(1991) 04 BOM CK 0041

In the Bombay High Court

Case No : Writ Petition No. 3412 of 1986

M. R. Bhansali and Co. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 09-04-1991

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1991) 56 ELT 24

Hon'ble Judges : S.P. Bharucha, J;A.V. Savant, J

Bench : Division Bench

Advocate : Shri M.G. Vasudev, instructed by M/S. Gagrat and Co, for the Appellant; Shri M.A. Shringarpure, for the Respondent

Judgement

A.V. Savant, J.—The petitioner-firm has challenged the order dated 16th August 1985, which is at Exh. "D" to the petition, under which the respondents have rejected the request for revalidation and for the OGL endorsement on its imprest licence bearing No. 0470552 issued on the 12th May 1982 for the value of Rs. 3,37,85,400/- against the F.O.B. value of exports in the sum of Rs. 5,19,77,557/- for the import of un-cut and un-set diamonds. The said Imprest Licence expressly contained a stipulation that it was subject to the conditions in force at the time of the issue of the licence. On the 7th/8th July, 1983. Redemption Certificate was granted to the petitioner. On the 30th June, 1984 the petitioner''s Export House Certificate expired. On 2nd August 1985 the petitioner applied to the third respondent for endorsement under para 185(4) of the relevant Policy AM-83. This application dated 2nd August 1985 came to be rejected under the impugned order at Exh. "D" dated 16th August 1985. The three grounds set out in the impugned order are :-

(i) An endorsement for OGL items is granted to an Export House holding a valid E.H. Cert. Your Export House Certificate is already expired on 30-6-1984 and hence the facility for endorsement of old items is not permissible to you.

(ii) There is no provision to revalidate the Import Licence during the A.M. 85-88 policy and the question of endorsing the Imprest Licence under old policy does not arise.

(iii) The judgment given by the Supreme Court in the case of M/s H. Patel & Co. is not applicable to you.

This Court had occasion to consider similar rejections of a request for re-validation and for endorsement on such licences in Writ Petition No. 1465 of 1985 filed by M/s H. Patel & Co. That petition was decided by a learned single Judge - Pendse J. on 18th September, 1984. More or less, similar grounds were set out for rejection of the claim for revalidation and endorsement. Pendse J. set aside the order of rejection and made the petition absolute directing the respondents to grant the necessary re-validation of the Imprest Licence and the endorsement. Against this order of Pendse J. Appeal No. 232 of 1985 was filed. The Division Bench dismissed the said appeal on 19th March 1985 observing as under :

"It is not disputed that the said certificate was in accordance with the policy as then existed and if it is so, we see no reason to reject the revalidation as applied for by the respondents .... the entitlement and benefit accrued to the respondents under the valid licence cannot be denied merely on the ground that the policy has undergone a change in the subsequent year."

Special Leave Petition (Civil) No. 7389 of 1985 was also dismissed by the Supreme Court on 19th July 1985 with the observation that there was no point of substance which was required to be considered in that case. It is true that a contention based on the provisions of para 185(7) of the Import-Export Policy was sought to be raised before the Supreme Court in M/s. H. Patel & Co''s case. However, in the facts of the case before it, the Supreme Court did not permit the Union of India to raise the contention in the said Special Leave Petition. The said contention based on para 185(7) of the said policy was, however, left open to be considered in an appropriate case when an occasion so arose.

2. Thereafter, another learned single Judge of this Court - Pratap J. - had an occasion to consider the implications of both para 185(4) as also para 185(7) of the said Import-Export Policy. This was in Writ Petition No. 2477 of 1984 of M/s. P. Ripalkumar & Co., which was decided on 19/20th August 1985. Para 185(4) of the Policy reads as under :

185(4) :

"The facility for import of OGL items available in sub-para (3) above, may also be allowed, on merits, to Export Houses against their advance/imprest licence on account of which they are rendered ineligible to obtain REP licence. In such cases, however, the value upto which the OGL import may be allowed, will not exceed the value to which the Export House would have been eligible to the REP licence, had the not obtained advance/imprest licence in question. This facility will be available to the Export House after he has discharged the export obligation imposed on the advance/imprest licence. Therefore, if by the time, the

Export House becomes eligible to this facility, the advance/imprest licence has expired, or, if the original validity left unused by that time is less than six months, the licensing authority will revalidate the licence simultaneously so as to give to the licence-holder a time of six months for the purpose of importing OGL items under this facility."

