
(2004) 01 P&H CK 0096
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2116 of 2002

Prince Rubber Industries

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 19-01-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 115 ECR 227 : (2004) 168 ELT 308

Hon'ble Judges : S.S. Nijjar, J; S.S. Grewal, J

Bench : Division Bench

Advocate : Salil Sagar, for the Appellant; Anand Chhibar, for the Respondent

Final Decision : Allowed

Judgement

S.S. Nijjar, J.—We have heard the learned Counsel for the parties at length and perused the paper-book.

2. With the consent of the Counsel for the parties, the writ petition is taken up for final hearing.

3. The petitioner seeks the issuance of a writ in the nature of Certiorari quashing the impugned order, dated 23-2-2001 (Annexure P-1) by which the claim of the petitioner for incentives in terms of Circular No. 11/93, dated 5-5-93 have been denied to the petitioner. The petitioner also seeks a writ in the nature of mandamus directing the respondents to release the grant of 8% Cash Compulsory Support premium against the advance import licences. In accordance with the aforesaid Circular along with interest at the rate of 18% per annum.

4. It is not disputed that Government of India Respondent No. 1 issued Circular, dated 5-5-1993 in order to provide facility in allowing exporters to meet the competitive international market, and gave the concession by introducing a scheme of granting 8% cash amount equivalent to their unutilised import licences issued before 1-3-1993. The incentive was available subject to fulfilment

of certain conditions contained in the scheme as stipulated in Circular No. 11 of 1993, dated 5-5-1993 (hereinafter referred to as "the 1993 Scheme"). The petitioner being fully eligible made the necessary application on 26-7-1993 to Respondent No. 2 through Respondent No. 3. Advance import licences, dated 25-9-91 and 7-10-91 were granted to the petitioner by Respondent No. 3. The petitioner had annexed all the necessary documents along with the application. The application of the petitioner was duly forwarded by Respondent No. 3 to Respondent No. 2 when no action was taken by Respondent No. 2 on the claim of the petitioner Respondent No. 3 addressed the letter, dated 17-9-1996 to Respondent No. 2. By letter, dated 23-2-2001, Respondent No. 2 has rejected the claim of the petitioner with the following observations :-

"Subject: Grant of 8% premium on advance licence as per REP Circular No. 11/93, dated 5-5-93.

Sir,

I am to refer to your letter No. ADV/LIC/AM92/812, dated 3-1-2001 on the above-mentioned subject and state that the matter has been considered in consultation with our Policy Division but it is regretted that your claim cannot be allowed at this stage as the scheme, which was funded by Reserve Bank of India has been closed since 1994. Only cases covered under Policy Circular No. 4/96 can be considered which include cases where there were Court orders or where appeal has been allowed by the Appellate Authority.

Yours faithfully, Sd/- M.K.Parimoo Dy. Director General of Foreign Trade for Director General of Foreign Trade".

5. Having considered the entire matter, we are of the opinion that the aforesaid order is wholly arbitrary and cannot be sustained. The application had been made by the petitioner during the stipulated period. It was duly forwarded to the competent authority. The respondents failed to take necessary action on the application filed by the petitioner. The inaction on the part of the respondents is not deciding the case of the petitioner cannot now be permitted to be used as a justification for denying the legal claim of the petitioner. The only ground on which the claim of the petitioner has been rejected is that it cannot be allowed at this stage of the scheme which was funded by the Reserve Bank of India, has been closed since 1994. Mr. Sagar, relying on the averments made in the writ petition has submitted that the entire material has been supplied to the respondents on a number of occasions, yet the claim of the petitioner has not been considered.

6. There is substance in the submission made by Mr. Salil Sagar. In the face of the letter, dated 17-9-1996. We are unable to accept the averments made in the written statement to the effect that the record has been lost. Even assuming that the record is lost, letter dated 17-9-1999 written by an official of the respondents is sufficient for the consideration of the claim of the petitioner for the incentives which were given to the exporters in Circular No. 11/93, dated 5-5-1993. Under

the aforesaid Circular, the applications for the relief were to be made by 31-7-1993. The letter dated 17-9-1996 clearly shows that the necessary application had been submitted by the petitioner on 26-7-1993. The claim of the petitioner had been sent back to the office of Jt. Director General of Foreign Trade, Ludhiana (Licensing Authority) on 23-9-1994, without any remarks or noting. Finding the case to be complete, the Licensing Authority again referred the matter back to the Joint Director General of Foreign Trade, New Delhi for grant of premium. The letter further goes on to say that in another communication, dated 31-10-1996, the Licensing Authority was informed that the advance licences file of the petitioner had been sent to Headquarters. Thereafter many reminders have been issued by the Licensing Authority Mr. Chhibar, now argues on the basis of the averments made in the written statement that the file having been misplaced, no relief can possibly be granted to the petitioner unless they are in a position to reconstruct the record. As the necessary documents are available with the petitioner, a direction be issued to the petitioner for helping the respondents in reconstructing the file.

7. We are unable to accept the submission of Mr. Chhibar that the petitioner should now again be directed to forward all the documents to enable the respondents to take a fresh decision. In view of the admission made by Respondent No. 3 in the letter, dated 17-9-1996, the respondents cannot be permitted to say that the necessary record was not available at the relevant time.

8. In view of the above, the writ petition is allowed. Letter dated 23-2-2001 (Annexure P-1) is quashed. The respondents are directed to release the grant of 8% CCS (Cash Compulsory Support) premium against advance import licences as per Circular No. 11, dated 5-5-1993 (Annexure P-2). The petitioner shall be entitled to interest at the rate of 8% per annum, which shall be for the period of three years and two months prior to the filing of the writ petition. No costs.