courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 21/09/2026

(1967) 02 P&H CK 0002

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 1947 of 1965

Messrs Indo-Afghan Agencies APPELLANT

Vs

Union of India and others RESPONDENT

Date of Decision : 02-02-1967

Acts Referred:
Defence of India Rules, 1962 — Rule 84

Citation : (1967) 02 P&H CK 0002

Hon'ble Judges : R.S. Narula, J;D.K. Mahajan, J

Bench : Division Bench

Advocate : Bkagirath Dass, B.K. Jhingan and S.K. Hirajee, for the Appellant; Chetan Dass Deuan, Deputy Advocate-General, Haryana with Mr. S.S. Dewan, for the Respondent

Final Decision : Allowed

Judgement

Narula and Mahajan, JJ.—This judgment will dispose of nine connected cases (C.Ws. Nos. 1947, 1921 to 1927 and 1949 of 1965), in all of which similar and common questions call for decision. The main common question relates to the circumstances and the manner in which the Government can be justified to impose a cut on the entitlement of an exporter to obtain a corresponding import licence in terms of a particular export promotion scheme.

2. The Imports and Exports (Control) Act (18 of 1947) (hereinafter called the Act), was passed on March 24, 1947. The object of the Act was to continue the power to prohibit, restrict or otherwise control, imports and exports which had for the first time been controlled in this country, by restrictions imposed thereupon in exercise of the powers conferred by rule 84 of the Defence of India Rules, framed under the Defence of India Act, 1939, which restrictions bad subsequently been extended under the Emergency Provisions (Continuance) Ordinance 20 of 1946. Section 3 of the Act provides as follows :

3. Powers to prohibit or restrict imports and exports.-(1) The Central

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/messrs-indo-afghan-agencies-...

Government may. by order published in the Official Gazette, make provisions for prohibiting, restricting or otherwise controlling, in all cases or in specified classes of cases, and subject to such exceptions if any, as may be made by or under the order :

(a) the import, export, carriage coastwise or shipment as ships stores of goods of any specified description;

(b) the bringing into any port or place in India of goods of any specified description intended to be taken out of India without being removed from the ship or conveyance in which they are being carried.

(2) All goods to which any order under sub-section (1) applies shall be deemed to be goods of which the import or export has been prohibited u/s 11 of the Customs Act, 1962, and all the provisions of that Act shall have effect accordingly.

(3) Notwithstanding anything contained in the aforesaid Act, the Central Government may, by order published in the Official Gazette, prohibit, restrict or impose conditions on the clearance, whether for home consumption or for shipment abroad of any goods or class of goods imported into India.

Section 4A of the Act authorises the Central Government to levy and charge fees for toe grant or renewal of licences under toe Act. In exercise of powers conferred on the Central Government by sections 3 and 4-A of the Act (referred to above), the Central Government issued the "Imports (Control) Order, 1955" on December 7, 1955. I will refer to the said order in this judgment as the 1955 Order. Paragraph 3 of the 1955 Order is in the following words :

3. Restriction on import of certain goods-(1) Save as otherwise provided in this Order, no person shall import any goods of the description specified in Schedule 1, except under, and in accordance with, a licence or a customs clearance permit granted by the Central Government or by any officer specified in Schedule II.

(2) If in any case it is found that the goods imported under a licence do not conform to the description given in the licence under which they are claimed to have been imported, then, without prejudice to any action that may be taken against the licensee under the Sea Customs Act, 1878 (8 of 1878) in respect of the said importation, the licence may be treated as having been utilised for importing the said goods.

Paragraph 10 of the 1955 Order provides that no order for an amendment or suspension or cancellation of a licence shall be passed unless the licensee importer has been given a reasonable opportunity of being heard. Section 7 of the Act provides that no order made or deemed to have been made under the Act can be called in question in any Court, and that no suit, or other legal proceeding can lie against any person for anything done in good faith under the Act or under any order made thereunder.

4. Periodical decisions and orders of the Central Government to govern the policy

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/messrs-indo-afghan-agencies-…

of granting import licences are issued by six monthly notifications which are incorporated with other relevant material in an official publication known as the ''Red Book'' for the use of the made. In exercise of its functions under the Act, the Government of India issued a notice which was published in notification No. 104 I.T.C. (P.N.) 54, dated September 29, 1954, in the Gazette of India, Extraordinary, of that day in part I section 1. Framing of export promotion schemes was authorised under paragraph 52 of the said notification and its details were contained in appendix 23 to the said notification. Thereafter the said provision for such schemes has mutatis mutandis continued in force, and has been copied into practically all subsequent official notifications and the six monthly or annual import trade control policy books. The scheme was admittedly in force during 1962-63. Paragraph 1.2 of the main scheme provides that it merely enumerates the general rules governing the export promotion schemes relating to the various export products and its provisions are applicable to all such schemes in so far as they are not inconsistent with the express provisions of any particular export promotion scheme in relation to any particular commodity. No exporter is entitled to take advantage of any export promotion scheme unless he has first registered himself with the appropriate registering authority under the particular scheme. Paragraph 6.1 of the main scheme provides:

6. Extent of import entitlement 6.1. The value for which an import licence is given will be determined with reference to the f.o b. value of exports and will be up to the monetary extent mentioned in the relevant export promotion scheme. This provision is, however, subject to the proviso that in addition to any action which may be taken to stop corrupt or fraudulent practices:

(i) In cases where the Licensing Authority considers that the value of the goods exported is over-invoiced, it shall be open to the Licensing Authority either to refuse to issue any licence against such export or to reduce the value of the licence to such figure as he deems fit; and suitable penal action may also be taken against the persons concerned.

(ii) In cases where the Licensing Authority considers that there has been misdeclaration of the description of the products exported, no licence will be issued against such exports and suitable penal action may also be taken against the person concerned.

Three things are noteworthy in the above-quoted provision namely:

(i) that the value for which the entitlement for an import licence is to be determined by the Government under such schemes can have reference only to the "f. o. b. value of exports", and not to any other valuation of the exported goods;

(ii) that the main scheme authorises the Government to fix the maximum extent of entitlement in the relevant export promotion scheme, which may vary from one scheme to another. The rule makes it clear that it is not necessary for the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/messrs-indo-afghan-agencies-…

Government to provide that the entitlement to import shall necessarily be equal to the extent of the export. In different schemes, the Government may provide differently; and

(iii) that the only situation in which the Licensing Authority is authorised to issue an import licence of a value lesser than the extent of the declared export, is the contingency mentioned in clause (i) in the above-quoted provision, that is, when the Licensing uthority considers "that the value of the goods exported is over-invoiced".

5. It is, therefore, apparent that in so far as imposing cuts on the entitlement of an importer or an exporter under an export promotion scheme is concerned, such cuts can be imposed under the above-mentioned general provision only in three contingencies, that is:

(i) when corrupt or fradulent practice is detected to have been committed by the exporter;

(ii) when the Licensing Authority considers that the value of the goods exported has been over invoiced by the exporter; and

(iii) when the export promotion scheme in question provides that the entitlement may be "up to" a particular maximum extent and does not itself fix the exact extent of the entitlement.

