(1994) 03 BOM CK 0049

In the Bombay High Court

Case No : Writ Petition No. 1495 of 1986

Popular Colour Lab Pvt. Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 04-03-1994

Acts Referred:

Citation : (1994) ECR 92 : (1994) 72 ELT 29 : (1994) 2 MhLj 1433

Hon'ble Judges : V.A. Mohta, J;S.M. Jhunjhunwala, J;I.G. Shah, J

Bench : Full Bench

Advocate : Shri Nitin R. Kantawala, instructed by M/s. Kantawala and Co, for the Appellant; Shri L.S. Vyas and Shri R.H.V. Mehta, for the Respondent

Judgement

V.A. Mohta, J.—The common referred point for consideration by this full Bench is this batch of petitions is :-

"Whether regulations framed u/s 157 of the Customs Act can be termed as ''statute'' and whether doctrine of promissory estoppel can be evoked against such regulations ?"

2. All the Petitioners are dealers in photographic and other processes. They entered into contracts with manufactures of mini colour lab in Japan for import of sets of N. QSS. 603 with accessories and spare parts and opened irrevocable letters of credit for the price in Japanese Currency Yen. All this was complete much before 3rd April, 1986. Indeed the sets even left Japan shore before that date. The sets, however actually reached India subsequent to that date. The significance of the date 3rd April, 1986 is that the Project Import Regulations, 1986 made u/s 157 of the Customs Act (the Act were brought in force with effect from that date by Notification No. 230 of 1986 in supersession of the Project Imports (Registration of Contract) Regulations, 1965 made u/s 157 read with proviso to the entry in column No. 2 against Item 72A(i) of the First Schedule to the Indian Tariff Act, 1934. Prior to 28th February, 1986, customs duty was charged as per the rates mentioned against the Heading No. 86 of the First

Schedule to the Customs Tariff Act ''Boilers, Machinery, Mechanical appliances Parts thereof''. Sub-item No. 84.66 dealt with all items of machinery popularly known as ''Project Import''. As per regulations of 1965, it was necessary for every importer who wanted to claim the benefit thereunder to apply in writing for the registration of the contract before clearance of the goods and to give certain information as prescribed.

3. With effect from 28th February, 1986 the Tariff Entry No. 84.86 was recast by dropping the proviso and an independent Heading No. 98.01 attracting the same rate of duty, viz. 40% was made. The 1986 regulations applied for assessment and clearance of goods falling under Heading 98.01. Under those regulations, the term ''Industrial Plant'' has been specially defined as a result thereof the scope of entry relating to the project entry has been curtailed and it excluded from its scope the photographic film processing laboratories, film studios and certain other establishments. The benefit of Heading No. 98.01 was thus not applicable to the photographic machinery imported by the photographic processing laboratories, photographic studios and photocopying studios and the goods became assessable at higher rate under Heading 90.10. Chapter Note 2 of Chapter 98 says that the expression used in Heading No. 98.01 shall have the meaning assigned to them by the 1986 regulations. It may be mentioned that the expression "Industrial Plant" is not defined either under the Customs Act or the Customs Tariff Act which together form a near composite scheme.

4. Upon coming into force of the 1986 regulations the Customs Authorities refused to treat the photographic equipments imported thereafter as "Industrial Plant" falling under Heading No. 98.01 and sought to levy duty thereon under Heading No. 90.10. These actions/orders of the Customs Authorities and also the validity of the 1986 regulations were challenged in this Court by several importers on several grounds. One ground was that the 1986 regulations could not cut down the normal meaning of the expression "Industrial plant" specially when the photographic machinery was included in the expression under the old tariff and 1965 regulations and this position was affirmed by the Government by a letter, dated 4th November, 1983. According to the importers, the normal connotation could be curtailed only by the Act and not by a subordinate legislation like regulations and hence the regulations were outside the purview of Section 157 and were incompetent. In the case of Subhash Photographics Vs. Union of India, , this Court repelled the challenge. Aggrieved thereby, the Petitioners therein filed appeals in the Supreme Court which came to be dismissed by a common judgment which is reported in 1993 (66) E.L.T. - Subhash Photographic v. Union of India.

5. Some importers had also raised a contention invoking the principles of promissory estoppel that they had acted on the notification in force prior to 3rd April, 1986 and consequently could not be burdened with higher duty only because the goods arrived and were imported thereafter. Those petitions also failed and the said decision in Lazor Colour Prints Pvt. Ltd. Vs. Union of India, .

Substance of the view taken is that the doctrine could not be applied to the regulations which are a statute. These present writ petitions were also companion matters but were heard separately by another division bench which expressed doubt about the correctness of the view that the regulations were a statute taken in Subhash Photographic and Lazor Colour Prints (supra) and referred the question reproduced in the opining part of the judgment to a larger bench by an order, dated 5th November, 1992 Popular Colour Lab Pvt. Ltd. Vs. Union of India, .

6. Two grounds are common before us. One is that the doctrine of promissory estoppel does not operate against a statute and the other is that the rules framed u/s 156 of the Customs Act are statute. Our task has become easy in view of the following pronouncements of Supreme Court in appeal in the case of Subhash Photographic (supra).

