(1991) 07 BOM CK 0046

In the Bombay High Court

Case No : Writ Petition No. 1635 of 1991

P.J. Pipes and Vessels Ltd. — APPELLANT

Vs

Union of India — RESPONDENT

Date of Decision : 02-07-1991

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1992) 40 ECR 32 : (1991) 56 ELT 40

Hon'ble Judges : M.L. Pendse, J;A.V. Savant, J

Bench : Division Bench

Advocate : Shri T.R. Andhyarujina, Mr. Gopal Subramaniam and K.R. Bulchandani, for the Appellant; Shri C.J. Shah and Shri K.C. Sidhwa, for the Respondent

Judgement

Pendse, J.—By this petition filed under Article 226 of the Constitution of India, the petitioners are challenging legality of order dated March 21, 1991 passed by Deputy Chief Controller of Imports and Exports in exercise of powers under Clause 8-B of Imports (Control) Order, 1955. By the impugned order, it is directed that the grant of licence to the petitioners and allotment of imported goods to the petitioners should be kept in abeyance for a period of six months from the date of issuance of abeyance order. The order recites that pending investigation into the allegation of mis-utilisation of goods imported against Special Imprest and Advance Licences, it is in the public interest not to issue to the said firm any import licenses/CCPs or to allow allotment/delivery of imported goods through any other canalising agency. The power under Clause 8-B can be exercised without obtaining further details in regard to the circumstances under which mis-utilisation took place.

2. Shri Andhyarujina, learned Counsel appearing on behalf of the petitioners, submitted that drastic powers under Clause 8-B are exercised without there being any material whatsoever available with the Deputy Chief Controller. The petition was lodged on 26-4-1991 prior to the closure of the Court for Summer

Vacation but was taken for admission and interim relief during vacation. In the Vacation, the petitioners secured certain ad-interim reliefs and directions were given to the respondents to file return. When the petition was placed before us on 27-6-1991, We found that the return was not filed on behalf on the respondents and, therefore, we directed the counsel for the respondents that the name of the Officer who is concerned with the file should be disclosed, as we propose to write an order holding him guilty for negligence and communicate the order to the Central Govt. There upon, the Counsel for the respondents sought time and has now filed affidavit sworn by Sh. R. K. Goyal, Deputy Chief Controller of Imports and Exports. The perusal of the return makes it clear that the exercise of power under Clause 8-B was perfectly in order and the grievance of the petitioner is entirely misconceived.

3. Clause 8-B enables the Chief Controller of Imports and Exports to keep in abeyance grant of licence or allotment of imported goods without assigning any reason and without prejudice to any other action that may be taken, provided the Chief Controller is satisfied that without ascertaining further details in regard to such allegation, the grant of licence or allotment of imported goods will not be in the public interest. The return sets out that investigation prima facie revealed that the petitioners had obtained two Special Imprest Licences on May 2, 1989 and July 27, 1989 by misrepresenting about requirement of H.R. Stainless Steel Plates. The return further reveals that the entire quantity of imported H.R. Stainless Steel Plates were not, at all, utilised in the manufacture of end products in the petitioners'' factory but sold it in an illegal manner in contravention of the conditions of the licence in Black Market. The Affidavit further claims that the petitioners have not utilised a single plate out of the plates imported and sold about 547 MTs. of the Steel Plates imported duty free in violation of conditions of Licences and the Import Policy. The return further mentions that as part of the conspiracy, the petitioners requested in July-August 1990 for permission to dispose of the imported goods just to gain huge illegal benefits. The return unmistakably established what was revealed from the investigation carried out by the Chief Controller of Imports and Exports and prima facie, makes it clear that the dealings of the petitioners in respect of the licences are not clean. In these circumstances, the exercise of powers to keep in abeyance the grant of licence and allotment of imported goods cannot be faulted with.

4. Shri Andhyarujina made a brave attempt to urge that the action of the petitioner is bona fide and the petitioner had sought permission to dispose of the imported goods. He also claimed that the goods were sold in the market at a loss and that too only to pay off the loans taken from the Nationalised Banks. The learned Counsel urged that the Customs duty has been paid and even if there is any amount still left outstanding, the petitioners are willing to pay the same. None of the submission impressed us because it is not the assertion of the petitioners about their bona fide conduct but the satisfaction of the Chief Controller of Imports and Exports which is relevant to ascertain whether the exercise of powers under Clause 8-B was justified. On the strength of material

disclosed in the return, we refuse to exercise our discretion under Article 226 of the Constitution of India and disturb the order. Clause 8-B provides that abeyance order can remain in operation only for duration of six months and we are not inclined to disturb the said order, when prima facie we are satisfied that the conduct of the petitioners is not aboveboard.

5. Accordingly, petition is summarily dismissed and all the ad-interim orders stand vacated.