6. Under the above-said main scheme, the Central Government issued on October 10, 1962, an export promotion scheme for woollen textiles and woollen goods with effect from the date of the issue of the notification i.e. October 10, 1962. Copy of that scheme is Annexure ''A'' to the writ petition. (In the absence of indication to the contrary, the annexures referred to in the judgment are those with civil writ 1947 of 1965 M/s Indo-Ajghan Agencies v. Union of India and others, hereinafter referred to as the main case.) I will refer to this particular scheme as the scheme in question Paragraphs 2, 3, 9, 10 and 19 of the Scheme in question have been referred to by the counsel for the parties at the hearing of this case and appear to be relevant for deciding some of the issues involved herein and are, therefore, quoted below:

2. It has been decided that manufacturer-exporters and merchant exporters of the above woollen textiles and woollen goods will be entitled to import raw materials, namely raw wool, wool tops, shoddy, man-made fibers and tops, permissible types of dyes and chemicals and machinery and machinery parts and spare parts for woollen industry for a total amount equal to 100 per cent of the f.o.b. value of the exports. The scheme will cover only pure woollen textiles and woollen goods as above which contain 80 per cent or more than 80 per cent of wool by weight.

3. The import entitlements will be available to all such manufacturer-exporters and merchant-exporters as are registered under the scheme with the Textile Commissioner, Bombay. Exporters who are already registered under the earlier

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/messrs-indo-afghan-agencies-…

Trade Notices need not apply for fresh registration. The forms of application for registration will be as annexure I.

9. After scrutiny of the applications, the Textile Commissioner shall issue an entitlement certificate indicating the items and value for which licence should be issued to the applicant. On receipt of the application and entitlement certificate, the Joint Chief Controller of Imports and Exports, Bombay shall issue the licence.

10. In case where the Textile Commissioner considers that the declared value of the goods exported is higher than the real value of the goods, the matter may be investigated further by calling for further evidence, e.g. purchase vouchers and any other corroborative evidence to facilitate scrutiny. It shall be the duty of the Registered Exporter to furnish such evidence as is called for in this connection. On the basis of his enquiry, the Textile Commissioner may assess the correct value of the goods exported, and issue an entitlement certificate on the basis of such assessed value.

19. The provisions of appendix 23 of Red Book, in so -(sic) as they are not inconsistent with the express provisions of this scheme, shall be applicable to this scheme also.

By notification, dated January 1, 1963, (Annexure A-1), the benefit of the scheme in question was extended to exports to Afghanistan in the following words:

(vi) Export to Afghanistan will be eligible to receive import entitlements as prescribed without any restriction as to the area from which import of materials as permissible under the Scheme could be effected.

8. It has been admitted by the respondents that each of the petitioners in these nine cases was duly registered under the scheme in question, according to the prescribed procedure at the relevant time of the disputed exports. The petitioner in the main case exported woollen goods of the f.o.b. value of Rs. 5,03,471.73 to Afghanistan by rail (from Atari Railway Station in Punjab), through Pakistan as per details contained in annexure ''B'' to the writ petition. It is not disputed that the packages containing the goods were opened and checked by the Indian Customs Authorities, before they were allowed to be railed. Similarly each of the petitioners in their respective cases exported woollen goods of different f.o.b. values on different dates. It is the common case of both sides that all these exports were effected by the respective petitioners under the scheme in question. After exporting the goods, the respective petitioners submitted applications for import licences which had to be issued in accordance with the entitlement certificates issued by the Textile Commissioner of the Government of India in Bombay. The application of the petitioner in the main case, is dated October 14, 1933 (Annexure C-1), which was submitted to the Textile Commissioner with a covering letter of that date (Annexure ''C'') in terms of paragraph 2 of the scheme in question, read with the Afghanistan extension notification of January 1, 1963. In paragraph 13 of the application (Annexure

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/messrs-indo-afghan-agencies-…

C-1) in the prescribed form, the petitioner in the main case stated that the f.o.b. value of payment received as well as the real value of the goods exported as declared before the Customs Authorities was Rs. 5,03472.00. Invoices along with the relevant shipping bills were submitted with the application. Similarly particulars of other requisite information were given in the respective applications of all the petitioners.

9. Though paragraph 2 of the scheme in question, provided that the merchant-exporters (to which class the petitioner in the main case belongs as well as the manufacturer-exporters of the woollen textiles in question would be entitled to import the raw materials etc. named in the said clause for a total amount "equal to 100 per cent of the f.o.b. value of the exports", the Government of India determined the entitlement of the petitioner in the main case at Rs. 1,99,459 and accordingly issued an import licence for the said amount, and forwarded it to the petitioner (in the main case) with letter, dated August 20,1964 (Annexure ''D''). Similar entitlements of the other petitioners were determined ex parte by the Textile Commissioner at lesser than full f.o.b. value of the goods exported by them and similar import licences of such lesser value were given to them. The value of the import licence of the petitioner in the main case fell short of his entitlement under paragraph 2 of the scheme in question by Rs. 3,04,012.73 p. and similarly the licences granted to the other petitioners fell short of their alleged entitlements. Everyone of the petitioners represented against the deficiency. The petitioner in the main case was allowed an interview with some members of a Committee at Bombay on October 29, 1964. The petitioners were asked at the said interview to submit their purchase invoices to the Textile Commissioner. In pursuance of the said direction all the purchase invoices were sent with a personal representative of the petitioner in the main case along with statements of sales and purchases as enclosures to petitioner''s letter, dated November 9, 1964 (Annexure ''E''). No enquiry into the matter was held to the knowledge or in the presence of the petitioner in the main case. The Government merely sent its reply, dated December 15, 1964 (Annexure ''F'') informing the petitioner in the main case that the case bad been carefully considered, but it was regretted that there was no justification for reconsidering the Government''s earlier decision. It is admitted by the respondents that the data or the material justifying the cut in the entitlement was not disclosed either to the petitioner in the main case or to any of the petitioners in the other cases. They were not even told of the basis on which the reduction had been effected. The petitioner in the main case submitted written representation, dated March 15, 1965 (Annexure ''G''), to the Central Government, wherein all the relevant facts were detailed and it was emphasised as below:

It is obligatory on the part of the authority to intimate us the evidence on which they intend to rely against us before coming to any decision, as also to state the relevant rules, under which they could do so.

Even the Central Government did not afford any opportunity to the petitioners to

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/messrs-indo-afghan-agencies-…

be heard. It merely sent its reply, dated May 10,1965 (Annexure ''H''), informing the petitioner in the main case that the cut on the import entitlement had been imposed by the Textile Commissioner under paragraph 10 of the scheme in question, as the prices quoted by the petitioner in the main case were more than the export prices for those commodities, after taking into account 100 per cent incentive. In view of these circumstances, it was stated in the letter, that it was regretted that there was no ground for revision of the decision of the Textile Commissioner Left with no other alternative, the main petition was filed in this Court on June 25, 1965. Except for the difference in figures, amounts and dates, all other relevant facts of the five cases including the main case (C.Ws. 1947, 1949 and 1922 to 1924 of 1965) are the same. In none of those cases, any opportunity was allowed to the respective petitioners to show cause against the impugned cut and in none of those cases, were the petitioners even informed of the basis on which the cut had been imposed or the data or evidence which justified the imposition thereof. Some of the relevant facts relating to the other four cases (C.Ws. 1921 and 1925 to 1927) are a little divergent and would be referred to separately.

