
(1986) 01 DEL CK 0010
In the Delhi High Court
Case No : C.W.P. No. 659/85

Nath Bros. Exim International Ltd.

APPELLANT

Vs

Chief Controller

RESPONDENT

Date of Decision : 02-01-1986

Acts Referred:

Citation : (1989) 42 ELT 528

Hon'ble Judges : S.B. Wad, J

Bench : Single Bench

Advocate : L.C. Goyle, for the Appellant; None, for the Respondent

Judgement

S.B. Wad, J.—The short question for determination in this writ petition is whether the petitioner is entitled to Export House Certificate in the capacity of "Manufacturer Exporter-SSI" for the year 1984-85.

2. The petitioner company was initially only an exporter of the readymade garments and had a certificate as an Export House. They started manufacturing the readymade garments (and exporting them) from the year 1981. Initially, they had a provisional certificate for registration as a small scale industrial unit from the Director of Industries, U.P., up to November 1982. The said certificate was renewed from time to time. A permanent certificate was issued in favor of the petitioners as an S.S.I. Unit by the Director of Industries, U.P. on 20th June, 1984.

3. The petitioners applied for an Export House license as Manufacturers for the year 1984-85. On 21st June, 1984, the Chief Controller of Imports and Exports rejected the petitioners application on the ground that the certificate from the Director of Industries was a provisional certificate and its validity was only up to 13th November, 1982. The Chief Controller of Imports and Exports held that the application of the petitioners could be considered only as an application for the renewal of the Certificate under Para 180 and not as an application for a fresh certificate under Para 176 of the Export Policy - The Chief Controller of Imports

and Exports further informed that as the growth rate of 20% as required by Para 180(2) of the Import Policy was not achieved by the petitioner, the Export House Certificate could not be renewed in their favor. In reply to the said letter, the petitioner informed the Chief Controller of Imports and Exports on June. 25, 1984, that- the permanent registration certificate bearing No. 20/56/01035/PNT/855/12 dated 20-6-1984 was issued by the Director of Industries, U.P. Photo copies of the said permanent registration certificate were also annexed with the letter. This letter was not replied by the Chief Controller of Imports and Exports. The petitioner made a number of representations including the one to the Minister of Commerce. Thereafter, on 28th February, 1985 the Deputy Chief Controller of Imports and Exports, acting for the Chief Controller of Imports and Exports, informed the petitioner that his representation to the Minister of Commerce was considered and rejected because he had failed to achieve the growth rate of 20 per cent as required under Para 180(2) of the Import Policy. He was also informed that his application could be considered only as an application for renewal of the Export House Certificate. It may be noted that even in this letter the fact that the petitioner had already obtained the permanent certificate as a small scale industrial unit from the Director of Industries, U.P. was neither considered nor even adverted to. Under these circumstances, the petitioner has filed the present petition.

4. Prayer (B) in the petition is for directing the first respondent to grant the petitioner an Export House Certificate in the capacity of "Manufacturer Exporter-SSI Unit" for the year 1984-85. Prayers (C), (D) and (E) are for the consequential benefits and reliefs to which the holder of the Certificate is entitled according to the relevant Import-Export Policy. Prayer (A) is for quashing the impugned orders dated 21st June, 1984 and 26th February, 1985.

5. To encourage exports for earning the foreign exchange, so badly needed by the country, special provisions are made in the Export Policy. It may be illustrated from Chapter 18 to the 1984-85 policy. The objective of the scheme for registration of Export Houses and grant of special facilities to them was to strengthen their negotiating capacity in foreign trade and to build up more enduring relationship between them and their supporting manufacturers. The exporters may be merely trading in the commodities manufactured by other manufacturers. So far as the export promotion and earning of foreign exchange is concerned, the concern of the Government was to encourage exports by giving some special facilities. The reading of the subsequent paragraphs of Chapter 18 will make it clear that the benefits of the special facilities were not restricted only to the non-manufacturing exporters. What was crucial for the nation's economy was speeding up of the exports and to earn additional foreign exchange. It was, Therefore, not the intention of the policy makers that the exporters-manufacturers should be at a disadvantage as compared to the exporters who were merely traders, buying the goods from other manufacturers. Paragraph 176 of the Import Policy expressly recognises the entitlement of the manufacturers to Export House Certificates. The eligibility criteria is laid down by Paragraph 176 of

the Import Policy. It is an admitted position that readymade garments is a "select product" in terms of Appendix 16. In sub-clause (b) of sub-para (2) of Para 176 of the Import Policy, it is laid down that the prescribed minimum of the annual average FOB value of exports shall be only Rs. 50 lakhs and Rs. 2 crores respectively in the case of a small scale industrial unit, registered with the concerned Director of Industries before 1-4-1984 or a consortium of small scale units. It may be noted that so far as the small scale industrial units were concerned, the annual requirement of the Policy was that the export of the manufacturing exporter must be at least Rs. 50 lakhs. Sub-clause (c) of sub-para (2) of Para 176 of the Import Policy further liberalised the requirement by providing that the export in each one of the three years covering the prescribed base period will have to be at least 10 per cent of the exports in the preceding year. Reading of Para 176 makes it clear that the manufacturer in select products, who is also an exporter is entitled to the Export House Certificate with the consequential special facilities provided the limits of exports as laid down are satisfied. In Para 14 of the writ petition, the petitioner has given the figures of (manufacture and) export for the preceding three years. They are :-

