

(1989) 08 BOM CK 0029
In the Bombay High Court
Case No : Writ Petition No. 842 of 1983

Narendra Mafatlal Mehta

APPELLANT

Vs

Chief Controller of Imps. and Exps

RESPONDENT

Date of Decision : 10-08-1989

Acts Referred:

Citation : (1989) 25 ECR 91 : (1989) 44 ELT 36

Hon'ble Judges : S.P. Bharucha, J

Bench : Single Bench

Judgement

1. The petitioner had filed an earlier writ petition in this court being O.O.C.J. Misc. Petition No. 1458 of 1979. It was made absolute by Pendse J. on 26th November 1982. He directed the respondents "to issue to the petitioner the Export House Certificate under the Import Policy April 1978-March 1979 within a period of one month from today. The grant Export House Certificate would entitle the petitioner to seek certain facilities as provided by paragraph 174 of the Scheme". The scheme that was referred to was the scheme for the registration of export houses provided for by Chapter XIX of the Import Policy April 1978 to March, 1979.

2. The petitioner was furnished with the requisite export house certificate. In terms thereof, he applied for the issue of an additional licence. On 18th January 1983 the additional licence was issued, but under the 1982-83 policy. The petitioner protested and asked for the correction of the licence so that it should be valid under the 1978-79 policy. By an amendment made on 28th February 1983 the licence was made valid under the 1978-79 policy.

3. On 9th March 1983 the 3rd respondent issued to the petitioner a notice to show-cause why action should not be taken to amend the licence because, according to the show-cause notice, by oversight it had been amended to be operative for the 1978-79 policy. The petitioner showed cause and made reference to the directions given by this court. The petitioner thereafter filed this writ petition. The petitioner was then served with an order passed by the 3rd

respondent on 26th March 1983 amending the licence by substituting the words "AM-79" by the words "AM-83". In the order the 3rd respondent noted that this court had specifically directed that the export house certificate should be issued in terms of AM-79 policy. The 3rd respondent, however, observed that this court had not given any specific direction that the facilities available consequent to the issue of such an export house certificate should be granted. To allow the petitioner an additional licence for import of items permissible during the AM-79 licensing period. The petition was amended to impugn the 3rd respondent's order. At the stage of granting the amendment and interim relief I observed that the Pendse J.'s order stated that the petitioner would be entitled to seek facilities under para 174 of the AM-79 policy. It was, therefore not open to the respondents to confer facilities under any other policy. If there were difficulties in granting facilities under the AM-79 policy, this should have been brought to the notice of the learned judge or the matter should have been carried higher. Neither had been done.

4. Neither has been done upto now. It is regrettable that the 3rd respondent should have read the order of this court in a manner that frustrated. The action of the 3rd respondent in issuing the show-cause notice and in passing the order is indefensible.

5. In a result, the show-cause notice dated 9th March 1983 and the order thereon dated 26th March 1983 are quashed and set aside.

6. The respondents shall pay to the petitioner the costs of the petition.