10. All these cases have been contested by the respondents. The written statements in the first set of cases ate almost identical and have been filed by Shri R. Doraiswamy, Textile Commissioner, Government of India, Ministry of Commerce, duly supported by his affidavit, dated October 16, 1965. Following defences to the writ petitions have been taken by the respondents in the said written statements:

(i) The provisions of the Import Control Policy issued by the Government, do not confer any legal right on the members of the public including the petitioners to obtain import licences from the Government by invoking the writ jurisdiction of the High Court. Neither the scheme nor the "trade notice has been issued under the Act or the 1956 Order. They have been issued under the executive authority of respondent No. 1 (Union of India).

(ii) The 1955 Order, inter alia, specifies in clause (5) the grounds on which the import licences may be refused.

(iii) The right to an import licence or entitlement is not absolute and is always subject to the provisions made in paragraph 10 of the scheme in question, according to which in a case where the declared value of the goods exported is considered higher than the real value, the Textile Commissioner is authorised to carry out an investigation so as to determine the correct value and to issue entitlement certificate on the basis of the value so assessed. Paragraph 20(d) of the main scheme also authorises the licencing authority to reduce the value of the licence to such figure as it deems tit in case it is found that the value of the goods exported has been over-invoiced.

(iv) It is admitted that the petitioner in the main case submitted his purchase vouchers. But it is not the requirement of the scheme that the petitioner should

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/messrs-indo-afghan-agencies-…

be confronted with the data collected by respondent No. 1 to justify the reduction imposed by them or to show that the value charged by the petitioner was in any way more than the price which was prevailing in the market.

(v) Enquiries reveal that standard goods of manufacturers are sold in the "international market" at a rate much below ex-mill price of the product. The fact that the petitioner had purchased the goods at rates in excess of the domestic prices and invoiced the goods for export at the same or slightly higher rates to a country having trade agreement on barter basis, is a clear indication that the petitioner had the intention to avail of the export assistance at the enhanced rates which he could not do, had the export been made to any other country. The stand taken by the respondents is well founded for the reason that the export prices charged by manufacturers of repute on exports to international markets are well below their ex-mill price. The fact that no export prices had been fixed, is, therefore, of no consequence.

All other relevant pleas of the respondents are contained in paragraphs 11 and 12 of their written statement in the main case, which are, for facility of reference, quoted below verbatim :

11. It is to be mentioned here that there was an unprecedented spurt in the export of woollen goods to Afghanistan during the period July-September, 1963. Complaints were received from the Collector of Customs that the exporters to Afghanistan were indulging in over-invoicing the woollen goods exported by them. Copies of the complaints are attached as Exhibits R. 2 and R. 3. The Textile Commissioner-respondent No. 2, consequently constituted a Committee consisting of the officers in his office and a representative of the Joint Chief Controller of Imports and Exports, Bombay for investigating the cases of over invoicing. The Committee after investigation made a report that there has been large-scale over-invoicing by exporters to Afghanistan. During the investigation the said Committee considered the invoices of reputable firms of exporters of Amritsar and Ludhiana including those from Bombay who had exported woollen goods to Afghanistan and other European countries, and as a result submitted the aforesaid report. The Textile Commissioner, respondent No. 2, was satisfied with this report and having found the petitioner had over invoiced the goods exported by him, recommended to the Joint Chief Controller of Imports and Exports, Bombay for the issue of import licence for the value of Rs. 1,99,-459 considered reasonable by him. The entitlement letter was accordingly issued to the petitioner by respondent No. 2. No reasons were, however, mentioned in the entitlement letter for the reduction in the entitlement nor was it a necessary requirement of the scheme to do so. For similar reasons no opportunity was given to the petitioner to be heard either daring the investigation by the Committee or at the time the Textile Commissioner took a decision to reduce the entitlements.

12. The import entitlement was reduced for the reason mentioned in the preceding paragraph. Farther paragraph 20(d) to appendix 23 of the Import

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/messrs-indo-afghan-agencies-…

Trade Control Policy (Red Book) for the year April, 1962 March, 1963, also authorises the licensing authority to refuse the issue of licence or to reduce the value of the licence to such a figure as he deems fit in cases where ha considers the value of the goods exported is over-invoiced. The contention of the petitioner that the action of the respondent is in excess of the powers, ultra vires, arbitrary, unjustified, mala fide and contrary to the policy of the 1st respondent is baseless, and the same is denied Paragraph 10 of the Trade Notice No. EPB(W)-13/62 dated 10th October 1962 authorises the Textile Commissioner the second respondent to assess the correct value of the goods exported and issue an entitlement certificate on the basis of the assessed value. The petitioner having been found to have over invoiced the goods exported to Afghanistan, the said respondent in exercise of the powers conferred, reduced the entitlement in the case of the petitioner. The trade Notice is a self-contained scheme and the petitioner is bound by it and the decision of the respondent No. 2 is taken thereunder. The Trade Notice is by virtue of executive powers and the attack of the petitioner on the ground contended is consequently completely misplaced and without any foundation in Law. It is correct that the exproters M/s New India Woollen Mills, Amritsar, M/s Jawahar Woollen Textile Mills, Amritsar, M/s Mayaram Jai Lal of Amritsar and M/s Kishanchand Rajpal of Amritsar, were granted import licence for the value of the exported goods. In view of the complaints received in regard to over-invoicing by the exporters to Afghanistan, respondent No. 1 issued directions that incentives under the Export Promotion Scheme in respect of exports of woollen textiles to Afghanistan should be withdrawn with effect from 7th September, 1963, and that all pending applications in the office of the respondents Nos. 2 and 3 for the grant of entitlement certificates should be processed on the basis of the international prices by which the woollen textiles were exported to European countries and other destinations. The entitlement certificates issued to the firms mentioned above had been issued prior to the said directions and thus the said firms escaped scrutiny of the Department. It may be mentioned that cases numbering between 200 and 390 were scrutinised in pursuance of the directions of the respondent No. 1 and as a result except for cases where the prices invoiced were below the prices fixed by the Committee similar action to reduce the entitlement was taken in respect of all of them. The petitioner does not make any mention of the date when the import entitlement was issued in favour of the firms referred to by him.

With the permission of the Court, the petitioner in the main case, filed his replication, dated February 9, 1966, in reply to the written statement of the respondents. In his replication, the petitioner emphasised that no notification or trade notice was issued by the respondents saying that export promotion scheme in respect of exports of woollen textiles to Afghanistan was withdrawn with effect from 7th September, 1963, or that the pending applications were to be processed on the basis of the international prices by which the woollen textiles were to be exported to European countries and other destinations. The petitioner in the main case also added in the replication that in fact export on the old basis and in

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/messrs-indo-afghan-agencies-…

accordance with the scheme in question, was continued as before under which the import entitlement was to be equal to 100 per cent f.o. b. value of the exports, and that there was no question of determination of the exports, value on the basis of the international prices as mentioned in the written statement. The petitioner has also sworn in the replication that it maintains that no scrutiny was held in its case although the original purchase invoices had been submitted to respondent No. 2, and that no ex-parte decision based on material not disclosed to the petitioner, was binding on it. nor could the same be justified under the 1955 Order. Regarding paragraph 20 of the main scheme and paragraph 10 of the scheme in question, the petitioner has averred in the replication that there was no provision for taking into account cent per cent incentive, and since no prices had been fixed, as admitted by the respondents, no such fixation could be made on the basis of what was not contained in the scheme in question, under which the exports had been made. It was then added as below:

It is wholly incorrect to suggest that the value could be determined in the absence of the petitioner or the exporters and/or by utilising evidence collected by the said Textile Commissioner in the absence of the petitioner and without confronting the same to the petitioner to explain the material on which the decision was to be based.

