(1988) 04 BOM CK 0016

In the Bombay High Court

Case No : Writ Petition No. 1877 of 1984

Narendra Mafatlal Mehta APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 21-04-1988

Acts Referred:

Citation : (1988) 37 ELT 493

Hon'ble Judges : Sujata V. Manohar, J

Bench : Single Bench

Judgement

Mrs. Sujata Manohar, J.—The petitioner carries on business, inter alia, of importing rough diamonds and exporting cut and polished diamonds in the name and style of Messrs N. Mehta & Co. The petitioner entered into a contract dated 21-1-1981 with a foreign purchaser for export of cut and finished diamonds. This contract was registered with the Bank of Baroda on 26-2-1981 as per the provisions of the Import Policy for the period April, 1980 to March, 1981. During the currency of this period the petitioner had an Export House Certificate. This Certificate expired on 30-6-1982.

2. The petitioner effected exports under the Registered contract in December, 1983. On 18-1-1984 the petitioner applied for REP Licence with a request that he should be given the benefit of Import Policy 1980-81. REP Licence was issued on the basis of registered contract to the petitioner on 26-3-1984. Since the licence did not contain an endorsement that it was based on the registered contract of 26-2-1981, the petitioner on 21-5-1984 applied for endorsement on the licence to that effect. This endorsement was granted on 5-6-1984. The endorsement contained 2 terms which are as follows :

"1) BASED ON CONTRACT NO. ZD/PGN/EXP/Re/39/21, DT. 26-2-1981.

2) NOT ELIGIBLE FOR THE FACILITY OF IMPORT OF ITEMS WHICH ARE UNDER OGL ON THE DATE OF CONTRACT."

3. The petitioner has utilised the licence for import of rough diamonds as per Condition (1) of the endorsement, that is to say, on the basis of rates under the 1980-81 Import Policy. In the present petition he has challenged the endorsement of Condition No. 2 on the licence. It is his submission that in view of the relevant provisions of the Import Policy of 1980-81, the endorsement of second condition is not valid.

4. Appendix 20 of the Import Policy 1980-81 contains the provisions for registration of contracts. Under paragraph 8 it is provided as follows :

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 relevant import policy for Registered Exporters. If the rate/items of replenishment, as per the policy in force on the date of contract, are 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.

5. In view of paragraph (8) in respect of registered contracts, the petitioner was entitled to claim import replenishment at the same rate and for the same items as were permissible on the date of the contract or on the date of the export. He has exercised the first option.

6. Now on the date of the contract the petitioner was an Export House. Chapter 18 of Import Policy 1980-81 contains the provisions relating to Export Houses. Paragraph 174 in the Chapter deals with import facilities available to Export Houses. Paragraph 174, sub-clause (v) is as follows :

174. Export Houses will be granted the following facilities under this policy :

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(v) REP licences issued to Export Houses on their own exports will be valid for import of raw materials, components and spares as are open to Actual Users under Open General Licence, without debit to the value of such REP licences, provided the value of such imports does not exceed the value of the REP licence. However, the raw materials and components thus imported will be disposed of by Export Houses only to eligible Actual Users.

REP licence to the petitioner as an Export House was, therefore, valid for import of raw materials, Components and spares as were open to the actual users under Open General Licence, provided the value of such imports did not exceed the value of REP Licence. In view of this provision, the respondents were not entitled to endorse the second condition on the licence stating that the petitioner was not eligible for the facility of import of items which are under OGL on the date of contract.

7. It is, however, contended by the respondents that both the endorsements ought not to have been made on the licence at all because in order to get the

benefit of registered contract under the import policy of 1980-81, such registered contract has to comply with the conditions which are specified in Appendix 20 of the Import Policy 1980-81. Under paragraph 7 of Appendix 20 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 scheduled stipulated in the contract, provided such extension of delivery is covered by the contract itself and there are no other changes in the terms of the contract registered. According to the petitioner, the contract did contain a permission to vary the scheduled delivery. Paragraph 7(3) however provides that the provisions of that paragraph are subject to conditions of para 9(1). Para 9(1) is as follows :

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

The exports of the petitioner fall under sub-clause (c). The petitioner was, therefore, required to execute the contract within one year in order to get benefit of registration under the 1980-81 Scheme of Appendix 20. Even assuming that this period of one year refers to the policy year 1981-82, the petitioner has not effected exports within this period. He effected exports only in December, 1983. Under para 9(1) therefore the petitioner could not have obtained the benefit of import policy of 1980-81.

8. The respondents, however, have not given any satisfactory explanation as to why they made endorsements which they did. Initially the respondents took a stand that the second endorsement was made pursuant to a Policy Division Circular dated 20-3-1981 issued by the Office of the Joint Chief Controller of Imports and Exports, Bombay instructing the officers of the Respondents at Bombay to make such an endorsement. A mechanical imposition of such a condition without examining the relevant provisions of the Import Policy 1980-81 in the case of the petitioner was not warranted. The respondents have now filed an affidavit of Suneeta Shantaram Karkhanis, ad-hoc Controller of Imports and Exports who had issued the said licence and made the endorsements. The only explanation she has given is that she made the endorsements only after verifying from the export Promotion Policy Section that the contract was registered. She did not verify the position as to whether the contract registered in 1981 could be given the benefit of Import Policy of 1980-81 even when the exports were made in December, 1983. This is a somewhat surprising statement coming from a person holding the post of ad-hoc Controller of Imports and Exports.

9. The petitioner has furnished 18 import licences issued to Registered Exporters where according to him the benefit of import policy of 1980-81 was granted even though the exports were effected after more than one year. It is also pointed out that the second condition is not endorsed on any of these licences.

10. In respect of endorsement, however, made on the import licences so

produced the Respondents have pointed out that these licences have been issued by their offices outside Bombay and they do not have particulars in respect of those licences. It is also pointed out that most of these licences pertain to engineering goods. Export of such goods is allowed upto a period of 3 years under para 9(1). For goods which are exported under Turn-key Projects export is allowed upto the completion of the contract. It seems that most of the exports under these licences are within a period of less than 3 years. In the absence of any further material it is not possible to say that the respondents have consistently not insisted on compliance with para 9(1) of Appendix 20 of Import Policy for the period 1980-81. In fact the respondents are bound to carry out the terms of their policy.

11. There is no doubt that if the petitioner was entitled to the first endorsement, the second condition should not have been endorsed on the licence in view of the provisions of the Import Policy 1980-81. The petitioner, however, was not entitled to the benefit of the registered contract as he had exported goods under the contract more than a year after the date of the contract. In this situation, no relief can be granted to the petitioner in respect of the second condition which is endorsed on the licence.

12. Mr. Devdhar, learned Counsel for the respondents, submitted that they should be permitted to delete even the first endorsement. Respondents have not given any satisfactory explanation as to how these endorsements came to be made. Initially they stated that the endorsements were made in view of the policy circular. Now the ad-hoc Controller of Imports and Exports, who made the endorsement, says that she made them without verifying the factual position. Be that as it may, on account of the endorsement the petitioner has already imported goods under the licence some years back on the basis of the first endorsement. There is no reason why he should now be penalised for the carelessness or inadvertence on the part of the officers of the respondents. Respondents are, in these circumstances, estopped from going back on the first condition which is endorsed on the licence since the petitioner has availed himself of that endorsement.

13. In the circumstances, the rule is discharged. The respondents are directed not to cancel the first endorsement.

14. There will be no order as to costs in the circumstances of the case.