-1981-82 Rs. 1,01,10,218 -1982-83 Rs. 59,42,932 -1983-84 Rs. 78,14,082

6. In reply to the said para, the respondents have admitted the said figures of manufacture and export. In Paras 10 and 11 of the writ petition, the petitioner had referred to its registration as a small scale industrial unit with the Director of Industries, U.P. from 1981 onwards and the permanent registration certificate issued in its favor by the Director of Industries, U.P. on 28-6-84. In reply to Para 10, the respondents have admitted that the provisional certificate issued by the Director of Industries, U.P. was extended from time to time. In reply to Para 11, the respondents have stated that no reply was needed. It would thus be seen that the factual requirement of eligibility under Para 176 on the admission of the respondents themselves, stands satisfied and the petitioners are entitled to the Export House Certificate in the capacity of Manufacturer Exporter.

7. In their first letter of rejection dated 21st June, 1984, the Chief Controller of Imports and Exports had only stated that the S.S.I. certificate in favor of the petitioner had expired on 13-11-1982 and had certified them as "non-Manufacturers" on that date. This letter was in reply to the correspondence carried on by the petitioner ending with letter dated 11-6-1984. The Chief Controller of Imports and Exports, however, ignored the fact that the said registration certificate was being renewed and was, in fact, renewed for a period of six months. The last such renewal of the registration certificate was done up to May 1984 and a permanent certificate was issued in June, 1984. However, immediately after the receipt of the letter, the photostat copy of the permanent registration certificate was sent to the Chief Controller of Imports and Exports. For reasons best known to the respondents, the said permanent registration certificate was ignored and in fact, the export house certificate was denied to the petitioner. Similarly, in the letter dated 28th Feb., 1985 the Chief Controller of

Imports and Exports ignored the fact of the permanent registration certificate issued in favor of the petitioner by the Director of Industries, U.P. The said letters of the respondents, dated 25-6-1984 and 28-2-1985 are illegal and void for the obvious reason of excluding from the consideration the valuable and decisive piece of evidence, viz. The permanent registration certificate dated 20-6-84. If this certificate was considered by the respondents, there was no alternative but to issue the exporter certificate to the petitioner in their capacity as the manufacturer exporter.

8. There is another reason as to why the said two impugned orders/decisions are invalid in law. The authorities proceeded on the wrong assumption that the petitioner was not manufacturer and, proceeded to consider their application as if it was an application for renewal of the Export House Certificate. The authorities wrongly proceeded to apply Para 180 of the Import and Export Policy to the facts of the case. The requirements of Para 180 of the Import and Export Policy are expressly applicable where an application for renewal is made by person holding export house certificates valid up to 30-6-1984 or up to 30-6-1983 or up to 30-6-1982. The requirement for such renewal is that the exporter must show the annual average growth of at least 20 per cent in the prescribed base period or in the immediately preceding year. The reason for this requirement is quite obvious. If special concessions are to be obtained by the exporters who are only traders, they must demonstrate that they are making special efforts for export promotion and earning in at least 20 per cent more foreign exchange. The authorities went wrong in taking the petitioner's application as an application for renewal and then insisting on the conditions imposed by Para 180 of the Policy. The reasons given in the order dated 28-2-85 that the Export House Scheme will get defeated if the applicants do not fulfill the growth criterion and come up for a fresh grant of export house certificate on the basis of the minimum prescribed limit is completely mis-conceived. The reason ignores the other provisions of Chapter 18 and particularly, the provisions of Para 176. The benefit of the scheme for export house as envisaged in Chapter 18 cannot be restricted or cut down by putting an interpretation on the provisions of Chapter 18 which is contrary to its own objective. If the reasoning of the authorities is to be taken to its logical end, it will mean that the special scheme is announced by the authorities for the benefit of only the traders exporters. In other words, the exporter so long as he is a trader, will be entitled to the special facilities and not where he takes the further trouble of manufacturing the articles which are to be exported. The object of the scheme as envisaged in Chapter 18 is to strengthen the negotiating capacity in foreign trade and to build up a more enduring relationship with the foreign counterparts. It can be derived that the trader who has to rely on a number of manufacturers for his supply will not be in as strong a position as the manufacturer for strengthening the negotiating capacity and for building up more enduring relationship in foreign trade. The manufacturer will be able to control and increase his production and, Therefore, the exports, and such a person would have more stable and better negotiating capacity with their foreign

counterparts. A sustained trade relationship would be possible more where the exporter is himself a manufacturer. The reasons stated in the two impugned orders of the respondents are wholly irrelevant and not germane to the Scheme of Chapter 18. This is also the reason for the impugned orders being bad in law.

9. For the reasons stated above, the impugned orders dated 21-6-1984 and 28-2-1985 are invalid and are quashed. The Petitioner satisfies the requirements of Para 176 of the Import-Export Policy of the Year 1984-85. Respondent No. 1, the Chief Controller of Imports and Exports is directed to issue an Export House Certificate to the petitioner in the capacity of "Manufacturer Exporter-SSI Unit" for the year 1984-85 if there is no impediment or bar or any other condition as required by law or the relevant import and export policy. The petition is allowed with costs. Counsel fee is Rs. 1.000/-.