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**(1994) 01 DEL CK 0020**  
**In the Delhi High Court**  
**Case No : C.W.P. No. 4811 of 1993**

Prashant Glass Works Pvt. Ltd.

APPELLANT

Vs

Collector of Customs

RESPONDENT

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**Date of Decision :** 31-01-1994

**Acts Referred:**

Customs Act, 1962 — Section 129D, 129D(2)

**Citation :** (1995) 77 ELT 844

**Hon'ble Judges :** Sunanda Bhandare, J

**Bench :** Single Bench

**Advocate :** M/s. V. Sridharan, A.R. Mahadev, Rao and B.P. Singh, for the Appellant; Shri V.K. Shali, for the Respondent

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## Judgement

1. Petitioner No. 1 a private limited company carries on the business of trading and manufacturing of silk cloth at Varanasi. Petitioner No. 2 is the Managing Director of petitioner No. 1 Company. For the purposes of this business, the petitioners import raw silk from the overseas market.

2. The respondents published the Import and Export policy for the period April 1990 to March 1993 (hereinafter referred to as the 1990 Policy) u/s 3 of the Imports and Exports (Control) Act, 1947. Under the 1990 Policy REP licenses/ Exim Scrips were issued against export of products. Under the 1990 Policy all goods save and except goods falling under prohibitive list were allowed to be imported against REP licenses/exim scrip. Silk was mentioned in [Appendix] 5 Part A and the same was allowed to be imported on REP licenses/Exim Scrip. REP licenses/Exim Scrip are transferable in the market and can be purchased and or sold in the open market. The petitioners purchased REP licenses/Exim Scrip for import of raw silk/tusser silk and entered into a contract on 14-12-1992 while Silk Korea Trading Corporation, Hongkong D.P.R. Korea for purchase of 7850 Kgs. Raw Silk 20/22 DENIER. The foreign seller supplied the goods on 28-12-1992 and after transshipment at Hongkong which was done sometime in June, 1993, the goods arrived at Delhi on 2-9-1993 through Bombay Port. In the meanwhile

in exercise of powers conferred u/s 3 of the Imports and Exports (Control) Act, 1947 the Central Government notified the Export and Import Policy for the period 1992-97 (hereinafter referred to as the 1992 Policy). This Policy came into effect from 1-4-1992. In the 1992 Policy silk was mentioned in the negative list and as such permitted to be imported only against a license. The goods imported by the petitioners as per the contract entered between the petitioners and the foreign seller on 14-12-1992 as mentioned hereinabove arrived at Delhi on 2-9-1993 through Bombay Port. The Bill of Entry for clearance of the said goods was filed by the petitioners on 3-9-1993 with Inland Container Depot, New Delhi. The Customs authorities however refused to make the assessment of the goods u/s 17 of the Customs Act. On 5-9-1993 when the representative of the petitioner visited the office of the Assistant Collector of Customs, I.C.D. New Delhi for release of the Bills of Entry filed by the petitioners he was informed that the Bills of Entry filed by the petitioner could not be cleared due to a clarification issued by the Director General of Foreign Trade, New Delhi. A copy of the circular dated 17-12-1992 issued by the respondent No. 3 was handed over to the representative of the petitioners. The circular purported to clarify the 1992 Policy. The petitioners having failed to get the goods released moved the present writ petition under Article 226 of the Constitution of India praying that the circular dated 17-12-1992 be quashed and direction be issued to the Customs Authorities to release the goods imported by the petitioners.

3. It was submitted by the learned counsel for the petitioners that the 1992 Policy itself has provided for the overlapping period and a transitional arrangement was made in respect of the licenses issued before the 1992 Policy came into effect. This transitional arrangement was required to be made because the traders who had purchased REP licenses/Exim Scrip from the market or exporters who had exported the goods would suffer a loss if Rep licenses/Exim Scrip became unusable because of the 1992 Policy. It was submitted that in Chapter I of the 1992 Policy it was stipulated that the licenses issued before the commencement of the 1992 Policy shall continue to be valid for import and export of items permitted there under. Thus, Silk which was allowed to be permitted under REP license Exim Scrip under the 1990 Policy could be imported during the commencement of the 1992 Policy. Learned counsel submitted that the petitioners had purchased the REP licenses/Exim Scrip before the impugned circular was issued and had also entered into the contract with the foreign seller before that date. It was submitted that the impugned circular cannot alter the 1992 Policy and clarification can be issued only in case of ambiguity. Since the 1992 Policy was unambiguous and clear, its meaning could not be altered or changed by way of a clarification.

