(2002) 12 BOM CK 0119

In the Bombay High Court

Case No : Writ Petition No''s. 2759-2761, 2425-2428, 3563, 2045-2046, 2081, 3562, 187, 1550, 1588, 2080, 2982, 2985, 3561 of 1989 and 2763, 2526, 2762 of 1993

Narendra Mafatlal Mehta — APPELLANT

Vs

Union of India (UOI) — RESPONDENT

Date of Decision : 09-12-2002

Acts Referred:
Constitution of India, 1950 — Article 19(1), 300A

Citation : (2004) 115 ECR 748 : (2004) 169 ELT 9

Hon'ble Judges : V.C. Daga, J;J.P. Devadhar, J

Bench : Division Bench

Advocate : V.S. Nankani and N.M. Shah, for the Appellant; A.J. Rana, S.M. Shah, N.V. Masurkar, K.R. Chaudhari, S.V. Bharucha, H.V. Mehta, T.C. Kaushik and V.H Kantharia, for the Respondent

Judgement

Vijay C. Daga, J.—In this group of petitions, the issue raised is common and hence all these petitions are disposed of by a common judgment. Since the facts in all these petitions are more or less similar, for the sake of convenience in this judgment, we have dealt with the facts pertaining to Writ Petition No. 2760 of 1989 and the decision in that petition will apply to all other petitions.

2. The Petitioners in Writ Petition No. 2760 of 1989 had purchased various REP licences issued under the Import and Export Policy April 1985-March 1988 (''AM 88 policy'' for short) for valuable consideration. There is no dispute that the transfer of these REP licences in favour of the Petitioners are valid and that the said licences were valid for a part of the period falling under Import and Export Policy April 1988-March 1991 (''AM 91 policy'' for short). After the AM 91 policy came into force with effect from 1-4-1988, the Petitioners by their letter dated 22-6-1989 requested the Respondent/licensing authorities to endorse the transferred licenses under Para 186 (1) of the AM 91 policy, so as to enable them to avail the flexibility to the extent permissible under the AM 91 policy. By the impugned letter dated 17-7-1989 the licensing authorities informed the

Petitioners that in view of Para 188 of the AM 91 policy the Petitioners are not entitled to seek any endorsement on those transferred licences issued under the AM 88 policy. Challenging the said letter/decision, the present petition has been filed.

3. Mr. Nankani, learned Counsel appearing on behalf of the Petitioners submitted that on the AM 91 policy coming into force with effect from 1-4-1988, in terms of Para 186 (1) of AM 91 policy, the Petitioners were entitled to seek endorsement on unutilised REP licences issued under AM 88 policy. Para 186 (1) of AM 91 policy reads as under :

"186(1) In case of exports prior to 1-4-1988, or where REP applications have not been disposed of by 31st March of the preceding licensing year against which the licence is to be issued on or after 1st day of the licensing year, the rate of import replenishment, will be as admissible on the date of export, but items of import (including face value restrictions thereon, if any) will be as permissible under the Import and Export Policy, for the licensing year."

According to the learned Counsel, Para 186 (1) of AM 91 policy applies to two types of cases, first, where exports were effected prior to 1-4-1988 or second where REP application made under AM 88 policy have not been disposed of by 31-3-1988. According to him, use of the word ''or'' in Para 186(1) of AM 91 policy is significant because it clearly postulates that both the aforesaid conditions are not required to be fulfilled for seeking endorsement under Para 186(1) of AM 91 policy. In other words, the submission was that on all the subsisting REP licences issued under AM 88 policy, endorsement under Para 186 (1) of AM 91 policy was available if the first condition of Para 186 (1) was fulfilled viz. on 31-3-1988. It was submitted that when the AM 91 policy came into force, the REP licences purchased by the Petitioners (issued under AM 88 policy) were valid and subsisting and to the extent the licence was unutilised, the Petitioners were entitled to seek endorsement under Para 186(1) of the AM 91 policy. Referring to various policy provisions of AM 88 policy and AM 91 policy, it was submitted that in all the REP licences issued under AM 88 policy, the exports were effected prior to 1-4-1988 and, therefore, the first condition under Para 186(1) of AM 91 policy being satisfied the Petitioners were entitled to the endorsement under Para 186(1) so as to avail the flexibility of import replenishment permissible under AM 91 policy. It was submitted that the rejection of the Petitioners application for endorsement, without, giving any opportunity of hearing to the Petitioners was in gross violation of the principles of natural justice. It was submitted that denial of endorsement under Para 186(1) of AM 91 policy was wholly arbitrary, illegal and in violation of the fundamental rights guaranteed under Article 19(1)(g) and 300A of the Constitution of India. Alternatively, it was submitted that in the event this Court holds that the Petitioners are not entitled to the endorsement under Para 186(1) of AM 91 policy, then and in that event the REP licences held by the Petitioners be revalidated so as to enable the Petitioners to avail the benefit available on the unutilised portion of those licences which had lapsed due to efflux of time.

