

(2002) 05 DEL CK 0225
In the Delhi High Court
Case No : C.W. No. 2102 of 1982

Modipon Limited and Another		APPELLANT
	Vs	
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 17-05-2002

Acts Referred:

Customs Act, 1962 — Section 25(1)

Citation : (2003) 85 ECC 790 : (2002) 146 ELT 45

Hon'ble Judges : Vikramajit Sen, J; Dalveer Bhandari, J

Bench : Division Bench

Advocate : A.N. Haksar, Veronica Mohan and Rohina Nath, for the Appellant;
Maninder Singh and N.K. Pandey, for the Respondent

Final Decision : Dismissed

Judgement

Dalveer Bhandari, J.—The petitioners have preferred a writ petition before this Court with manifold prayers, but the principal grievance of the petitioners is that the benefits which were given to them by Notification dated 23.4.1980 (as amended by Notification dated 5.6.1982) were taken away by the subsequent Notification dated 21.10.1982.

2. In order to appreciate the controversy involved in the case, we deem it appropriate to set out the relevant portion of the Notification dated 23.4.1980, as amended by the Notification dated 5.6.1982 and Notification dated 21.10.1982.

Notification dated 23.4.80 as amended on 5.6.82

"Exemption to Caprolactum:- In exercise of the powers conferred by Sub-section 25 of the Customs Act, 1962 (52 of 1962), and in supersession of the notification of the Government of India in the Department of Revenue and Banking No. 117-Customs, being satisfied that it is necessary in the public interest so to do, hereby exempts caprolactum, falling under sub-heading No. 20(20) of Heading No. 29.01/45 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India from so much of that portion of the duty of customs

livable thereon which is specified in the said First Schedule as is in excess of fifty-five per cent ad valorem.

2. This notification shall be in force up to and inclusive of the 31st day of May, 1983."

Notification dated 21.10.1982:-

"In exercise of the powers conferred by Sub-section (1) of Section 25 of the Customs Act, 1962, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 86-Customs, dated the 23rd April, 1980, namely:- In the said notification, for the words "fifty-five per cent", the words "seventy-five per cent" shall be substituted."

3. The petitioners submit that the earlier Notification dated 23.4.1980 was to remain in force up to 31.5.1983 and the respondents were not justified in taking away the benefits by a subsequent Notification dated 21.10.1982.

4. During the course of hearing of this petition, Mr. A.N. Haksar, learned Senior Counsel appearing for the petitioners, fairly submitted that he does not press the manifold grounds taken in the writ petition and submitted that he would confine his prayer only to the aspect that the subsequent Notification dated 21.10.1982 was not issued in the public interest. Mr. Haksar also fairly conceded that the Government has powers to issue the subsequent Notification, but there has to be public interest in issuance of the same. Mr. Haskar submitted that the respondents have not demonstrated any public interest in issuance of the subsequent Notification by which the benefits granted in the first Notification were partially withdrawn. According to him, the Central Government is under an obligation to give reasons for issuance of such a Notification. He also submitted that in this case no reasons are forthcoming. Therefore, there is no basis for the formation of the opinion and it should be assumed that the subsequent Notification was not issued in the public interest and the same needs to be quashed.

5. This petition was listed on 15.7.1982 for admission hearing. A Division Bench of this Court issued Rule D.B. and granted ad interim relief in terms of prayer (a) of C.M. No. 3071 of 1982. The said prayer (a) reads as under:-

"(a) to grant a suitable order of injunction and stay restraining the respondents, their officers, servants and agents from collecting duties of customs ,including basic duty of customs, additional duty of customs and auxiliary duty of customs in excess of the rates specified under Notification No. 38-Cus dated 1.3.1978 (as amended from time to time) in respect of Polyester (POLY) Filament Yarn at the rate of 200% ad valorem;; Notification No. 86-Cus dated 23.4.80 (as amended from time to time) in respect of Caprolactum at the rate of 55% ad valorem and Notification No. 102-Cus dated 1.7.77 (as amended from time to time) in respect

of D.M.T. (Diamethyl Terephthalate) at the rate of 10% ad valorem and/or other notifications as may be issued, from time to time, in replacement, amendment thereof in respect of the aforesaid goods, and to permit the petitioner to clear the same upon payment of duties of customs (including additional duty of customs and auxiliary duty of customs) as prescribed in the aforesaid notifications without including the landing charge in the assessable value on the payment to the aforesaid duty upon furnishing a bond for the disputed amount of duties and bank guarantee to the extent of 50% of the disputed amount of money;"

6. By the order dated 8.11.1982 the petitioners were granted permission to maintain the writ petition. It may be pertinent to mention that though the respondents were served and the learned counsel for the respondents appeared in Court as early as on 31.8.1982, but despite number of opportunities the counter affidavit was not filed by the respondents within a period of 20 long years. This clearly shows total apathy and indifference of the respondents in dealing with even the revenue matters where the stakes run into crores of Rupees of public money. On 15.4.2002 this Court was constrained to pass the following order:-

"It is unfortunate that no counter affidavit has been filed despite number of opportunities given in the last twenty years. In the interest of justice we defer orders and grant one more opportunity to file the counter affidavit. The respondents are directed to file counter affidavit on or before 1st May, 2002.

If the counter affidavit is not filed, a senior official of the respondents shall remain present in the court on the next date of hearing.

List this petition again for further direction on 1st May, 2002.

dusty."

7. Thereafter on 29.4.2000 a short counter affidavit has been filed.

8. Mr. Haskar, learned Senior Counsel appearing for the petitioners placed reliance on the judgment of the Supreme Court in *Dai-Ichi Karkaria Ltd. Vs. Union of India and Others*, in which it was observed that the "Government is competent to resile from a promise. It was further noticed therein that the Government can resile from a promise even in there is no manifest public interest involved provided, of course, that no one is put in any adverse situation which cannot be rectified."