That contents of paragraph 22 of the written statement are denied in so far as it is suggested that the scheme did not envisage that the determination of the export value was in the sole discretion of respondent No. 2 or that the material intended to be used was not to be confronted to the petitioner for the determination of the price. Irrelevant matters have been mentioned in the written statement to show that the prices allowed to be charged were on a barter basis and that the Government could regulate such prices Since no prices had originally been fixed, a justification in cut of the entitlement is sought to be adduced by referring to wholly irrelevant considerations.

No reasons were disclosed for not restoring the cut, nor are they within the knowledge of the petitioner. No reasons were given at the time of refusal, and the reasons which have been given subsequently are not germane to the issue, nor could the same be adopted in view of the clear wording of paragraph 2 of the trade notice, dated 10th October, 1962.

A further reply to the replication has been submitted by the respondents by way of rejoinder on April 4, 1966, with the leave of the Court. This is also supported by the affidavit of the Textile Commissioner. In paragraph 3 of the said rejoinder, it has been stated as below:

It is admitted that no notification or Trade Notice was issued by the respondent saying that the export promotion scheme in respect of exports of woollen textiles made to Afghanistan was withdrawn from 7th September, 1963, or that the pending applications are to be processed on the basis of the international prices

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/messrs-indo-afghan-agencies-…

by which the woollen textiles were exported to European countries and other destinations. The trade and the industry were, however, made aware through the Regional Officer of the Textile Commissioner at Amritsar that exports of woollen textiles made to Afghanistan after 7th September, 1963, will not be eligible for export assistance. The decision to process the pending cases on the basis of the international prices by which the woollen textiles were exported to European countries and other destinations is an executive decision taken by the respondent consequent on the report of the Collector of Customs that there had been a large scale over-invoicing in the export of woollen goods to Afghanistan. It is admitted that the exports of woollen textiles/goods were made to Afghanistan after 7th September 1963, and the respondents, as a measure of concession admitted applications for export assistance on such exports made up to 30th September, 1963, the export assistance being restricted to the free on board value claimed or the free on board value assessed on the basis of the international prices by which the woollen textiles/goods were exported to European countries and other destinations whichever is lower. The contention of the petitioner that there was no question of determination of export value on the basis of the international prices as mentioned in paragraph 12 of the return filed by the respondent is denied for the reason that in terms of paragraph 10 of the Trade Notice No. EPB (W) 13/62, dated 10th October, 1962, the Textile Commissioner, the second respondent, is empowered to assess the correct value of the goods exported and issue an entitlement certificate on the basis of such assessed value.

* * * *

The claim of the petitioner for the grant of export assistance on the basis of free on board value declared was, therefore, rejected.

* * *

It is admitted that under the scheme, the export assistance was to be given equal to cent per cent free on board value of the goods, subject to the provisions contained in paragraph 10 of the said Trade Notice.

12. It is in the above situation that these cases have been heard together. Shri Bhagirath Dass, the learned counsel for the petitioner, raised the following contentions in support of the claim of his clients:

(1) That subject to the right of the appropriate authorities to impose a cut on the entitlement of the petitioners to the quantum of import under clause 10 of the scheme in question, it is the legal right of the petitioners to obtain import licences "equal to" the cent per cent f. o. b. value of the goods exported by them;

(2) That the only ground on which any cat could possibly be imposed by the authorities on import entitlement of the petitioners was that the respective exporter had fraudulently shown higher f. o. b value of the exported goods than the value which they were in fact to get from the Afghan purchaser, that is on the solitary ground that there has been factual over-invoicing;

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/messrs-indo-afghan-agencies-…

(3) That the powers under paragraph 10 of the scheme in question have to be exercised by the appropriate authorities in a quasi-judicial manner and no cut in exercise of the said power can be imposed on the import entitlement of the exporters in question without informing the exporter concerned of the grounds of the proposed cut, of the material, "data and evidence on the basis of which the cut is sought to be imposed and without affording the exporter concerned an opportunity of rebutting the said material, data, evidence or allegations and for proving that in fact no over invoicing at all was involved in the questioned export;

(4) That the constitution of a Committee by the Textile Commissioner of the Government of India for holding ex parte enquiries into the alleged complaints and the blindfold following of the report of such a Committee by the Textile Commissioner is not only contrary to law, but is opposed to the principles of natural justice.

(5) That even in those cases in which some kind of alleged hearing has been given, the said hearing does not satisfy the requirements of the principles of natural justice inasmuch as the hearing was by a Committee in which the Textile Commissioner was not even a member and the decision was given by the Textile Commissioner without himself having heard the parties concerned; and

(6) that inasmuch as import licences of the full f. o. b. value had been granted to a substantial number of exporters, who were similarly situated and who had exported exactly the same quality of wollen goods to Afghanistan during the same period, and at almost the same prices and no cut was imposed on them and that this happened even during the pendency of the writ petitions, the imposition of the impugned cut on the import entitlements of the petitioners amounted to illegal discrimination against them, which is hit by Article 14 of the Constitution.

13. Mr. C.D. Dewan, the learned counsel for the respondents raised two preliminary objections against the maintainability of these writ petitions, namely;

(i) Inasmuch as the action of the Textile Commissioner of the Government of India under clause 10 of the scheme in question is impugned in these petitions, the Punjab and Haryana High Court has no jurisdiction to entertain or decide these petitions as the Textile Commissioner holds his office at and is resident in Bombay; and

(ii) that the main export promotion scheme as well as the scheme in question framed thereunder, have been made by the Central Government in exercise of its executive powers and not under any law or statutory regulation and, therefore, any orders passed under those schemes are not amenable to any writ, order or direction of the High Court under Article 226 of the Constitution.

14. The second out of the preliminary objections raised on behalf of the Stats is correlated to the first contention of the counsel for the petitioners, and will be dealt with while discussing the same. It is, however, necessary to dispose of the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/messrs-indo-afghan-agencies-…

first preliminary objection raised by the learned Deputy Advocate General, before dealing with the other rival contentions of the parties.

15. The factual aspect which is relevant for the disposal of the first preliminary objection of the learned counsel for the respondents is not in dispute. Each one of the petitioners in these cases belongs to and carries on business in one or other cities of the State of Punjab. All of them exported the goods in question to Afghanistan by rail by putting the goods across the Railway Customs Barrier near the wagha border (which is in Punjab), and put the goods in rail at Atari Railway Station which is also in Punjab. The import licences for the amounts found due by the Government were made available to the petitioners at their respective business houses in Punjab. The condition precedent for making an application for an import licence under the scheme in question was the effecting of the relevant export. The exports were made from within the State of Punjab. It is, therefore, apparent that at least a substantial part of the cause of action for filing these writ petitions arose within the territories over which this Court exercises jurisdiction. Clause 1-A of Article 226 of the Constitution is in the following terms:

1-A. The power conferred by clause (1) to issue directions, orders or writs to any Government authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

16. The phraseology of the above-quoted clause of Article 226 of the Constitution is in pari materia with the provisions of clause (c) of section 20 of the Code of Civil Procedure. The relevant clause of section 20 of the Code provides as below:

20. Subject to the limitations aforesaid, every suit shall be instituted in a ''''Court within the local limits of whose jurisdiction-

(a) * * *

(b) * * *

(c) the cause of action wholly or in part, arises.

