

(1993) 06 BOM CK 0052

In the Bombay High Court

Case No : Writ Petition No. 1399 of 1992

Rajasthan Spinning and Weaving Mills Ltd

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 30-06-1993

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1993) 67 ELT 57

Hon'ble Judges : M.L. Pendse, J;A.P. Shah, J

Bench : Division Bench

Judgement

Pendse, J.—The petitioners are a public limited company incorporated under the Companies Act and carries on business of exports of textiles and other articles. The Government of India, Ministry of Commerce by circular dated June 13, 1986 decided to grant cash compensatory support on export of certain textile items both to quota countries and non-quota countries. The quota countries are those in respect of whom a certain quota is settled. The items which a country desires to import are known as quota items. It is open for the exporter to send quota items as well as non-quota items both to countries which are quota countries or non-quota countries. It is not in dispute that in respect of export of blended yarn, cash compensatory support was not available upto September 22, 1988.

2. On September 22, 1988, Government of India published circular inter alia providing that cash compensatory support on export of blended yarn will be permitted at the rate of 8% on FOB value. This cash compensatory support was available both for export of quota and non-quota countries. On the same day i. e. September 22, 1988 Government of India published another of textile items - enhancement in the cash compensatory support rates of non-quota items to quota countries. By this circular, the rates of cash compensatory support on textile items were reviewed and Government decided to grant additional 5% cash compensatory support on export.

The petitioners have exported blended yarn from September 22, 1988 onwards

and the respondents granted cash compensatory support at the rate of 8% plus additional 5% as per the two circulars dated September 22, 1988. This cash compensatory support of 8% plus 5% was made available to the petitioners in respect of export carried out between September 22, 1988 and July 2, 1991. By letter dated February 7, 1992, the respondents informed the petitioners that grant of additional 5% of cash compensatory support was never available in respect of export of blended yarn and therefore the petitioners should refund the additional cash compensatory support of 5% received till September 1991. The claim of the respondents that additional 5% of cash compensatory support is not available in respect of export of blended yarn and the threat to recover the amount paid between September 22, 1988 and September 1991 has given rise to the filing of the present petition under Article 226 of the Constitution.

3. Shri Bharucha, learned counsel appearing on behalf of the petitioners, submitted that by circular dated September 22, 1988, Government of India had granted cash compensator support on export of blended yarn. It was urged that by another circular issued on the same day, the rates of cash compensatory support on textile items were reviewed and additional cash compensatory support of 5% was granted. The learned counsel urged that reading the two circulars together, it must be concluded that in respect of export of blended yarn, the exporter is entitled to additional 5% of cash compensatory support. Shri Bhabha, learned counsel appearing on behalf of the department on the other hand urged that there is intrinsic evidence in the circular providing for grant of additional cash compensatory support of 5% that such support is available only in respect of items which were entitled to the support prior to September 22, 1988. In view of the rival contentions, a short question which requires answer is whether export of blended yarn after September 22, 1988 is entitled to grant of additional cash compensatory support of 5%.

In our Judgment, the contention of the petitioners on this count cannot be accepted. It is not in dispute that cash compensatory support was available on export of blended yarn only from September 22, 1988 onwards. Turning to the circular which provides for grant of additional cash compensatory support of 5%, the relevant clause 2 makes it clear that the export of blended yarn cannot claim the advantage. Clause 2 of the circular reads as follows :-

"2. The present rates of CCS on textile items have been reviewed and it has been decided to grant additional CCS of 5(five) per cent on export, to quota countries, of non-quota textile items and garments including handlooms."

The plain reading of clause 2 makes it crystal clear that the existing rates of cash compensatory support on textile items were reviewed and it was decided to grant additional cash compensatory support of 5%. The expressions "present rates", "reviewed" and "additional cash compensatory support" clearly set out the intention of Government of India that the additional cash compensatory support of 5% is available in respect of only those items which were enjoying cash compensatory support prior to September 22, 1988. The contention urged on

behalf of the petitioners that the intention is not clear and as the two circulars are issued on the same day, it must be assumed that the additional support is available also to item of blended yarn, cannot be accepted. In our judgment, the claim of the respondents that the additional support of 5% is not available in respect of export of blended yarn deserves acceptance.

4. Shri Bharucha then submitted that the respondents continued to grant additional cash compensatory support of 5% on export of blended yarn for the period commencing from September 22, 1988 and ending with July 2, 1991. The learned counsel submitted that it is not open for the respondents to demand back the additional support of 5% after a passage of three years even assuming that the grant of such additional support was not permissible. Shri Bharucha submitted that as the respondents granted the additional support for a period of about three years, the petitioners had made firm commitments for export on the basis that the advantage is available and it would be extremely harsh and unfair now to turn around and tell exporters that the additional support granted should be refunded. The learned counsel urged that even if the additional 5% cash compensatory support was not permissible, still the amount already paid should not be demanded back by the respondents. We find considerable merit in the submission of the learned counsel. It is undoubtedly true that the respondents paid the additional 5% of cash compensatory support for a duration of three years and on that basis, the petitioners had made firm commitments to export blended yarn to the quota and non-quota countries. There admitted 5% was paid on the undertaking of the respondents that advantage of second circular is available to export of blended yarn.

5. Shri Bhabha submitted with reference to return filed by S. C. Jaggi, Deputy Director General of Foreign Trade, sworn on June 28, 1993 that the additional cash compensatory support was inadvertently granted and therefore the respondents are justified in demanding back the same. Shri Bhabha referred to the claim made in para 7 of the return and urged that the payment was required to be made to the exporters within 24 hours of submission of the relevant export documents and therefore the respondents made the payment without any pre-audit. It was claimed that the pre-audit was not possible because of large number of applications, even though there is provision in the scheme for such pre-audit. The learned counsel urged that it was only on post-auditing that it was realised that payment of additional cash compensatory support on blended yarn was not available. Shri Bhabha submits that as the respondents have made an inadvertent mistake, the petitioners should be compelled to return back the advantage secured. We are not inclined to accede to the submission of the learned counsel.

The cash compensatory support was paid as an incentive to exporters to increase export and thereby earn more foreign exchange. It is not possible to make export unless the prices offered are competitive in international market. As the respondents paid additional support, assuming inadvertently, on that basis

exporters acted and completed transactions and now it is not just to demand back the amount by claiming that payment was erroneous. On our enquiries as to what is the approximate amount of additional cash compensatory support paid by the respondents to all the exporters of blended yarn, neither Shri Bharucha nor Shri Bhabha were able to give any specific answer. In our judgment, equity demands that the petitioners should not be compelled to return the additional 5% of cash compensatory support already received.

6. Accordingly, petition partly succeeds and it is declared that the cash compensatory support of additional 5% is not available on export of blended yarn in accordance with the circular dated September 22,1988, but the respondents are restrained from recovering back or adjusting the additional cash compensatory support of 5% already paid for the period between September 22,1988 and July 2,1991. Rule is disposed of accordingly. In the circumstances of the case, there will be no order as to costs.