9. Mr. Maninder Singh, learned counsel appearing for the respondents submitted that such withdrawal would be valid even if it is effected prior to the expiry of the period of the representation or promise specified by the Government. He has also placed reliance on a number of authoritative judgments of the Supreme Court in support of his proposition. He relied on a Constitution Bench judgment of the Supreme Court in *Daruka and Co. Vs. The Union of India (UOI) and Others*, . He has particularly drawn our attention to para 16 of the judgment which reads as

under:-

"16. Policies of imports or exports are fashioned not only with reference to internal or international trade but also on monetary policy, the development of agriculture and industries and even on the political policies of the country but rival theories and views may be held on such policies. If the Government decides an economic policy that import or export should be by a selected channel or through selected agencies the court would proceed on the assumption that the decision is in the interest of the general public unless the contrary is shown."

10. Mr. Maninder Singh submitted that these Notifications were issued u/s 25 of the Customs Act, 1962 and in the Notification itself it is mentioned that the Central Government is satisfied in public interest so to do and all these Notifications have been issued in the public interest. He also submitted that unless it is demonstrated by the petitioners that these Notifications are contrary to the public interest or they are mala fide, the Court should not interfere with the Notifications. He submitted that the petitioners filed an amended petition and even in that amended petition the petitioners have not even laid the foundation that the Notification dated 21.10.1982 issued by the respondent Union of India is against the public interest. The petitioners cannot be permitted to assail these Notifications on the grounds on which even the foundation has not been laid in the petition. The onus is on the petitioners to demonstrate that the Notification dated 21.10.1982 is mala fide or against the public interest.

11. Mr. Maninder Singh also placed reliance on Kasinka Trading and another, etc. etc. Vs. Union of India and another, . It is held in this case that the power to grant exemption, as u/s 25 of the Customs Act, 1962, comprehends implicit power to rescind, revoke or withdraw the exemption. It is further mentioned that the exemption Notification issued in exercise of statutory power only suspends the levy and collection of tax or duty wholly or partially subject to conditions set out in the Notification. Such exemption Notification can be revoked, modified or superseded by a subsequent Notification in exercise of the same statutory powers in public interest even prior to the period of its operation specified therein. Such exemption Notification is not in the nature of any incentive and does not hold out any unequivocal representation or promise. Withdrawal of exemption in public interest is a matter of Government policy with which Court would not interfere in the absence of any manifest injustice, mala fides or fraud. The Court further held as under:-

"..Since, the notification had been issued u/s 25(1) of the Act, the very same power was available to the authority for rescinding or modifying that notification and the appellant ought to have known that the said notification was capable of or liable to be revoked, modified or rescinded at any time even before the expiry of 31-3-1981 if the "public interest" so demanded. To hold that after the Government had issued the Notification No. 66 of 1979 indicating that it was to remain operative till 31-3-1981, it could not be rescinded or modified before the expiry of that date would amount to prohibiting the Government from

discharging its statutory obligation u/s 25(1) of the Act, if it was satisfied that it was in the "public interest" to withdraw, modify or rescind the earlier notification. The plain language of Section 25 of the Act is indicative of the position that it is the public interest and public interest alone which is the dominant factor. Their case, however, is that relying upon the earlier notifications they had acted and the Government should not be permitted to go back on its assurance as otherwise they would be put to huge loss. The courts have to balance the equities between the parties and indeed the courts would bind the Government by its promise "to prevent manifest injustice or fraud".

The Court further observed as under:-

"24. It needs no emphasis that the power of exemption under 25(1) of the Act has been granted to the Government by the Legislature with a view to enabling it to regulate, control and promote the industries and industrial production in the country. Where the Government on the basis of the material available before it, bona fide, is satisfied that the "public interest" would be served by either granting exemption or by withdrawing, modifying or rescinding an exemption already granted, it should be allowed a free hand to do so...."

12. Mr. Maninder Singh has also placed reliance on Shrijee Sales Corporation and Another Vs. Union of India (UOI), . In this case the Court observed as under:-

"(1) The determination of applicability of promissory estoppel against public authority/Government hinges upon balance of equity or "public interest".

(2) It is the Court which has to determine whether the Government should be exempt from the liability of the "promise" or "representation".

13. The Court further held that "However, in the present case, there is a supervening public interest and hence it should not be mandatory for the Government to give a notice before withdrawing the exemption."

14. Mr. Maninder Singh also placed reliance on Union of India and Others Vs. Indian Charge Chrome and Another, . In this case their Lordships of the Supreme Court observed that what was given in the public interest can also be curtailed in the public interest. Individual interest must yield in favor of societal interest. The petitioners who have challenged the validity of the amendment of the Notification on the ground of invidious discrimination but there is no plea raised that formation of opinion as to the public interest was based on no material or vitiated by mala fides.

15. We have heard the learned counsel for the parties at length. We have also carefully perused the judgments cited at the bar. Mr. Haksar, learned Senior Counsel for the petitioners confined challenge to the aspect of public interest in the Notification dated 21.10.1982. Accordingly, our findings in this judgment are confined to this aspect only.

16. The Court have consistently taken the view that the public interest is

inherent in issuance and withdrawal of the Notifications. The public interest is the dominant factor in issuance and withdrawal of the Notifications. What is given in the public interest can also be taken away in the public interest. Every action of the government is presumed to be in the public interest unless contrary is proved. The petitioners have failed to demonstrate that the Notification dated 21.10.1982 was not issued in the public interest. The submission of the petitioners is totally misconceived and has to be rejected.

17. The writ petition is accordingly dismissed with costs.