17. Inasmuch as it cannot be doubted that at least a part of the cause of action for the filing of these writ petitions arose within the State of Punjab, the case does appear to fall within clause 1-A of Article 226 of the Constitution and for that reason, it cannot be denied that this Court has the territorial jurisdiction to entertain these petitions and to grant such relief to the petitioners to which they may be found to be entitled on merits.

18. Now I deal with the arguments of Mr. Bhagirath Dass. The first thing to be decided is about the nature of the right that accrues to an exporter consequent on his exporting goods strictly in accordance with an export promotion scheme framed by the competent authorities. The argument of the State counsel, which

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/messrs-indo-afghan-agencies-…

from the subject-mutter of his second preliminary objection, is that export promotion schemes are prepared by the Government as a mere executive fiat and not in exercise of any authority under a statute or under any statutory rules. If that is so, argues Mr. Dewan the rights of an exporter under the scheme, howsoever valuable they may be, are not justiciable in a Court of law and can much less form the subject-matter of a writ petition. Mr. Dewan, concedes that there is no decided case on the subject in his favour. Nor has any direct case been cited by the learned counsel for the petitioners in reply to this contention of the State counsel The trend of judicial authority, which is apparent from at least two judgments of their Lordships of the Supreme Court appears to be that parties aggrieved by an arbitrary cut imposed on the entitlement of a citizen under an export promotion scheme, are entitled to invoke the extraordinary jurisdiction of the High Courts. In Ramchand Jagadish Chand Vs. Union of India (UOI) and Others, the export promotion scheme relating to artificial silk, yarn and fabrics came up for consideration. The said scheme had been prepared under paragraph 51 of the import trade control policy for the licensing peril d October 1958 to March, 1959, which corresponded to paragraph 52 of the similar policy for the period December, 1954 to May 1955, Art-silk, yam and fabrics scheme was very much similar to the scheme in question. One material difference between the two schemes which is significant is that in the silk yarn scheme, it was provided that:

It has been decided to grant import licences at the ports under the export promotion scheme for the import of permissible varieties of art silk yarn to actual exporters upto the following percentage of the rupee equivalent to foreign exchange earned on the basis of the f.o.b. value of the art-silk goods exported, or the value assessed by customs whichever is less.

In the scheme in question, the relevant provision is to the effect that:

It has been decided that... merchant-exporters of the above woollen textiles and woollen goods will be entitled to import, namely, raw wools... for a total amount equal to 100 per cent of the f.o.b. value of the exports.

The significant difference between the above-said schemes is two-fold, namely :

(i) whereas in the art silk scheme as well as the scheme regarding which the Supreme Court made its pronouncement in Probhudas Morarjee Rajkotia and Others Vs. Union of India (UOI) and Others, , the expression used in respect of the entitlement of an exporter to get import licence is "up to" a particular quantity i.e. subject to the maximum of, the corresponding expression used in the scheme in question is equal to 100 per cent" which does not leave any room for discretion in the matter of the quantum of entitlement; and

(ii) whereas in the silk scheme a specific provision was made to allow import of the goods in question either on the basis of the f. o. b. value of the exported silk, or, on the basis of value assessed by customs, whichever was less, no such provision has been made in the scheme in question. (The true scope,

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/messrs-indo-afghan-agencies-...

interpretation, meaning and effect of paragraph 10 of the scheme in question will be discussed at the appropriate place.)

Reverting to the point with which I was dealing, it would be noticed that in the case of M/S Ramchand Jagdish Chand, the Supreme Court specifically went into the question whether in granting a licence to that firm for a lesser amount than that claimed by the firm, the authority conferred by the scheme had been arbitrarily exercised, or it was supported by some reasonable discernible principle. On the interpretation of the scheme involved in that case and on a consideration of the affidavit filed by the authorities therein, the Supreme Court held that the Controller of Imports was authorised to grant licences up to the percentage specified in that clause, and that no right had thereby accrued to the exporter to obtain a licence "for the full value of the commodity exported" as the relevant clause in the aforesaid export promotion scheme vested the Controller with authority to issue a licence for the amount subject to the maximum prescribed, claimed by the exporter, and that power in that case was, therefore, plainly discretionary. All the same, held the Supreme Court, the discretion had to be exercised by the Controller reasonably and not arbitrarily. Their Lordships observed in this connection as below :

It is true that the discretion has to be exercised reasonably and not arbitrarily. The licensing authority would normally issue an import licence for 100 per cent of the value of the goods exported but having regard to special considerations such as difficult foreign exchange position on other matters which have a bearing on the genera) interest of the State, import licences for a smaller percentage may be granted to the exporters. But by the use of the expression "up to the following percentage of the rupee equivalent" power to fix arbitrarily a percentage of the value of the goods exported for awarding an import licence is not granted.

19. Similarly in the case of Probhudas Morarjee Rajkotia and others (supra), which was concerned with special exports promotion scheme for engineering goods, their Lordships of the Supreme Court held that the appropriate authorities have no arbitrary power to fix percentage of value of goods exported for awarding import licences. Though on the facts of that case, the Supreme Court was satisfied that there was sufficient material on the record to justify the cut imposed by the authorities on the import entitlement of M/s Probhudas Morarjee Rajkotia, keeping in view the discretion vested in the authorities by the use of the expression "up to the monetary extent" mentioned in the scheme, it was again emphasised that "the authorities are not clothed with an arbitrary power to fix the percentage of the value of the goods exported for awarding an import licence." The aforesaid two judgments of the Supreme Court clearly indicate that if the relevant export promotion scheme does not permit the exercise of any discretion in fixing the quantum of entitlement to import at a lower figure by using expression like "up to" in the relevant clause of the scheme, the exporter is entitled to insist that no cut on his entitlement would be imposed by the authorities in an arbitrary manner, and on a basis which is contrary to the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/messrs-indo-afghan-agencies-…

scheme unless the party concerned is found to be guilty of some fraud or misrepresentation or of having over invoiced the exports. In this view of the matter, there seems to be no force in the second preliminary objection of Mr. Dewan. On the other hand the contention of Mr. Bhagirath Dass appears to be sound. Citizens have the normal fundamental right of carrying on any trade or profession under Article 19(1) (g) of the Constitution. Lawful and valid restrictions on the said right can certainly be imposed within the scope of clause (6) of Article 19, if they are in the interest of the general public, and if the restrictions are not unreasonable. The restrictions imposed by the Act and by similar provisions contained in the Sea Customs Act and Land Customs Act, and other such statutes, are certainly in the interest of the general public and have never been held to be unreasonable. In exercise of the statutory power vested in the Central Government by section 3 of the Act and by paragraph 3 of the 1955 Order framed thereunder, the periodical) import and export policy is issued by the Government. The export promotion schemes framed and promulgated by the Government, can be justified only under the Act. Even otherwise, it appears to me that if the Central Government persuades a merchant to export certain COIL modifies on the solemn representation contained in a scheme that he would thereby become entitled to obtain an import licence of the f.o.b. value of the goods exported by him, it would be too much to argue that even if the Government was to say in the absence of a valid legislation to the contrary that the exporter would not be given any import licence at all, merely, because the Government thought to adopt that course, the exporter would have no legal right to come to Court and to complain against such conduct of the Government and to ask for appropriate relief. In Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another, Subba Rao, J. (as the Chief Justice of India then was) observed in connection with the powers of High Courts under Article 226 of the Constitution as follows :

Article 226 is couched in comprehensive phraseology and it ex facie confers a wide power on the High Court to reach injustice wherever it is found. A wide language in describing the nature of the power, the purposes for which and the person or authority against whom it can be exercised was designedly used by the Constitution. The High Court can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression "nature", which expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart High Courts can also issue directions, orders or writs other than the prerogative writs. The High Courts are enabled to mould the reliefs to meet the peculiar and complicated requirements of this country. To equate, the scope of the power of the High Court under Article 226 with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government to a vast country like India functioning under a federal structure. Such a construction would defeat the purpose of the article

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/messrs-indo-afghan-agencies-…

itself.

