(1993) 12 MAD CK 0042

In the Madras High Court

Case No : Writ Petition No''s. 17894, 18294, 18295, 18382 of 1992

Rajendra Enterprises APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 22-12-1993

Acts Referred:
Customs Act, 1962 — Section 142

Citation : (1997) 57 ECC 151 : (1994) 71 ELT 22

Hon'ble Judges : Kanakaraj, J

Bench : Single Bench

Advocate : Shri K.R. Thiagarajan, Addl. Central Govt. Standing Counsel, M.S. Krishnan and S. Sampathkumar, for the Respondent

Judgement

Sampathkumar, J.—The issue raised in all the writ petitions is one and the same. Before setting out the facts in each case the common facts

leading to each of the writ petitions can be noticed. The Scheme relating to ""Exim Scrip"" was introduced with effect from 3-7-1991. Under this

scheme a new instrument called ''Exim Scrip'' calculated at the rate of 30% of the Foreign Exchange earned by an exporter is issued. The whole

idea was to enable the exporters to get the incentives faster and in an easier manner. There were also several circulars to simplify verification

procedures and a number of branches of the State Bank of India were authorised to purchase the ''Exim Scrip''/REP Licence to facilitate easy

negotiation of such ''Exim Scrip''. The exporters should file their claim for ''Exim Scrip'' in respect of their exports for which foreign exchange had

been released. The applications were disposed of, on what is called ""fast track basis"". Under the terms of Paragraph 199 Import-Export Policy for

the year 1990-93 such ''Exim Scrip''/REP Licence are transferable. Such transfers are not required to be endorsed by the Licensing Authority and

the transfer is governed by principles of ordinary law.

2. If we now turn to the facts of each case, the petitioner in W.P. No. 17894 of 1992 had secured ''Exim Scrip'' issued originally in favour of M/s.

Aisha Exports Private Ltd. for a sum of Rs. 62,91,000/-. The premium at 20% on the above Exim Scrip worked out to Rs. 12,58,000/-. The

petitioner tendered the above ''scrips'' to the State Bank of India on 6-4-1992 and the Bank issued a token in receipt of the Exim Scrip. After

verifying the genuineness of the Exim Scrips the premium amount was paid to the petitioner. The petitioner had also tendered certain other Exim

Scrips purchased from other parties, details of which are given in the writ petition and requested the third respondent to pay the premium amount.

The premium amount comes to Rs. 19,47,315/-. It transpires that the Exim Scrips purchased by M/s. Aisha Exports Private Limited were found to

be bogus and therefore, action was taken against the said M/s. Aisha Exports Private Limited. Consequently, the second respondent cancelled all

Exim Scrips issued to the said M/s. Aisha Exports and gave the following directions to the State Bank of India :-

a. not to make premium payments against cancelled scrips.

b. to recover any amounts paid already as premium on the cancelled exim scrips.

c. till recoveries are effected not to make payments on any other scrips presented by those who had taken payments against cancelled scrips.

It has to be noticed that so far as the Exim Scrips issued to the said Aisha Exports Private Limited, the petitioner, as a subsequent purchaser, had

surrendered the same to the Bank and obtained the premium amount of Rs. 12,58,000/-. Though the Exim Scrips on the basis of which the

petitioner demanded Rs. 19,47,315/- has not been cancelled and their genuineness is not doubted, the third respondent refused to make payment,

apparently, on the basis of the last of the directions quoted above. The writ petition is only for the issue of a writ of mandamus to direct the third

respondent to make payments as the subsequent genuine Exim Scrips to the tune of Rs. 19,47,315/-.

3. In W.P. No. 18294 of 1992 the petitioner had secured certain Exim Scrips originally issued to one M/s. Trimex Agencies Private Limited,

Pondicherry, and tendered the same for payment to the State Bank of India, Pondicherry, on 28-7-1992. The premium amount of Rs.

13,68,900/- was paid to the petitioner. Here again, the petitioner tendered certain subsequent exim scrips about which there is no doubt and

sought for payment of premium to the tune of Rs. 15,94,400/-, particulars of which are detailed in the writ petition. The payment is sought from the

third respondent and the same has been refused on the ground that the exim scrips of M/s. Trimex Agencies Private Limited, Pondicherry, had

been cancelled and therefore, the payments in respect of the genuine exim scrips cannot be made in view of Clause 3 of the directions given by the

Joint Chief Controller, quoted above.

