(1985) 08 BOM CK 0030

In the Bombay High Court

Case No : Writ Petition No. 2477 of 1984

P. Ripalkumar and Co. APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 20-08-1985

Acts Referred:

Citation : (1992) 38 ECR 625

Hon'ble Judges : S.C. Pratap, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.C. Pratap, J.—The petitioners are registered exporters and at the relevant lime held a valid export house certificate. On the basis of the Import Export Policy April-March 1982-83 (for short, the AM 83 Policy), they applied for an imprest licence. The same was issued for the c.i.f. value of Rs. 28,17,321/- for the import of diamonds, unset and uncut, against which the petitioners had to effect exports of a total f.o.b. value of Rs. 43,34,340/-. Pursuant thereto, they imported diamonds, unset and uncut, and also fulfilled their export obligation imposed on the imprest licence. In proof or recognition thereof, they applied for and were given redemption certificate.

2. The petitioners then, in accordance with the express terms of paragraph 185(4) (reproduced below) of the AM 83 Policy, applied for revalidation of the licence and O.G.L. endorsement thereon:

185(4)

The facility for import of OGL items available in sub-para (3) above, may also be allowed, on merits, to Export Houses against their advance/imprest licences on account of which they are rendered ineligible to obtain REP licence. In such cases, however, the value up to which the OGL import may be allowed, will not exceed the value to which the Export House would have been eligible to the REP licence, had he not obtained advance/imprest licence in question. This facility will be available to the Export House after he has discharged the export obligation imposed on the advance/imprest licence. Therefore, if by the time, the Export House becomes eligible to this facility, the advance/imprest licence has expired, or, if the original validity left unused by that time is less than six months, the licensing authority will revalidate the licence simultaneously so as to give to the licence-holder a time'' of six months for the purpose of importing OGL items under this facility.

The application was, however, rejected on three grounds:

(a) The imprest licence is not valid;

(b) There is no balance available in the customs copy of the licence; and

(c) There is no provision in the AM 84 Policy Book enabling the endorsement of the imprest licence.

Hence this petition.

3. Before moving on, it needs to be stated that Writ Petition No. 1465 of 1984 similar hereto, challenging rejection of a similar application on the same three grounds as aforesaid, was allowed by a learned Single Judge of this Court. Appeal No. 232 of 1985 therefrom was dismissed by a Division Bench holding:

It is not disputed that the said certificate was in accordance with the policy as then existed and if it is so, we see no reason to reject the revalidation as applied for by the respondents...the entitlement and benefit accrued to the respondents under the valid licence cannot be denied merely on the ground that the policy has undergone a change in the subsequent year.

Special leave petition therefrom was dismissed by the Supreme Court on 19th July 1985 with the observation that there was no

...point of substance which is required to be considered in this case.

The above decisions, on identical challenge as here, squarely govern the instant case. And, as the rule of precedent goes, these bind us all. Therefore, without anything more, the similar impugned rejection of the petitioners'' application is liable to be set aside with appropriate directions for revalidation and O.G.L. endorsement.

20th August. 1985

4. However, for the respondents, a new contention not urged before the learned Single Judge in the earlier matter supra and for the first time urged in appeal before the Division Bench and thereafter before the Supreme Court but not permitted to be raised and kept open, is now advanced here and is, therefore, required to be considered. This contention-and the only contention to which the controversy now stands reduced-is based on the AM 83 Policy paragraph 185(7) which, to the extent relevant, provides thus:

Import of OGL items by Export Houses under these provisions shall be subject to the condition, inter alia, that the shipment of goods shall take place within the validity of the OGL i.e. 31st March 1983 or within the validity period of the import licence itself (without any grace period), whichever date is earlier.

Relying solely on this paragraph 185(7), submission is that if the benefits accruing under paragraph 185(4) are not availed of by 31st March 1983, the last date of AM 83 Policy, the same cannot be obtained thereafter. The datum-line is 31st March 1983. That gone or passed by, the said benefits stand ipso facto extinguished or revoked. Paragraph 185(4) is hereafter referred to as p. 185/4 and paragraph 185(7) is hereafter referred to as p. 185/7.

