(1982) 11 BOM CK 0005

In the Bombay High Court

Case No : Writ Petition No. 2063 of 1982

Mehta Gems and another APPELLANT

Vs

Union of India and others RESPONDENT

Date of Decision : 26-11-1982

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1985) 22 ELT 37

Hon'ble Judges : M.L. Pendse, J

Bench : Single Bench

Judgement

1. The Petitioner No. 1 are a partnership firm carrying on business of importing rough diamonds and carrying the operation of cutting and polishing and thereafter exporting the same. The petitioners are a Small-Scale Industry duly registered with the Director of Small-Scale Industries. The Union of India published the Import Policy for the year 1981-82 and the said policy laid down the provisions pertaining to registration of Export Houses. Paragraph 173 of this Policy provides that the objective of the scheme of registration of Export Houses and the grant of special facilities to them is to strengthen their negotiating capacity in foreign trade and to build up more enduring relationship between them and their supporting manufacturers. Paragraph 183 of the Policy sets out the import facilities available to the Export Houses, which inter alia includes import replenishment (REP) licences and additional licences, etc. Paragraph 174 of the Scheme provides the eligibility for the grant of Export House Certificates. It lays down that the eligibility shall be determined on the basis of the exports actually made in the three years base period 1978-79, 1979-80 and 1980-81. Paragraph 175 provides that the applications will be considered subject to the conditions laid down thereafter, and for the present petition the first there conditions are only relevant, and they are as follows :

"(a) The annual average f.o.b. value of exports in the prescribed base period of Select Products shall not be less than Rs. one crore or those of Non-select

Products Rs. five crores."

(b) The prescribed minimum set down a above be only Rs. 25 lakhs and Rs. 2 crores respectively in the case of a small-scale unit registered with the concerned State Director of Industries before 1-4-1981 or a consortium of small-scale units.

(c) There will have to be exports in each one of the there years covering the prescribed base period."

2. In accordance with the scheme published by the respondents, the petitioners submitted an application for grant of an Export House Certificate for the year 1981-82 along with the necessary annexures and supporting documents. The application included the statement of f.o.b. value of exports for the three base years and the f.o.b. value for each of these three years was as follows :

The application made by the petitioners was turned down by the Controller of Imports and Exports and the same was communicated to the petitioners by letter dated February 17, 1982, a copy of which is annexed as Exhibit ''H'' to the petition. The letter recites that the Controller was unable to accede to the request of the petitioners since there has been a steep fall in the exports from year to year during the base period. Certain correspondence passed between the petitioners and the respondents, wherein the petitioners requested for reconsideration of the claim. The Controller informed the petitioners by letter dated March 30, 1982 that the decision already communicated cannot be altered. The petitioners have thereafter approached this Court by filing the present petition under Article 226 of the Constitution of India and seek the relief of quashing of the order passed by the Controller and for writ of mandamus directing the respondents to grant the Export House Certificate pursuant to the application dated April 10, 1981.

3. At the stage of admission of the petition, Shri G. R. Nair, Deputy Chief Controller of Imports and Exports, filed a return sworn on October 13, 1982. After the admission of the petition, no fresh affidavit has been filed, though it was directed that the petition should be heard along with Miscellaneous Petition No. 1458 of 1979, which I have disposed of to-day by Judgment. Shri Sethna, appearing on behalf of the respondents, applied for an adjournment to enable his clients to file an affidavit, but I declined to grant any time in view of the earlier order of this Court that this petition must be heard along with Miscellaneous Petition No. 1458 of 1979. There is no reason why the respondents did not file their return earlier. Shri Sethna requested that the affidavit filed at the stage of admission of the petition by the respondents should be taken into consideration while considering the claim of the petitioners.

4. Shri Dhanuka, the learned Counsel appearing in support of the petition, submitted that the reason given by the Controller for rejecting the grant of Export House Certificate and contained in the letter dated February 17, 1982 is entirely misconceived. I find considerable merit in the submission of the learned Counsel. The only reason set out in the letter is that there has been a steep fall

in the export from year to year during the base period. The f.o.b value of exports for each of the three years has been set out hereinabove and it obviously shows that the value of export has fallen down from year to year. But in my judgment that would not make any difference to the claim of the petitioners for an export house certificate. I have set out hereinabove the there requisite conditions under paragraph 175(a), (b) and (c) of the Scheme and a mere perusal of the same would establish that the mere fact that there is a steep fall in the export from year to year is no ground to declined the certificate. Paragraph 175(a), (b) and (c) read together makes it clear that the average f.o.b. value of exports in case of small-scale units in respect of select products should be Rs. 25 lakhs and there shall have to be export in each one of the three years covering the prescribed base period. This clause clearly establishes that the two requisite conditions are that in every year during the base period there must be some export and the average for the three years base period should be Rs. 25 lakhs. It is not in dispute that the petitioners have complied with these requirements, Shri Sethan, appearing on behalf of the respondents relied upon the contents of paragraph 4 of the return and urged that the incentives mentioned under the Scheme are given to the exporters provided they are able to achieve continuous growth rate in the export of their goods. Shri Sethna submits that on the facts and circumstances of the present case, it is difficult to hold that the petitioners would achieve the object of continuous growth rate in export. It is not possible to accept the submission of Shri Sethna for more than one reason. The Scheme nowhere provides that the persons applying for export house certificate must establish that there is a continuous growth rate in the export during the years of the base period. It is not permissible for the Controller to read something more in the scheme. The perusal of paragraph 5 of the return shows that it is the claim of the respondents that merely because the petitioners have technically fulfilled the requirements of annual export of Rs. 25 lakhs for the three years period that would not entitle the petitioners to the reliefs claimed. It is obvious that the persons enforcing the scheme have overlooked the conditions provided by the scheme and have tried to import certain other considerations while considering the application for grant of certificate.

5. Shri Dhanuka invited my attention to the judgment of the Supreme Court reported in 1973 (3) S. C. C 489 Ramana Dayaram Shetty v. Inter-national Airport Authority of India & Ors. In paragraph 10 of the Judgment Mr. Justice Bhagwati approved the dictum laid down by Mr. Justice Frank further to the following effect.

"An executive agency must be rigorously held to the standards by which it professes its actions to be judged.... Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed... This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword."

Mr. Justice Bhagwati, speaking for the Court, pointed out that the rule laid down by Mr. Justice Frankfurter was accepted as valid and applicable in India in an earlier decision of the Supreme Court. Relying on the passage in paragraph 10 of the judgment, Shri Dhanuka submits that it is not permissible for the respondents to claim that the executive agency would read something more than provided in the scheme, framed by the Union of India. In my judgment, the submission is correct and deserves acceptance. The action of the respondents in turning down the claim for grant of export house certificate cannot be sustained and the petitioners are entitled to the reliefs prayed for.

6. Accordingly, the petition succeeds and the rule is made absolute in terms of prayers (a) and (b) of the petition. The respondents are directed to grant to the petitioners Export House Certificate within a period of one month from today.

Shri Dhanuka invited my attention to paragraph 187 of the Import Policy and pointed out that the application for additional licence which and Export House Holder is entitled to, are required to be filed before September 30, 1981 and as that date has already expired long back, it is necessary to fix certain time before which the petitioners could make that application.

The respondents are directed to consider the application for additional licence as contemplated by paragraph 178 of the Import Policy, if any, filed by the petitioners within a period of three months from the date of grant of Export House Certificate on merits.

7. In the circumstances of the case, there will be no order as to costs.