4 Mr. Rana, learned Senior Counsel appearing on behalf of the Respondents, on the other hand, taking up the alternate plea of the Petitioners first, submitted that the licensing period is always from April of one year to March of the subsequent year. He submitted that the validity period of the licensing policy should not be mixed up with the validity period of the licence issued under the policy. He submitted that the licence granted under a policy will not entitle the holder of that licence for the benefits under the subsequent policy unless specifically permitted. Mr. Rana submitted that under AM 88 policy, there was no provision for revalidation of the licence and once the licence expires, it lapses for all purposes, and the licence holder cannot utilise that licence. Once the licence holder has allowed the licence to lapse, there is no provision under the Import Policy for revalidating the lapsed licence.

5. Mr. Rana, then submitted that the construction of Para 186(1) of AM 91 policy put forth by the Petitioners was totally erroneous. According to him, Para 186(1) of AM 91 policy was only a transitional arrangement to protect the interests of those exporters who effected exports during the transitional period and was applicable only to such cases where, (i) the exports were effected immediately prior to 1-4-1988 (For example where exports effected on 29-3-1988, but the exporter could not apply for REP entitlement under AM 88 policy till 31-3-1988 either on the ground that the offices of the licensing authority were closed or for any other valid reason), or (ii) cases where exports were effected prior to 1-4-1988 and application for REP entitlement under AM 88 policy was made, but the said application was not disposed of by the licensing authorities till 31-3-1988. It was submitted that the exports effected much prior to 1-4-1988, and REP entitlement permissible under AM 88 policy pursuant to such exports have been applied and granted cannot be said to be the exports effected during the transitional period. It was submitted that in the instant case, the licences acquired by the Petitioners were issued on the basis of exports effected prior to 1-4-1988 and hence seeking endorsement of Para 186(1) of AM 91 policy on the said licences issued under AM 88 policy did not arise at all. Mr. Rana submitted that under Para 188 of AM 91 policy there was complete bar from making any endorsement on the REP licences issued under AM 88 policy save and except to the extent what is already endorsed on those licences under the AM 88 policy. Under the circumstances, it was submitted that the licensing authorities were justified in rejecting the application of the Petitioners.

6. Having heard the Counsel on both sides and having perused the records placed before us, we are of the opinion that the Para 186(1) of AM 91 policy is applicable only to those cases where the exports are effected during the transitional period, for which REP entitlement under AM 88 policy has not been granted. The very heading Transitional Arrangement'' set out before Para 186 (1) of AM 91 policy makes it abundantly clear that the Para 186(1) of AM 91 policy is applicable to all the export effected during the transitional period and is not

applicable to all exports effected prior 1-4-1988 for which REP entitlement under AM 88 policy has been granted. In other words, all exports made during the AM 88 policy for which requisite benefit available under AM 88 policy has already been granted, will not be eligible for the benefit of Para 186(1) of AM 91 policy and only those exports made during the transitional period for which benefits available under AM 88 policy have not been granted, will be entitled to the benefit of para 186 (1) of AM policy.

