(1991) 10 BOM CK 0054

In the Bombay High Court

Case No : Appeal No. 743 of 1988 in Writ Petition No. 1877 of 1984

Narendra Mafatlal Mehta APPELLANT

Vs

Union of India, CCI and E and Another RESPONDENT

Date of Decision : 22-10-1991

Acts Referred:

Citation : (1992) 41 ECR 603

Hon'ble Judges : S.P. Bharucha, J;N.D. Vyas, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

N.D. Vyas, J.—The present appeal is preferred from the judgment and order of the learned Single Judge dismissing the appellant''s petition.

2. A very short question arises in this appeal for determination. Therefore, we arc referring to a few relevant facts only. The appellant carries on business of importing rough diamonds and exporting cut and polished diamonds in the name and style of Messrs. N. Mehta and Company. The said firm was declared an Export House and ii entered into a contract with its foreign buyer for export of polished diamonds. The said contract was registered with the 3rd respondent herein on 17th March 1981. On the basis of the exports effected in December 1983 under the said registered contract, an application was made to the 3rd respondent by the said firm for the issuance of replenishment licence under paragraph 8 of Appendix 20 of Import Policy for 1980-81. On 26th March 1984 replenishment licence was issued. The licence was forwarded by the said firm to the 3rd respondent on 21st May 1984 for endorsement in terms of paragraph 8 of Appendix 20 of Import Policy for 1980-81. The licence was returned duly endorsed. The endorsements were: "(1) based on contract No. ZD/PGN/EXP/RE/39/21 dated 26th February 1981, and (2) not eligible for the facility of import of items which arc under OGL on the date of contract" After having failed to have the second condition deleted by the 3rd respondent, Writ Petition No. 1877 Of 1984 was filed challenging the endorsement of the additional condition, viz., the

second condition. It is the admitted position that the said firm has utilized the licence for the import of rough diamonds as per the first endorsement.

3. Before we deal with the submissions made on behalf of the appellant, it is necessary to set out the relevant provisions of Appendix 20 of the Import Policy 1980-81:

7.(1) Where a contract registered under the scheme contains a specific clause permitting variation in delivery schedule, protection of benefit will be available to supplies made after the expiry of the original delivery schedule stipulated in the contract also, provided the extension of delivery is covered by the contract and there is no other change in the terms of the contract registered. The extension of delivery period in such cases need not be registered with the bank.

(2) Where a contract registered under the policy docs not contain any clause permitting variation in delivery schedule, protection of benefit will be available to supplies made after the expiry of the delivery schedule also, provided such extension in delivery schedule is applied for by the buyer and agreed to by the seller before the expiry of the original delivery schedule and there is no change in the other terms of the contract. The extension in delivery schedule in such cases should be registered with the bank within 45 days from the dale of buyer''s acceptance to such extension.

(3) The provisions in this paragraph will be subject to conditions prescribed in para 9(1) below.

8. Against contracts registered under the scheme, a Registered Exporter will be eligible to claim import replenishment at the same rate and for the same items as were permissible on the date of contract, under the relevent import policy for Registered Exporters. If the rate/items of replenishment, as per the policy in force on the date of contract, arc different from those on the date of export, he may claim the benefit as on either date only i.e., both the rate and items must relate to the same date.

9. (1) The benefits of registration under the scheme will be available for the execution of the concerned contract only up to the time-limits set down below as from the date of contract:

(a) Turnkey Projects as defined in paragraph 152 of the Import Policy, 1979-80, and exports of Capital Goods of the nature specified in Annexure I hereto: Upto the completion of the contract.

(b) Exports of engineering goods other than those covered by (a) above: Upto three years.

(c) Exports of goods other than those covered by (a) and (b) above: Upto one year.

(2) The above limits will apply only to contracts entered into on or after 1 -5-1979 and registered in accordance with the prescribed procedure.

4. It is submitted by the learned Counsel for the appellant that despite the fact that the export was affected in December 1983 which was beyond the period of one year prescribed under paragraph 9(1) of the said Policy, the appellant was entitled to avail of the benefit of the Registered Contract Scheme. In support of this submission, the learned Counsel argued that once an export contract fell under either paragraph 7(1) or paragraph 7(2), paragraph 9(1) will have no application and, therefore, the appellant was entitled to the benefit of the scheme.

5. We arc unable to accept the above submission. To accept such submission would mean that we have to ignore the cardinal rule of interpretation, viz., to give full effect to the plain and simple language of the provisions relating to the said scheme, which we do not wish to do. If one reads paragraphs 7,8 and 9 of the said Appendix, it is crystal clear that paragraph 9(1) controls paragraph 7 to the extent of the period prescribed under paragraph 9, Even paragraph 7(3) says that the provisions in paragraph 7 would be subject to the conditions prescribed in paragraph 9(1). Thus, on the basis of the interpretation of these provisions, the above submission is rejected.

6. The learned Counsel further submitted that although the order dated 14th August 1984 refusing to delete the condition No. 2 did not give any reasons, the same was supplied only by way of affidavit-in-reply to the petition and this cannot be permitted in law. The case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, , was cited in support of this submission. In our opinion, in the facts of the present case before us, where it is purely a question of interpreting the provisions of the said Appendix 20 and finding out whether the appellant was entitled to the benefits of the said scheme, it is hardly necessary to see what was said in the order passed or subsequently. For the reasons mentioned above, the submission of the learned Counsel is also rejected.

7. In the result, the judgment and order of the learned Single Judge is confirmed and the appeal is dismissed. There will be no order as to costs in the circumstances of the case.