
(1993) 06 BOM CK 0011

In the Bombay High Court

Case No : Writ Petition No. 2336 of 1983

Narendra Mafatlal Mehta

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 23-06-1993

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1993) 67 ELT 464

Hon'ble Judges : M.L. Pendse, J;A.P. Shah, J

Bench : Division Bench

Advocate : S.U. Kamdar, V.S. Nankani and N.M. Shah, for the Appellant; J.P. Deodhar, for the Respondent

Final Decision : Allowed

Judgement

M.L. Pendse, J.—The petitioner applied for export house certificate on June 21, 1978 in accordance with the requirement of Import-Export Policy of April 1978 to March 1979. The application made to the Chief Controller of Imports and Exports was rejected by order dated August 30, 1978 on the ground that the petitioner failed to diversify exports. The petitioner preferred Writ Petition No. 1458 of 1979 to this Court and by decision of one of us (Pendse, J.), reported in Narendra Mafatlal Mehta Vs. Union of India and another, , the respondents were directed to issue the requisite export house certificate.

2. In pursuance of the judgment, the respondents issued additional licence, but subsequently served a show cause notice on March 9, 1983 to explain why the licence should not be amended by deleting the advantage of being registered during the period of April 1978 and March 1979. The petitioner preferred Writ Petition No. 842 of 1983 to challenge the issuance of show cause notice and the petition was admitted and the proceedings in pursuance of show cause notice were stayed.

3. The petitioner thereafter opened letter of credit and goods imported arrived at

Calcutta port. The imported goods were crude rape-seed oil. The authorities declined to give clearance for home consumption on the ground that the import was unauthorized. The petitioner filed writ petition in Calcutta High Court to challenge the action of the respondents and the Calcutta High Court stayed show cause notice issued by the department and directed clearance of the goods on petitioner's furnishing a bank guarantee. It is not in dispute that the goods were cleared by the petitioner and disposed of.

4. The respondents served show cause notice dated September 24, 1983 upon the petitioner to explain why the imported goods i.e. rape-seed oil should not be diverted to the canalising agency i.e. State Trading Corporation. The show cause notice states that the import of rape-seed oil was not available under OGL but was canalised even during the year 1978-79 and therefore the import of the petitioner was unauthorised. The petitioner was called upon to show cause why the direction should not be issued to hand over the imported goods to the canalising agency. The show cause notice is under challenge in this petition filed under Article 226 of the Constitution. The petition was admitted and the proceedings of show cause were stayed.

5. Shri Kamdar, learned counsel appearing on behalf of the petitioner, submitted that the proceedings commenced by show cause notice has become redundant because the imported goods are already disposed of by the petitioner in pursuance of the order passed by the Calcutta High Court. The show cause notice issued by the respondents is merely for the purpose as to why the petitioner should not be directed to hand over the imported goods to canalising agency. As the direction no longer survives, the purpose of show cause notice has come to an end. We find considerable merit in the submission of the learned counsel. Shri Deodhar, learned counsel appearing for the department, submitted that the respondents should be permitted to complete enquiry commenced by show cause notice and pass appropriate adjudication order. We are not inclined to accede to the request as no fruitful purpose will be served by continuing the proceedings. The respondents cannot pass any order of adjudication when the goods are not available. In these circumstances, the impugned show cause notice is required to be quashed.

6. Accordingly, petition succeeds and rule is made absolute in terms of prayer (b). In the circumstances of the case, there will be no order as to costs.