Para 185(7) of the said policy reads as under :

"Import of OGL items by Export Houses under these provisions shall be subject to the condition, inter alia that the shipment of goods shall take place within the validity of the OGL i.e. 31st March 1983 or within the validity period of the import licence itself (without any grace period), whichever date is earlier. This restriction will also apply to licences issued before 1-4-1982 in respect of items which continue to be on OGL in 1982-83 policy. (The restriction regarding grace period will not, however, apply in cases where shipment can be made within the permissible grace period on or before 31-3-1983.)"

Applying the rule of harmonious construction the two provisions were reconciled and it was held by Pratap J. as under : "If a general provision runs inconsistent with a particular provision, the latter would not thereby cease to operate but, by the rule of harmonious construction, the general must be taken to effect or apply to those categories not covered by the particular. P. 185/7 would, therefore, be subject to p. 185/4. To put differently, p. 185/4 is an exception to p. 185/7. The embargo in general under p. 185/7 would not, therefore, apply to a case under p. 185/4 which has its own self-contained scheme with its own inbuilt mechanism for its effectiveness."

In view of the above, Pratap J. set aside the impugned order in M/s P. Ripalkumar''s case and directed revalidation for a period of six months and ordered the consequent endorsement to be made.

3. We have heard the learned Counsel in this petition who have advanced the contentions similar to those advanced earlier in the cases of M/s H. Patel & Co. and M/s. P. Ripalkumar & Co. Another contention raised by Shri Shringarpure for the respondents was on the question of delay on the part of the petitioners in making the application for endorsement as late as on the 2nd August 1985 though the petitioners'' Export House Certificate had expired on 30th June, 1984. This question did arise before Pratap J. in another Writ petition No. 694 of 1983 of M/s. Madhukar & Co. Having regard to the fact that the litigant had approached the Court late for exercise of the High Court powers under Article 226 of the Constitution, Pratap J. took the view that interests of justice would be met by reduction to the extent of 25% in the accrued benefit and the corresponding relief while ordering revalidation and endorsement. M/s. Madhukar & Co., the petitioners, in Writ Petition No. 694 of 1983, were further directed to pay costs of Rs. 2,500/- as condition precedent.

4. In view of the dates set out earlier, we think, that while the petitioners have a right to ask for revalidation and the consequent endorsement, there does appear

to be a delay on their part in approaching the respondents as late as on 2nd August 1985 after their export house certificate had expired on 30th June, 1984. In our view, therefore, an order similar to one passed in M/s. Madhukar & Co.''s case would strike the balance. Hence we order that the petition partly succeeds as under :

(a) The impugned order dated 16th August 1985 at Exh. "D" to the petition is set aside.

(b) The respondents are directed to :

(i) revalidate for a period of six months from the date of revalidation the petitioners'' imprest licence No. 0470552 dated 12th May 1982.

(ii) Endorse the aforesaid licence to be valid for import of OGL items under para 185 (excluding sub-para 7 thereof) of AM 82-83 policy except any item the import of which has been specifically banned under the said policy and which items are also permissible for import under OGL list in accordance with the policy in operation at the time of the import but with a cut to the extent of 25% of the C.I.F. value mentioned in the said licence.

(c) The licence shall be non-transferable.

(d) The respondents are given 12 weeks from today to comply with the above order.

Rule made absolute accordingly. The petitioners shall pay to the respondents costs of the petition.

5. Certified copy to be issued forthwith.