4. Learned counsel for the respondents submitted that under the Act, 1992 Policy silk was put in the negative list and Therefore, import of raw silk could be done only under a license. The import of silk under REP license/Exim Scrip could not be permitted once the 1992 Policy was notified. Learned counsel submitted that the circular was issued only by way of the clarification of the 1992 Policy.

Learned counsel relied on the judgment of the Supreme Court in *D. Navinchandra and Co. and Others Vs. Union of India (UOI) and Others*, and submitted that an item can be imported under an old policy only if it is importable under the new existing policy and since silk was put under the negative list in the 1992 Policy the import of raw silk though done under the REP license/Exim Scrip purchased and contracted before the circular was issued, could not be allowed. Learned counsel further submitted that under the 1992 Policy any notification made or public notice issued or anything done under the previous Export Import policies would continue to be in force and would be deemed to have been made, issued or done under the new policy provided it was not inconsistent with the provisions of the new policy. Since the item of silk was put in the negative list, it being inconsistent with the existing policy import under the REP licenses/Exim Scrip could not be permitted.

5. It is not disputed that import of raw silk under the 1990 Policy was permitted under REP licenses/Exim Scrip. Thus, the petitioners would have been entitled to import raw silk which was then a canalised item through REP licenses/Exim Scrip. It is also not disputed that the petitioners purchased the REP licenses/Exim Scrip issued before the 1992 Policy was notified and imported the goods before the circular was issued on 17-12-1992. Raw Silk was not in the negative list in the 1990 Policy. It is also not disputed that under the 1992 Policy silk has been put in the negative list and import can be done only if license is granted by the respondents. The only short question, Therefore, for consideration is whether in terms of the 1992 Policy, import of raw silk could be done against REP licenses/Exim Scrip if REP licenses/Exim Scrip were issued while the 1990 Policy was in existence and operative.

6. At this stage it will be useful to reproduce Clause 4 of the 1992 Policy which was operative from 1-4-1992 to 31-3-1997. Clause 4 which deals with transitional arrangements reads thus.

"Any notification made or Public Notice issued or anything done under the previous Export-Import policies and in force immediately before the commencement of this Policy shall, in so far as they are not inconsistent with the provisions of the policy continue to be in force and shall be deemed to have been made, issued or done under this Policy. licenses issued before the commencement of this policy shall continue to be valid for import/export of the items permitted therein."

7. On a plain reading of Clause 4 of the 1992 Policy it is clear that the licenses issued before commencement of the 1992 Policy would continue to be valid for import/export of the items permitted there under. The transitional arrangement was necessary because of the overlapping period. The reliance placed by the respondents on the earlier portion of Clause 4 of the 1992 Policy is without any basis because it only refers to notifications and public notices issued under the previous policies which were in force immediately before the commencement of the 1992 [Policy]. Once the licenses were issued under the old Policy, the 1992

Policy itself by way of the transitional arrangement permitted import and export of items permitted in the old Policies. The Judgment of the Supreme Court cited by the learned counsel for the respondents does not help the respondents to support the circular issued by them in December, 1992. If there was no transitional arrangement specified in the 1992 Policy, undoubtedly, once the new Policy had come into force, import and export of items under the 1990 Policy could not have taken place once the items were put in the negative list. However, since the new Policy itself specified the transitional arrangement, the petitioner could import the item though on the negative list under the 1992 Policy itself under Clause 4. Undoubtedly, no circular can change the policy itself. By way of the clarificatory circular it appears that the respondents stopped the import made by the petitioners against REP licenses/Exim Scrip issued under the 1990 Policy though the import [that] was covered under Clause 4 of the 1992 Policy. From the averments made by the parties in the petition and the counter-affidavit it also appears that this circular was never gazetted whereas the petitioners entered into a contract against REP licenses/Exim Scrip on the basis of the transitional arrangement specified in the new Policy itself before the circular was issued. The circular being contrary to the 1992 Policy itself cannot stand the scrutiny of law.

8. Under the circumstances the writ petition is allowed. The impugned circular dated 17th December, 1992 is quashed. The respondents are directed to forthwith release the goods covered under the Bills of lading - Annexures C to the writ petition - upon payment of customs duty against REP licenses/Exim Scrip. No costs.