
(1990) 04 BOM CK 0034

In the Bombay High Court

Case No : Writ Petition No's. 781 and 1114 of 1990

Mehta Gems

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 23-04-1990

Acts Referred:

Citation : (1991) 56 ELT 13

Hon'ble Judges : V.S. Kotwal, J

Bench : Single Bench

Advocate : Shri D.R. Dhanuka, instructed by N.M. Shah, for the Appellant; Shri V.G. Rege and Shri M.A. Shringarpure, for the Respondent

Judgement

1. Rule in both petitions made returnable forthwith by consent.
2. Shri Rege and Shri Shringarpure, the learned Counsel waive service.
3. Write Petition No. 1114 of 1990 is actually a sequel to the order recorded to the Writ Petition No. 781 of 1990 and therefore both are being disposed of by common order since the fate of one petition would govern the fate of other petition.
5. For obvious reasons the petitions can be finally disposed of at this stage itself. All the necessary affidavits have already been filed on behalf of the respondents who have nothing more to add and in fact nothing more could be added on the merits. Three features practically come on the surface in a prominent manner justifying the allowing of both the petitions and which makes any further discussion thoroughly unnecessary.
6. The first is that Para 161 of the Policy in question which corresponds to Para 166 of the earlier Policy does not give a power of review to the second and third respondents to review their own orders as the prescription in that paragraph is very clear and limited. Consequently the order of cancelling the earlier order is unsustainable. Second, it is an accepted position that the petitioners were not

heard when the previous order was cancelled and this goes to the root of the matter. Third, it is apparent that the export obligation even under the extended period as granted by the authorities has been fully discharged by the petitioners and in spite of which the impugned order even to the extent of debarring the petitioners has been made which is wholly unsustainable. The first order is dated 18th of July 1989 granting extension for export because by that time the export was already complete. However, by the second order dated 29th of January, 1990 the said extension came to be cancelled by reviewing the previous order though by that time the export obligation was already discharged.

7. In view of these most formidable features both the petitions must succeed outright. There is nothing in the affidavits of the respondents which could save the situation for the respondents because these three points elaborated hereinabove make the position quite clear. Since the first order is being set aside the second order debarring the petitioners as the export house for getting further licence will have to be set aside which has been done in the order dated 14/20th of February, 1990. That petition will have to be allowed in terms of prayer clauses (a) and (b) both though the amount for the necessary certificate need not be prescribed as it can be verified by the Department and that liberty is granted. In my opinion, therefore, no further discussion is necessary and both the petitions must be allowed.

8. Writ Petition No. 781 of 1990. - Rule made absolute in terms of prayer clause (a).

9. Writ Petition No. 1114 of 1990. - Rule made absolute in terms of prayer clause (a) as also (b)(i)(ii) except deleting the figure for the purpose of REP licence, so that that issue can be examined by the Department on its own merits and pass the appropriate orders.

10. There would, however, be no order as to costs.