

(1986) 09 GUJ CK 0021

In the Gujarat High Court

Case No : Spl. Civil Application No. 3912 of 1986

M.R. Bhansali and Co. and Another

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 08-09-1986

Acts Referred:

Constitution of India, 1950 — Article 226
Imports and Exports (Control) Act, 1947 — Section 3(2)

Citation : AIR 1987 Guj 172

Hon'ble Judges : P.R. Gokulakrishnan, C.J;R.A. Mehta, J

Bench : Division Bench

Advocate : Prakash Narain and Mohit S. Shah, for the Appellant; Hamid Qureshi, Sr. Central Govt. Standing Counsel, for the Respondent

Judgement

Gokulakrishnan, C.J.—This Special Civil Application is to quash the show cause notices dt. 21-7-1986 which are Annexures "L" and "M" to this Special Civil Application. There is a further prayer for issue of a writ of mandamus directing the respondents "to clear the petitioners" consignment covered by the indent Annexures "G" and "H" to this petition and against the subsidiary additional licence, the details of which are given in Annexure "B" to this petition. Apart from these main prayers, the petitioner has asked for temporary relief for the purpose of getting the goods consigned released. Before admission, we issued notice to the respondents and Mr. Qureshi, the learned Senior Central Government Standing Counsel, appeared on behalf of the respondents after taking notice.

2. The short facts of the case that the petitioners, on the strength of the import licence for the purpose of importing crude palm kernel oil and crude palm stearin for industrial purposes, imported those oil. It arrived on 15-6-1986. On 16-6-1986, they filed the bill of entry. On 21-7-1986, the petitioners received the show cause notices which are Annexures "L" and "M" which are being impugned in this Special Civil Application. By the show cause notice which is Annexure "L",

the Deputy Collector of Customs, Kandla called upon the petitioners to show cause to the Collector, Customs and Central Excise, Rajkot within 30 days of the receipt of the said notice as to why the importation of the impugned consignment of 1946.475 MTs. of goods declared to be crude palm stearin in bulk of quantity and CIF valued at Rs. 53,89,864.39 should not be held in contravention of S. 3(2) of the Imports and Exports (Control) Act, 1947, read with S. 11 of the Customs Act, 1962, and as to why a penalty should not be imposed on them under S. 111(d). It is averred in the said notice that as per the endorsement made on the licences, that the licences in question are not valid for import of goods which have been banned in the Import and Export Policy, Volume 1, 1985-88 whereas the commodity palm stearin which appears at serial No. 9 (VIII) of Appendix 5, Part B of Import Policy AM 85-88 and is" therefore, banned for import by individuals other than the S.T.C. of India Limited and, therefore, apparently cannot be imported under cover of aforesaid additional licences. The notice, after extracting the Supreme Court judgment dt. 15-5-1986 in the matter of Civil Appeal No. 664 of 1986 : (reported in AIR 1985 SC 1567) which states :

"xxx as held by this Court in its judgment dt. 5th Mar., 1986, holders of additional licences are entitled to import only those goods which are included in Appendix 6, List 8, Part 11 of Import Policy AM 85-88 xxx"

stated that the ratio of this decision of the Hon"ble Supreme Court of India is directly applicable in respect of the aforesaid additional licences also. Consequently, the notice proceeded, it appears that these additional licences are valid for import of only those items which appear in Appendix 6, List 8, Part 11 of Import Policy AM 85-88. The notice clearly stated that the palm stearin does not appear in Appendix 6, List 8, Part 11 of the Import Policy AM 85-88 and as such it cannot be imported under the cover of additional licences.

3. Annexure "M" is another show cause notice which is impugned in this Special Civil Application and it called upon the petitioners to show cause to the Collector, Customs and Central Excise, Rajkot, within 30 days of the receipt of the said notice as to why the importation of the impugned consignment of 508.793 MTs. of goods declared to be crude palm kernel oil totally valued at Rs. 15,24,803.82 (CIF) should not be held to be in contravention of provisions of S. 3(2) of the Imports and Exports (Control) Act, 1947 read with S. 11 of the Customs Act, 1962, and as to why the aforesaid goods should not, therefore, be confiscated under S. 111(d) of the Customs Act, 1962, and as to why a penalty should not be imposed on them under S. 112 of the Customs act. The said show cause notice, inter alia, states that the endorsement made on the licences given to the petitioners is to the effect that the licences in question are not valid for import of goods which have been banned in the Import and Export Policy, Volume I of 1985 ,88. It further states that the commodity palm kernel oil appears at Serial No. 9(VII) of Appendix 5, Part B of Import Policy AM 85-88 and, is therefore, banned for import by individuals other than the S.T.C. of India Limited and, therefore, apparently cannot be imported under the cover of the aforesaid

additional licences. Even in this show cause notice, the Supreme Court decision rendered in Civil Appeal No. 664 of 1986, dt. 15-5-1986 : (reported in Indo Afghan Chambers of Commerce and Another Vs. Union of India (UOI) and Others, was referred and after referring the same the notice states that the licences are valid for import of only those items which appear in Appendix 6, List 8, Part 11 of Import Policy AM 85-88 and since palm kernel oil does not appear in Appendix 6, List 8, Part 11 of Import Policy AM 85-88, the same cannot be imported under the cover of the aforesaid additional licences.