"The Parliament has appointed two authorities i.e. Central Government and the Board to make rules/regulations to carry out the purposes of the Act generally. The character of Rules and of the Regulations made under Sections 156 and 157 respectively is the same - both constitute delegated legislation. The Regulations are subject to an additional limitation viz., they should not be contrary to the Rules made u/s 156. The purpose of sub-section (2) in both the sections is inter alia to allocate certain matters to each of them exclusively; subject to these sub-sections, both the delegates can exercise the power vested in them for carrying out the purposes of the Act. No established legislative practice of any considerable duration has been brought to our notice to read any further limitation into the regulation-making power u/s 157, assuming that a legislative practice can be read as a limitation. We cannot, therefore, accept the contention that regulation-making power u/s 157 should be confined only to be peripheral and/or procedural matters.

"It makes little difference in principle that while an exemption notification made u/s 157 are not so required. Absence of such requirement does not mean absence of control by the Parliament over the acts of the delegate."

In this connection provisions of Section 158 are most relevant. Not only are rules and regulations required to be published in the Official Gazette but they can provide for levy of fees and for imposing a penalty for their contravention or for failure to comply with them. No doubt, the maximum outer limit of the penalty under the rule is Rs. 500/- and in the case of Regulations it is Rs. 200/-, but that is besides the point. Under Article 20 of our Constitution, no one can be punished without authority of law. All these factors are clear indications that the regulations have a statutes of statute. It is not and cannot be the case of anyone that the subordinate legislation is not a statute.

7. As observed by the Supreme Court, character of the rules as well as regulations both is not different both being delegated legislation and hence if rule is a statute regulation is also a statute. Their purpose and ambit are no doubt

different since they operate within the specified areas. But that is hardly relevant. Only additional limitation put on the regulations by sub-section (1) of Section 157 is that they shall not be inconsistent not only with the Act but also with the rules. Source of power is contained in that sub-section (1) and not in sub-section (2) which only provides illustrations of the general powers conferred by sub-section (1) without exhaustions the subject in relation to which such powers can be exercised. The opening words "in particular and without prejudice to the generality of power" used in sub-section (2) are a pointer. This sub-section does not provide an exhaustive list of topics to be covered by the regulations and they are not confined merely to procedural or peripheral matters. They are a statute in their respective sphere. It is pertinent to notice that the regulations are framed by the "Board" which u/s 2(6) of the Customs Act means the Central Board of Excise and Customs constituted under the Central Board of Revenue Act, 1963. As observed by the Supreme Court in Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, - rules and regulations framed even by statutory Corporations have the force of law "there being no substantial difference between a rule and a regulation in as much as both are subordinate legislation under powers conferred by the statute". Requirement of laying the rules before the Parliament u/s 159 would make no difference for the purposes of judging their respective character. After all it is not a condition precedent for making them effective.

8. Learned counsel for the petitioner contended that the word "statute" is not defined anywhere, not even under the General Clauses Act and hence its common and dictionary meaning will have to be resorted to. Contention is correct. To put it shortly, statute means the will of the legislature. But this does not mean the will can be expressed only though the substantive act and not through a subordinate legislation.

9. It was submitted that the regulations are "instruments" and not the statute and there is a well recognised distinction between the statute and the instrument. In this context, our attention was drawn to the decision of the Supreme Court in the case of The Vishnu Pratap Sugar Works (P) Ltd. Vs. The Chief Inspector of Stamps, U.P., . The question in that case was whether the Court-Fees Act as applied to U.P. was an "instrument" as contemplated u/s 7(iv)(a) of the said Act. The Supreme Court held that it was not. The ratio of that decision does not advance the case of the Petitioners any further.

10. It was also contended by the learned counsel for the Petitioners that doctrine of promissory estoppel can be applied against exercise of executive power conferred upon the Government by a statute as held by Rajasthan High Court in the case of Union of India v. J.K. Industries Ltd. 1990 (49) E.L.T. 511. The principle is unquestionable but has no application. We are concerned with the provision in a regulation and not a Government decision. Reliance on decision of

Madras High Court in the case of Union of India v. Chakra Tyres Ltd. 1991 (32) E.L.T. 6 is equally misplaced. It was a case of withdrawal of exemption notification (even before its specified period) issued under the Rule 8(1) of the Central Excise Rules, 1944 and in that background the doctrine of promissory estoppel was held to be applicable to the said notification issued under a subordinate legislation.

11. One of the submission made before us by learned Counsel for the Respondents was that promissory estoppel is not applicable to any change in the policy decision of the Government. We find it difficult to accept a proposition as wide as this. All will depend upon the facts and circumstances of the case and the nature of the policy decision.

12. In our view therefore the view taken by the division bench in Lazor Colour Prints Pvt. Ltd. (supra) has correctly laid down the law that the doctrine of promissory estoppel cannot apply to the regulations in question. We may mention that to the same effect is the decision of Madras High Court in the case of Suresh Colour Labs Vs. Union of India, . Even on merits, it is pertinent to notice that the 1963 regulations were not for a stated period and hence it is not a case of premature withdrawal or supersession of those rules.

13. To conclude, we hold that the regulations are statute and doctrine of promissory estoppel cannot be evoked against them. In the result, the petitions are dismissed and rules discharged. No order as to costs.

14. At the request of Shri Kantawala, learned Counsel for the Petitioners, interim order continued for a further period of eight weeks. Certified copy expedited.