7. Para 186(1) of the AM 91 policy is aimed at protecting the interest of the exporters who have exported goods within the policy period of AM 88 policy but could not get benefit of REP entitlement available to them under the AM 88 policy on account of the said policy coming to an end on 31-3-1988. For example, if in the month of February-March 1988 exports were effected, but for some valid reason the exporter could not apply for REP entitlement available under AM 88 policy, or in cases where exports were made much prior to 1-4-1988 and even the application for REP entitlement was made in time, but the same was not disposed of by the licensing authorities, then, such exporters could not be deprived of their REP entitlement merely because the AM 88 policy came to an end on 31-3-1988. To cater to the needs of such exporters whose case fall within transitional period, Para 186(1) of AM 91 policy has been framed;

8. As rightly contended by Mr. Rana, learned Senior Counsel for the Respondents, Para 186(1) deals with the transitional arrangements, to protect the interests of the exporters who have made exports during AM 88 policy but could not get requisite REP licence under AM 88 policy. Endorsement under Para 186(1) of AM 91 policy is available only to such cases, where (i) the exports have been effected prior to 1-4-1988 under AM 88 policy, but, no application for REP entitlement could be made, before 1-4-1988, or (ii) cases where exports were effected prior to 1-4-1988 and REP applications were also made under AM 88 policy but the same have not been disposed of by 31-3-1988. We find force in the aforesaid submission of the learned Counsel for the Respondents. The contention of the Petitioners that all exports made prior to 1-4-1988 for which REP entitlement available under the AM 88 policy has been granted will automatically be entitled on their licence, endorsement of Para 186(1) of AM 91 policy cannot be accepted, because Para 186 (1) of AM 91 policy applies only to cases where exports were effected prior to 1-4-1988 but application for REP entitlement could not be made on or before 31-3-1988, or, cases where the REP applications made during the AM 88 policy were not disposed of by the licensing authorities by 31-3-1988. In our opinion, Para 186(1) of AM 91 policy does not apply to cases where pursuant to exports effected prior to 1-4-1988, the application for REP entitlement under AM 88 policy has been made and has been granted by the licencing authorities. In the instant, case, the licence purchased by the Petitioners was granted under AM .88 policy in view of exports made prior to 1-4-1988 and hence, there was no question of making any endorsement on it, under Para 186(1) of the AM 91 policy.

9. Para 186(1) read with Para 188 of AM 91 policy makes it further clear that the REP licenses issued under AM 88 policy are not eligible for any flexibility under AM 91 policy except to the extent already endorsed on the licence. Para 188 of AM 91 policy reads as under :

"188. REP licenses issued during the previous policy period shall not be allowed any flexibility except to the extent already endorsed on the licence."

It was contended on behalf of the Petitioners that there was no flexibility permissible under the AM 88 policy and therefore, Para 188 cannot be invoked while construing Para 186(1) of the AM 91 policy. As rightly pointed out by the Counsel for the Respondents, Para 204(3) of the AM 88 policy permits flexibility, may be, to a narrow class of manufacturers. The licences purchased by the Petitioners might or might not have been entitled to the endorsement under Para 204(3) of AM 88 policy. That is wholly irrelevant in the present case. All that the Para 188 of AM 91 policy states is that no endorsement under AM 91 policy will be permissible on REP licences issued under AM 88 policy. If there are any endorsements already made on the licence under the AM 88 policy, then the same are not effected as per Para 188 of AM 91 policy. Thus, the REP licences purchased by the Petitioners being issued under AM 88 policy, no endorsement under Para 186(1) of the AM 91 policy could be made so as to avail the flexibility permissible under the AM 91 policy.

10. In this view of the matter, we are of the opinion, that the licensing authorities were justified in refusing to make endorsement under Para 186(1) of AM 91 policy on the REP licences issued under AM 88 policy. We see no merit in the contention of the Petitioners that there has been any breach of the principles of natural justice in the instant case. As the Petitioners were not entitled to the endorsement under Para 186(1) of AM 91 policy there was no question of granting any personal hearing to the Petitioners. Moreover the Petitioners having barked upon a wrong tree for all these years and having allowed the said licences to lapse, cannot now seek revalidation of those licences which lapsed more than a decade ago. Having chosen not to avail the REP entitlement granted under the licence issued under AM 88 policy, the Petitioners cannot now seek revalidation of the licences. Thus, we reject the contention of the Petitioners for revalidation of their licences and uphold the orders impugned in all these petitions.

11. Accordingly, all these petitions fail. Rule stands discharged. However, there will be no order as to costs.