4. In this case the licences were issued subject to this conditions imposed or deemed to be imposed as per Cl.5 of the Imports (control) Order, 1955 dt. 7-12-1955. However, conditions covered by Clause 5(I)(iii) of the imports (Control) Order, 1955 will not apply unless otherwise expressed to the contrary on this licence. On 17-3-1986, the Joint Chief Controller of Imports and Exports, issued necessary letter to the petitioners to import these goods. It is further stated by the petitioners that in the Open House Meeting held on 3-4-1986, it was again clarified that these goods can be imported by the petitioners. The petitioners further state that the Government of India, by its Circular dt. 23rd April, 1986, stated as follows :

"xxx The Chief Controller of Imports and Exports has since written to say, in consultation with the Additional Solicitor General that canalized items would not be covered within the purview of this judgment and that such license holders would be allowed to import canalized items against this license."

It is the case of the petitioners that by virtue of these clarifications, the petitioners entered into a firm contract with the foreign merchants on 29-4-1986 and 2-5-1986 and opened two Letters of Credit on 7-5-1986 for a sum of Rest. 75/- lacs. Accordingly, the goods arrived on 15-6-1986 and on 16-6-1986 and the bill of entry was filed. It is also the case of the petitioners, that on 14-5-1986, Principal Collector of Customs, Bombay gave a clarification that these types of articles can be imported. It is at that" point of time, the said two impugned notices DT. 21-7- 1986 were issued. Questioning the said notices, the present Special Civil Application has been filed.

5. Mr. Prakash Narain, the learned counsel appearing for the petitioners, after repeating the above said particulars, contended that the Government is estopped by doctrine of promissory estoppel in refusing permission to import the above said goods, after having allowed the same to be imported by giving the licences and also clarifying the position on various stages for the purposes of importing these goods. The next contention advanced by the learned counsel is that any adjudication proceedings by virtue of the show cause notices will be only an eye-wash since the authorities have made up their mind to confiscate the goods and impose penalty. It is next contended by the learned counsel that the Supreme Court decision referred in show cause notices cannot in any way affect the licences issued for import of these goods as per para. 176 of Import Policy for 1978-79 in view of subsequent clarification by the Supreme Court on the very

same subject.

6. Mr. Qureshi, the learned counsel appearing for the respondents, contended that the Supreme Court decisions clearly bars the petitioners from importing the goods in question since those goods are not included in Appendix 6, List 8, Part 11 of Import Policy AM 85-88. Both the learned counsel further submit that the various directions given by the Supreme Court on this subject are now being considered by a larger Bench and Mr. Qureshi, therefore, submits that as such the petitioners must be directed to submit their explanation to the show cause notices issued to the authorities concerned. The learned counsel further submits that this Court cannot, at this stage, interfere with the show cause notices issued by the authorities concerned and the Supreme Court in the decision in Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others, has deprecated the interference by the Court at the stage of show cause notice. According to Mr. Qureshi, the petitioners can As well put forth all these contentions before the authorities concerned in answer to the show cause notices and the authorities will consider all the issues dispassionately in accordance with the decision of the Supreme Court.

7. We have carefully gone through the various submissions made by the respective counsel appearing for the parties herein. Annexure "A" to the Special Civil Application, which is the licence in issue for the purpose of import of these goods, no doubt is issued as per the Import Policy for 1978-79, but the said licence is issued subject to the condition that :

"This licence is issued subject to the conditions imposed or deemed to be imposed as per Clause 5 of the Imports (Control) Order, 1955 dt. 7-12-1955. However, conditions covered by Clause 5(I)(iii) of the Imports (Control)". Order, 1955 will not apply unless otherwise expressed to the contrary on this licence."

The petitioners should factually satisfy the authorities concerned that subsequent ban in the Import Policy for 1985-88 will not in any way affect the license issued in respect of the entitlement got by the petitioners as per the Import Policy for 1978-79. This is issued as per pat-A 176 of the Import Policy for 1978-79 AM. No doubt, the Supreme Court in Civil Appeal No. 1423 of 1984 directed the authorities concerned in identical matters to issue the necessary Export House Certificates for the year 1978-79 after observing that :

"Save and except items which are specifically banned under the prevalent import policy at the time of import, the respondents shall be entitled to import all other items whether canalised or otherwise in accordance with the relevant rules."

The respondents in their show cause notices have made reference to the decision rendered by the Supreme Court in Civil Appeal No. 664 of 1986 dt. 15-5-1986: (reported in Indo Afghan Chambers of Commerce and Another Vs. Union of India (UOI) and Others, wherein the Supreme Court has stated that the holders of additional licences are entitled to import only those goods which are included in Appendix 6, List 8, Part 11 of Import Policy AM 1985-88. Mr. Prakash Narain also

produced the Circular issued by the Office of the Chief Controller of Imports and Exports, Ministry of Commerce, Udyog Bhawan, New Delhi, dt. 18-6-1986 wherein it is stated :

"The Supreme Court of India has observed in its judgment in Writ Petition No. 199 of 1986 and the Civil Appeal No. 4 of 1986 that the holders of additional licences issued for 1978-79 Policy shall be entitled to import only those goods which are included in Appendix "6", Part 11 of AM 85-88." (This judgment rendered in W.P. 199/86 is reported in Indo Afghan Chambers of Commerce and Another Vs. Union of India (UOI) and Others, .

