the petitioner to seek a direction to permit the petitioner to fulfil the export obligation is with a view to avoid payment of duty and penalty levied in the incidental proceedings, and such attempt cannot be permitted. Mr. Deodhar learned counsel appearing on behalf of the respondents is right in his submission that the direction issued by the Appellate Authority is

misconstrued by the petitioner. The Appellate Authority merely observed that the import already affected should be regularised subject to the fulfilment of the export obligation. This does not entitle the petitioner to claim that permission should be granted now, that is after passage of several years to fulfil the export obligation. Mr. Deodhar also points out that the petitioner made a false attempt to export cotton yarn by claiming the same to be synthetic fibre. In our judgment, the conduct of the petitioner is thoroughly dishonest and the petitioner is not entitled to any relief.

4. Accordingly, Writ Petition fails and Rule is discharged with costs.