Powers of High Courts under Article 226 of the Constitution are very wide and absolutely unfettered. In the interest of justice and for practical reasons, High Courts have no doubt grafted on its powers under the Article certain self-imposed restraints. As the exercise of powers under Article 226 of the Constitution is discretionary, the discretion has to be exercised on the facts of each case according to the sound judicial principles and keeping in view the above-mentioned self-imposed restraints. After a careful consideration of the matter, I am of the opinion that if the Government acts in a wholly arbitrary manner in declining to give an import licence to an exporter in terms of the export promotion scheme under which he has exported the relevant goods, or if the Government imposes an arbitrary cut on the entitlement of the exporter under the scheme, the matter would be justiciable in proper cases before the High Court under Article 226 of the Constitution. In this view of mine, I appear to be substantially supported by the authoritiative pronouncement of the Supreme Court in the foresaid two cases M/S Ramchand Jagdish Chand v. Union of India and others 2; and Probhuaas Morarjee Rajkotia and others v. Union India and others (Supra).

20. I would, therefore, hold that where an export promotion scheme specifically provides for entitlement to import any material of the total amount equal to 100 per cent of the t. o. b. value of the exports, as has been provided in the scheme in question, the authorities concerned must treat the question of entitlement of the applicant for an import licence on an entirely different footing than the case of an application under an export promotion scheme which provides for grant of an import licence of an amount "up to" the f. o. b. value of the exports. In cases where the expression "up to" is used, a discretion is vested in the authorities to grant licences of the full value or any lesser value which may be justified on consideration of all the circumstances of the case. In a case where the provision is for grant of import licence of the amount "equal to" 100 per cent of the f. o. b. value, no discretion is left in the authorities to impose any cut on the entitlement In the absence of any statutory provision to that effect or in the absence of any specific provision in the scheme to that effect. The only relevant provision in the scheme in question is clause 10 with which, I will presently deal. Subject, therefore, to the operation and effect of clause 10, it was the legal right of the petitioners to obtain import licences of an amount equal to cent per cent f. o. b. value of the goods exported by them under the scheme in question.

21. This takes me to the second contention of Mr. Bhagirath Dass. After a consideration of all the facts and cricumstances of the case and the state of law discussed above, I am of the opinion that under the scheme in question, a cut could be imposed on the entitlement of the exporter (Applicant for an import licence) under the scheme in question only on the following grounds:

(i) that the applicant for the import licence had been found and proved to have committed some fraud or some corrupt practice within the meaning of the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/messrs-indo-afghan-agencies-…

proviso to paragraph 6. 1 of the main scheme me (appendix 23 to the Red Bock since 1954 up to date);

(ii) that it has been proved to the satisfaction of the appropriate licencing authority that the declared value of the goods exported was in fact "higher than the real value of the goods according to the market value of those goods prevalent in the market from which the goods were exported on the date of the export;

(iii) if on a proper enquiry, the appropriate licencing authority found that even though the rates at which the goods were exported, were the proper ones, the exports were deliberately over-invoiced in any manner whatsoever so as to in fact bring into this country lesser foreign exchange than the declared f, o. b. value of the goods;

(iv) that a subsequent law passed by the appropriate legislature or by a subordinate legislating authority has disentitled the exporter applicant to obtain and import licence of the amount of the full f. o. b. value of the exports.

22. The above quoted categorisation of the cases in which a cut may lawfully be imposed on the entitlement of an intended importer under the scheme in question would show that the following grounds for imposing the cut would not be valid and may be struck down in appropriate proceedings in proper cases:

(i) that though the f. o. b. value of the exported goods and their real value in the market from which they are exported at the time of the export is the same as declared by the exporter, the international value of the goods in the international market is lesser; and

(ii) that though the Government expected that the exports would be limited to certain probable amount, the extent of actual exports has far exceeded that estimation.

23. The grounds on which the entitlement of the petitioners purports to have been reduced in the cases before us according to the written statements filed by the respondents, fall within the prohibited categories and do not by themselves prima facie come within the permitted contigencies. This observation may not however, be understood to convey that we have in any manner decided as to what was the actual or real value of the exported goods in each case or whether in fact there was any over-invoicing in any particular case or not or even whether any of the petitioners had committed any corrupt or fraudulent practice in any case. If it becomes necessary to decide any of these issues, they would have to be decided by the appropriate authority of the Government in proper proceedings.

24. Now I deal with the scope and effect of paragraph 10 of the scheme in question, which is the subject-matter of the third contention of Shri Bhagirath Dass. The first point which calls for decision in this respect is whether the circumstances of the case, and the relevant provisions of the Scheme envisage that the enquiry referred to in paragraphs 9 and 10 of the scheme in question

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/messrs-indo-afghan-agencies-…

has to be conducted in a judicial manner or not. It appears to me that so for as the scrutiny of the applications for in port licences referred to in paragraph 9 of the scheme is concerned, it is more or less an administrative function involving no discretion The scrutiny referred to in that paragraph is more or less a mathematical process and does not involve the decision of any disputed question. If, however, the Textile Commissioner or the other appropriate authority finds, as a result of the scrutiny, that an applicant is qualified to obtain an entitlement certificate for the full value declared by him, but the entitlement certificate which could in fact issue, should be of a lesser amount because he over-invoiced the goods or because of some private complaint or information regarding the commission of any fraud or a corrupt practice by the exporter or because of any other valid reason, the stage of embarking upon the proceedings referred to in paragraph 10 of the scheme in question is reached. The only ground mentioned in the sad paragraph on which a cut may be imposed is that the declared value of the goods exported is higher than the real value of the goods. This question cannot possibly be decided in a subjective manner. It has to be decided on the basis of objective data or evidence available before the relevant authority. The rule itself requires the matter to be investigated by calling further evidence e.g. purchase vouchers and any other corroborative evidence to facilitate the requisite enquiry. The rule enjoins upon the registered exporter a duty to furnish such evidence as is called for in this connection. It is on the basis of such an enquiry alone that the rule authorises the Textile Commissioner to assets the correct value of the goods exported and to issue an entitlement certificate on the basis of such assessed value. It would be utterly violative of the principles of natural justice if this rule the one contained in paragraph 10 of the scheme in question) is interpreted to imply that the Textile Commissioner may obtain such evidence as he thinks fit, but if the exporter wants to know the evidence which he is called upon to rebut or wants to know of the complaint which is going to be looked into or of the material on which the cut is intended to be imposed, the Textile Commissioner can tell him what he is not concerned with those things. Still this is what the learned State counsel wants us to hold. I regret we are unable to agree with Mr. Dewan in this connection. There is great force in the argument of Mr. Bhagirath Dass to the effect that the functions and duties enjoined upon the Textile Commissioner by paragraph 10 of the scheme in question have to be performed in a quasi-judicial manner, and no cut in the exercise of the said power can be imposed on the entitlement of an importer without informing the applicant of the basis on which the cut is proposed to be imposed, the data or evidence to be considered against him and without affording the applicant an opportunity of rebutting the said evidence in a proper manner and of producing his own evidence in support of his rival contentions, if any. If this is not done, the decision under paragraph 10 of the scheme in question would obviously be arbitrary and would be liable to be struck down on grounds which appear to have already been approved by the Supreme Court in the cases of M/S Ramchand Jagdish Chand v. Union of India and others (supra) and Probhudas Morarjee Rajkotia and others v. Union of India and others (supra).