5. Proceeding then to consider p. 184/4 and p. 185/7, it would be seen that-

(a) p. 185/4 specially provides for and deals with a particular class of cases while p. 185/7 is general;

(b) p. 185/4 expressly envisages expiry of licence and, therefore, its revalidation thereafter, while under p. 185/7, the date 31st March 1983 once crossed, the chapter stands closed;

(c) p. 185/4 gives its own time schedule which, by the very exigencies involved is, as it has to be, flexible and fluctuating, while p. 185/7, on the other hand, has a rigid and fixed time frame.

6. The two, viz., p. 185/4 and p. 185/7, do not, therefore, stand together but stand apart. Yet, each must nevertheless be given effect. The need, therefore, for harmonious construction. And reconciliation is the key thereto. If a general provision runs inconsistent with a particular provision, the latter would not thereby cease to operate but, by the rule of harmonious construction, the general must be taken to effect or apply to those categories not covered by the particular. P. 185/7 would, therefore, be subject to p. 185/4. To put differently, p. 185/4 is an exception to p. 185/7. The embargo in general under p. 185/7 would not, therefore apply to a case under p. 185/4 which has its own self-contained scheme with its own inbuilt mechanism for its effectiveness. And, indeed, there are good reasons for this special mechanism under this particular provision p. 185/4. A normal replenishment licence can be forthwith availed of. Not so with an imprest licence. Again, in a given case, an imprest licence may be issued say in January or February, nay, even March of the policy period ending 31st March. The holder thereof has to (i) first import; (ii) then fulfil his export obligation; (iii) thereafter apply for and obtain redemption certificate; (iv) then obtain O.G.L. endorsement; and (v) then effect O.G.L. import accordingly. In a given case, it may be an uphill, nay, an almost impossible task, to complete this process by 31st March. It is not without sound reason, therefore, that p. 185/4 itself positively contemplates that in this interregnum and rigmarole, an imprest licence may as well expire; and precisely, therefore, it provides for revalidation thereof.

7. Construing otherwise, the emerging position may as well result in unintended consequences negativing the benign, object of p. 185/4 and stultifying its full effect. A judicial interpretation should not whittle down or rupture an otherwise benevolent foreign exchange earning scheme. Rather, it, that is to say, judicial interpretation is expected to be geared to the fulfilment of such scheme for the benefit of the State and, therefore, the country at large as also those willing to stand by its terms and conditions. Besides, justice and fair play demand that one who has on merits been issued an imprest licence and who has then fulfilled his export obligation thereunder and earned foreign exchange so vital to the country, does not thereafter find the door closed on him when he seeks the honestly earned and well-deserved fruits thereof.

8. Mr. Joshi, learned Counsel for the respondents, submitted that the petitioners were not entitled to relief because of delay. It is not possible to agree. After the redemption certificate of 16th November 1983, application for revalidation and O.GJL. endorsement was made within four months therefrom on 12th March 1984. There is, in the circumstances, no such delay as to warrant its rejection on that ground. The contention thus fails and is rejected.

9. In the result, this petition succeeds and the. same is allowed.

(a) The impugned order dated 15th March 1984 (Exhibit D) is set aside and quashed.

(b) The respondents are directed to:

(i) revalidate for a period of six months from the date of revalidation the petitioners'' imprest licence; and

(ii) endorse the said licence to be valid for import of O.G.L. items under paragraph 185 (excluding sub-para 7 thereof) of the AM 83 Policy except any item the import of which has been specifically banned under the current policy.

(c) This licence will be non-transferable.

10. Rule is made absolute in terms aforesaid but, in the circumstances, with no order as to costs.

11. At the request of the respondents'' learned Counsel Mr. R.J. Joshi, final orders on this petition are stayed till and inclusive of 25th September 1985. Thereafter and unless in the meanwhile these orders are further stayed, the respondents will comply therewith within a period of three weeks therefrom.