In view of these judgments, the respondents in the show cause notices observed that the additional licences issued in favour of the petitioners are valid for import of only those items which appear in Appendix 6, List 8, Part 11 of Import Policy AM 85-88 and that Palm Stearin and Kernel Oil are, not found in the said Appendix. Apart from these judgments of the Supreme Court, our notice was drawn to the judgment rendered in Civil Appeal No. 4978 of 1985 dt. 5th Mar., 1986: (reported in Raj Parkash Chemicals Ltd. and Another Vs. Union of India (UOI) and Others, . This judgment, after referring to the order in Civil Appeal No. 1423 of 1984 wherein it is stated that:

"Save and except items which are specifically banned under the prevalent import policy at the time of import, the respondents shall be entitled to import all other items whether canalised or otherwise in accordance with the relevant rules,"

observed that :

"There is no dispute that the diamond exporters enjoying the benefit of the order are entitled to the issue of Export House Certificates under the Import Policy 1978-79 and to the facilities flowing from such grant. There can also be no dispute that the consideration whether the items sought to be imported by such diamond exporters are canalised cannot act as an impediment to the import directly by them.

The Supreme Court also observed that:

"The terms in which the order (dt) April 18, 1985) has been made appear simple on the surface, and yet as the range and depth of the contentions at the Bar have demonstrated, they embody a certain complexity."

It proceeded to hold that :

"It seems to us that when the word "banned" was used, it was intended to take in items which were banned altogether as well as items which were banned for import by the holder of an Additional Licence."

Nevertheless the Supreme Court in this judgment finally observed that the diamond exporters, who, pursuant to the issue of Additional Licences under the Import Policy 1978-79, have opened and established irrevocable Letters of Credit on or after Oct. 18, 1985, will not be entitled to the benefit of this order.

Admittedly in this case, the Letter of Credit was opened on 7-5-1986 only.

8. Mr. Qureshi, the learned counsel appearing for the Central Government, also brought to our notice that the various judgments of the Supreme Court on this subject are before a larger Bench of the Supreme Court and the matter will be disposed of within a short period. Whatever it may be, the petitioners can put forth all these contentions with the relevant facts before the authorities concerned in response to the show cause notices issued which are Annexures "L" and "M" to this Special Civil Application. We are not able to appreciate the argument of Mr. Prakash Narain, the learned counsel appearing for the petitioners, to the effect that the adjudication proceedings is an eye-wash. We are definite and hopeful that the authorities constituted for the purpose of adjudicating all these disputes will act fairly and justly and will take into consideration all the relevant materials before it decides the issue in dispute.

9. Mr. Qureshi has also brought to our notice the decision in Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others, for the proposition that this Court cannot interfere by way of writ proceedings under Art. 226 of the Constitution when especially the parties concerned can give their explanation to the show cause notice and convince the authorities concerned with regard to the legality of the import made by the petitioners herein. In this decision, the Supreme Court observed that when the Act provides for a complete machinery to challenge an order of assessment, the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Art. 226 of the Constitution. The Supreme Court further held that it is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. We are in complete agreement with this submission made by Mr. Qureshi.

10. Mr. Prakash Narain submitted that, the goods which have been imported at an enormous cost of nearly Rs. 72/- lakhs will be lying idle, thereby causing huge loss to the petitioners by way of interest and demurrage charges, if they are not released forth with. Mr. Qureshi, the learned counsel appearing for the respondents, fairly stated that though the Letter of Indent described the value as Rs. 72/- lakhs, the goods are much more worth than the same and putting the figure modestly at Rs. 1 /- crore 20 lakhs, the petitioners can have the release of the goods by furnishing bank guarantee for Rs. 60/- lakhs and depositing a further sum of Rs. 60/- lakhs in cash. The teamed counsel, after pointing out Ss. 112 and 125 of the Customs Act, submitted that penalty to the extent of 5 times the value of the goods can also be imposed. The figure suggested by Mr. Qureshi, in our opinion, seems to be a reasonable one. Mr. Qureshi further made a concession by stating that the Revenue will be agreeable if the petitioners furnish Bank Guarantee for Rs. 60/- lakhs and get half of the goods released and then deposit a sum of Rs. 60/- lakhs for releasing the other half. We are definite that the Revenue will stand by these concessions made by Mr. Qureshi, the learned

counsel appearing for the respondents, in case the petitioners approach the respondents concerned for release of these goods pending disposal of the adjudication on the show cause notices issued.

11. From the foregoing discussions we have made, we are of the view that the present Special Civil Application cannot be entertained when especially the petitioners have effective and efficacious remedy before the authorities concerned to get the appropriate relief after showing cause to the show cause notices issued. In these circumstances, this Special Civil Application is dismissed.

12. Application Dismissed.