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/messrs-indo-afghan-agencies-…

25. I am not prepared to uphold the defence taken up by the respondents in the written statements to the effect that it is not the duty of the authorities to divulge the material or even to inform the party concerned of the basis on which a cut is sought to be imposed and not to allow the petitioners any opportunity of rebutting the. same or of having their say in the matter of imposition of cut under paragraph 10 of the schema in question. In view of the admitted fact that no such opportunity was granted to the first group of five petitioners referred to above, and that even in other cases, the data and the material on which the authorities have proceeded, was not intimated to the importers and no proper opportunity was afforded to them by the authority who ultimately decided against them, all the impugned orders imposing the cuts are liable to be struck down. I think that paragraph 10 of the scheme in question casts a duty on the Textile Commissioner to decide the issue arising thereunder in a judicial manner. When he is to decide a disputed question of fact, he is expected to come to a correct decision. The enquiry and investigation envisaged by paragraph 10 of the scheme is not only for the benefit of Government, but also for the benefit of the intended importer. The power conferred on the Textile Commissioner is coupled with a duty cast on him to decide the matter correctly. In the present the Textile Commissioner has failed to perform his duty according to the principles of natural justice and it is the function of this Court to direct him to discharge that duty in a proper way if he wants to impose any cut on the entitlements of this petitioners.

26. The fourth argument of Mr. Bhagirath Dass is that the constitution of the Committee formed for advising the Textile Commissioner was illegal. For this proposition, he has relied on a Division Bench judgment of the Mysore High Court in M/S Mount Corporation and others v. Director of Industries and Commerce in Mysore. Bangalore and others (Supra) In that case it was held in connection with the rejection of an applicant for import licence as below:

It is admitted in the counter-affidavit filed on behalf of respondents 1 and 2, that respondent 1 has accepted the decision of the Committee and made his recommendations on the basis of the said decision. When an authority exercises his jurisdiction under a Statute, he has to exercise his own individual judgment or discretion as the case may be. He cannot adopt the decision of any other body as his own. Therefore, in law, there is no disposal of the applications of the petitioners by respondent 1 and respondent 3.

In the view we have taken of the main contention of the learned counsel for the petitioners, it is unnecessary to go into this matter particularly when the constitution of the two Committees referred to by the respondents and the exact functions discharged by them, and their reports have not been brought before us. We asked the leaned counsel for the State if he could show us as to what were the reports submitted by these Committees, but he was not able to do so. This may add to the strength of the argument of the learned counsel for the petitioners about the arbitrariness of the decision; but the mere, appointment of a Committee to make some preliminary investigation or to advise the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/messrs-indo-afghan-agencies-…

Commissioner on certain matters cannot, in my opinion, result in invalidating the impugned orders.

27. Though there appears to be some force in the complaint of the petitioners regarding the alleged discrimination in favour of other named exporters, who have been given entitlement certificates of the full amount of the f.o.b. value of their exports and though the names of those parties have been specifically given in the writ petitions and the grant of such entitlement certificates to them is admitted, and though the case of even a party who has been given such a certificate after the filing of the writ petition has been mentioned in the replication in Khanna''s case it does not appear to be possible to hold on the material placed before us that the impugned orders are liable to be set aside on that ground, as the possibility of some difference in those cases and the cases of the petitioners cannot be ruled out. Moreover, in the view we are taking of the main contention of the counsel, it does not appear to be necessary to go into this dispute.

28. Some salient features of the other four cases (C.Ws 1921 and 1925 to 1927) pointed out by the learned counsel for the State may now be dealt with. In C.W. 1921 of 1965-M/S Bhandari Hosiery Works (Regd.) v. Union of India etc. the exports of the f.o.b. value of Rs. 68382.50 were effected in the month of July, 1963 and of the value of Rs. 7200/ during August, 1963. Original documents in support of the petitioner''s contention were called for by letter, dated August 8, 1963 (Annexure ''D''). This was because the goods had been detained by the Customs appraiser at the Customs barrier on the allegation that they had been over-valued. The petitioner explained his position in his tetter, dated August 16, 1963 (Annexure ''E''), and offered to produce further documentary evidence to prove that the goods had not been over-valued. As soon as the Customs Authorities were satisfied about the value being proper, the goods were allowed to be exported as per letter, dated September 23, 1963 (Annexure ''F''), wherein it was stated that all the parcels in question had been allowed export for their destination on September 6, 1933. In spite of this, a cut was imposed on the entitlement of the petitioner when he applied for the corresponding import licence. As against the declared f.o.b. value of Rs. 75,582.50 P., the petitioner in this case was granted an entitlement certificate for the sum of Rs. 48,304/- only thus leaving a difference of Rs. 27,278.50 P. In reply to the petitioner''s representation against the impugned cut, he was informed by the Deputy Director of Industries from the office of the Textile Commissioner, Bombay in letter, dated February 3, 1964 (Annexure ''I'') to appear in a specified room of the Bombay office of the respondents at 11 A.M. on 24th February, 1961. The petitioner was also directed in the said letter to take with him such documentary evidence as he might possess in support of the rates charged by him for the exported goods. After the interview, the petitioner wrote letter (Annexure ''J'') to the Deputy Director confirming the visit of the petitioner''s representative and the fact that the exports bad been effected at the rates at which the goods in question had been actually purchased by the petitioner and also emphasising the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/messrs-indo-afghan-agencies-…

fact that the value of the goods bad been verified from the Customs Authorities before the export, and that the consignments had been released for export only after such verification. Reference was also made in the letter to the petitioner having shown all the relevant documents to the authorities. In paragraph 11 of the writ petition it has been stated that the petitioner was never afforded any opportunity to show cause against the intended cut nor was he taken into confidence as to why the entitlement certificate of a lesser amount had been issued. In paragraph 12 of the writ petition it has been averred that in pursuance of the communication received from the respondent, the petitioner appered "before the Committee" in the third week of February, 1964 and explained all what had transpired at the interview. The legality of the enquiry held on February 24. 1964, has been attacked in paragraph 21 of the petition. It has been stated by the petitioner that it was only the Textile Commissioner who was entitled to conduct the enquiry under clause 10 of the scheme and that the petitioner could not delegate those powers to anyone else. It has also been added in that paragraph that the Committee which granted the interview did not bring to the notice of the petitioner any facts or circumstances which were intended to be considered against the petitioner''s case, and that the cut had been imposed in an arbitrary manner.

29. In the written statement of the respondents the same story as given in the other cases has been repeated in paragraph 11 (which has been quoted in an earlier part of this judgment). The constitution of the Committee has been justified on account of private complaints of general nature said to have been received by the authorities. Contents of paragraphs 12 to 14 of the writ petition have been admitted. This implies admission of the allegation that the enquiry was not held by the Textile Commissioner himself, but by someone else and that though the petitioner had the alleged bearing before a Committee, the decision was given by the Textile Commissioner. In paragraph 20 of the written statement it has been averred that the petitioner could not produce documentary evidence in support of its statement and the enquiry having been intended to assess the reasonability or other-wise of the cut imposed by respondent No. 2, it was not necessary to communicate to the petitioner the basis on which the cut was imposed or to bring to the notice of the petitioner any facts or circumstances which were intended to be untilised in determining the value of the exported goods. According to the averments in paragraph 21 of the written statement in this case, the Textile Commissioner had exercised his own individual judgment in deciding the cut and he had the power to impose the same after investigation. Except for the fact that the petitioner in this case had an opportunity to appear before the Committee. I have not been able to find any material difference in the relevant facts which clearly show that the respondents deliberately withheld from the petitioner the data and evidence on the basis of which the out was imposed and that the authority who decided the matter did not hear the petitioner. The bearing if any was granted after the decision of respondent No. 2 by the Committee which did not decide anything. For the reasons given in connection

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/messrs-indo-afghan-agencies-…

with the first group of five cases, this writ petition must also, therefore, succeed.

30. The only distinguishing feature in the petition of M/S Beautex Hosiery (Regd.) (C.W. 1925 of 1965) that has been pointed out by the State counsel is the following passage in paragraph 11 of the respondents'' written statement:

For similar reasons no opportunity was given to the petitioner to be heard either during the investigation by the "Committee or at the time the Textile Commissioner took the decision to reduce the entitlement. It may be mentioned that the petitioner was given an opportunity to establish that there had been no over-invoicing.

The details of the alleged opportunity granted to the petitioner in this case are similar to the one which was afforded to the petitioner in C.W. 1921 of 1965. There is, therefore, no such distinguishing feature in this case as may result in my arriving at a different conclusion on the material point.

31. In the petition of M/S Shahzada Hosiery Mills (C.W. 1926 of 1965), it is alleged that the petitioner had admitted having over-invoiced the goods and cannot, therefore, be allowed to ask for any relief from this Court. It is conceded by Mr. C.D. Dewan that no such admission was ever made by or on behalf of the petitioner before the respondents during the course of the correspondence or at the alleged hearing before the Committee. The alleged admission of the petitioner is spelt out from paragraph 12 of the written statement, wherein it has been alleged as below.

It was admitted by Shri A.S. Gupta that exports of woollen goods were made for the first time in July, 1963. It was pointed out that prices charged on the goods exported to Afghanistan were significantly higher than those charged by him on exports to other countries. Shti A.S. Gupta admitted this fact and it was explained by him that exports to Afganistan were on a "spurt and advantage was taken of the situation.

The allegation of commission made in the written statement filed in this Court cannot in my opinion be treated as an admission of the petitioner Even otherwise, the contention of the learned counsel for the respondents in this connection has no force as the petitioner filed a replication, dated October 2, 1966 with civil miscellaneous No. 3841 of 1966. with the leave of the Court, in paragraph 3 of which it has been stated as below:

It is also wrong to say that it was pointed out to the deponent that the prices charged for the goods exported in July and August to Afghanistan were higher than those charged by the deponent on exports to other countries On the other hand it was brought to their notice that prices for the same quality of goods have remained the same for Afghanistan and other countries on all occasions. It was also requested to the author-ties that bills can be produced to support this assertion. It is equally incorrect to say that it was so admitted by the deponent.

The petitioner has therefore, lost no time in contradicting the allegation of the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/messrs-indo-afghan-agencies-...

respondents in this respect. It is also significant to note that the replication has been sworn by Shri A.S. Gupta, who is the person named in the above-quoted averments of the respondents as the man who made the admission. No other distinguishing feature having been pointed out this writ petition must also be allowed for the reasons recorded in connection with the first group of cases.

32. In the petition of M/S Parkash Cloth Merchants (C.W. 1927 of 1965). an opportunity is alleged to have been afforded to the petitioner in the following averments contained in paragraphs 13 and 21 of the written statement of the respondents;-

The representative of the firm submitted before the Committee consisting of the joint Secretary in the Ministry of Commerce, Industrial Adviser (Textile Production) and Joint Textile Commissioner that the materials were purchased in the open market at prices ranging from Rs. 109 to Rs. 122. He also produced a document issued by the Government Woollen Mills, Srinagar that the shawls styled "Pattu" were sold at Rs. 74/- The petitioner had charged Rs. 85/- for "Pattu" shawls, Rs. 110/- for Kashmir embroidered shawls of size 40"/80" and l00"/54". It was decided that the case may be re-examined with reference to the submissions of the petitioner. After verification of the document produced and having regard to the size and quality mentioned in the invoices, the respondent No. 2 assessed the reasonable value and issued the entitlement.

21. Since the enquiry was intended to assess the reasonability or otherwise of the cut imposed by respondent No. 2, it was not necessary to communicate to the petitioner the basis on which the cut was imposed or to bring to the notice of the petitioner any facts or circumstances which were intended to be utilised in determining the value of the goods exported. The Textile Commissioner has exercised his own individual judgment in deciding the cut and be has the power to impose the same after investigation and the investigation has been made with reference to corroborative evidence.

If anything, the above averments of the respondents make the case of the petitioner stronger than the first group of cases. It has not been disputed that the petitioner supported the f.o.b. value of the exported goods with documents issued by the Government Woollen Mills, Srinagar, to a substantial extent, but still the cut was imposed "having regard to the size and quality mentioned in the invoices". In any case, it has been specifically admitted by the respondents that the material on the basis of which the cut was imposed, was not disclosed to the petitioner and the petitioner was not informed of the basis on which the cut had been imposed as this was not considered to be necessary. I have, therefore, no hesitation in holding that the cut was imposed in this case also in a wholly arbitrary manner and contrary to the principles laid down by the Supreme Court.

33. No other argument was addressed before us in these cases by any of the parties. For the foregoing reasons all these writ petitions are allowed and the impugned orders of the respondents imposing the cut on the entitlement of the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/messrs-indo-afghan-agencies-…

petitioners, are set aside and quashed. The respondents are directed to issue to the respective petitioners entitlement certificates for the total amount equal to 100 percent of the f.o. b. value of the respective exports unless there is some basis for imposing any cut on the same within the four corners of paragraph 10 of the scheme in question as interpreted in this judgment. In case the authorities find that there is any such basis, the same and the material on which the basis, is arrived at, will have to be disclosed to the respective petitioners and they will have to be allowed adequate opportunity of rebutting the said material and of proving that the f.o.b. value declared by them was the correct market value of the goods exported on the day of the export so far as the market from which the goods were exported is concerned. The petitioners would be entitled to have their costs of the proceedings in this Court from the respondents.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/messrs-indo-afghan-agencies-…