4. In W.P. No. 18295 of 1992 the petitioner had obtained payment of the premium amount of Rs. 10,44,900/- in respect of certain exim scrips

purchased from M/s. Trimex Agencies Private Limited. In respect of the subsequent surrender of exim scrips from a genuine owner the petitioner

seeks payment of Rs. 35,800/- from the third respondent since the same is being refused under the very same clause, referred to above.

5. W.P. No. 18382 of 1992 relates to the payment of premium of Rs. 8,83,400/- on certain exim scrips tendered by the petitioner but which

payment is being refused on the ground that the petitioner had obtained payment of a sum of Rs. 14,11,200/- relating to surrender of exim scrips

purchased from M/s. Aisha Exports Private Limited. Here again since the exim scrips issued to Aisha Exports Private Limited had been cancelled

payment, genuine exim scrips are being refused on the basis of clause 3 referred to above.

6. In all these writ petitions we are only concerned with the question whether the respondents can prohibit the payment in respect of the genuine

exim scrips on the ground that the petitioners had received payment in respect of the exim scrips issued to M/s. Trimex Agencies and M/s. Aisha

Exports Private Limited which exim scrips had been cancelled on the ground of fraud. Unfortunately, even though the petitioners have not prayed

for any relief in respect of the demand by the respective Banks to refund the amounts already paid to the petitioners under the bogus exim scrips,

the petitioners have obtained interim orders staying the demand for refund of the respective amounts received by them. This action on the part of

the petitioners in getting interim orders relating to a relief which is not the subject matter of the writ petitions, is most reprehensible. In fact, this has

caused some amount of confusion in the minds of the respondents and this is reflected in the counter-affidavit filed by the Joint Chief Controller of

Imports and Exports. Considerable stress is laid on the bogus exim scrips and the following sentence in the counter-affidavit shows the confusion

prevailing in the minds of the respondents.

The petitioners who have purchased the fraudulently obtained licence have instead of seeking remedy from the sellers filed this writ petition and

are trying to divert attention from the main issue and get pecuniary benefits on the licence obtained on the basis of the forged documents.

However, after the writ petitioners filed a reply affidavit, the Joint Chief Controller has corrected the mistake and the following sentence is found in

the rejoinder.

Unless the petitioner returns the amount received against cancelled Exim Scrips from State Bank of India, it would not be possible to make

payments to them against any other scrips either.

7. The respondents have relied upon the orders passed against M/s. Trimex Agencies, M/s. Trimex Minerals and M/s. Aisha Exports Private

Limited under clause 8(b) of the Imports (Control) Order, 1955. They have also passed debarring circulars against those companies. A perusal of

this abeyance circular and debarment circular passed against those companies who are alleged to have committed the fraud of filing forged

documents to get exim scrips shows that the said companies and its Proprietors have been debarred from getting any import licence, Customs

Clearance permit, allotment of imported goods etc. But the respondents are unable to show, as to how this action will prevent the bona fide

purchasers who had obtained payment of premium by negotiating exim scrips issued to genuine exporters. In other words, the respondents may

have a case for recovering the amounts paid on the basis of exim scrips issued to those defaulting agencies. The claim of the petitioners that they

were bona fide purchasers and therefore, payments to them cannot be invalidated, is not an issue on which I am rendering a judgment in this case. I

make it clear, I am concerned in these writ petitions only with regard to the exim scrips purchased by the petitioners from genuine exporters and

about which there is no allegation of fraud or irregularity. The petitioners have given details of such exim scrips issued to exporters other than the

exporters against whom the abeyance circular or debarment circular had been issued. The argument of Senior Counsel Mr. Thiagarajan for the

petitioners is that there is no provision either under the Import Control Order or Import-Export Policy or the present scheme which enables the

respondents to stop such payments in respect of genuine exim scrips. Equally, it is contended that even if the petitioners are facing a claim from the

respondents in respect of certain alleged irregular payments, made to them there is no power vesting with the respondents to adjust the same

against claim made under the present writ petitions. Learned counsel also refers to Section 142 of the Customs Act and argues that there is no

such similar provisions under the Import Control Order or policy or even under the present scheme. Neither in law nor under any contractual

provision the respondents have reserved a right to make such adjustment. Learned counsel for the Joint Chief Controller sought to sustain the plea

of the respondents on the basis of the application form under which the petitioners received payment in respect of bogus exim scrips. The form

says that the claimants bind themselves for refund of the amount and empower the Bank to stop payment of the cheque if there is any difficulty in

the exim scrips. Even this declaration by the petitioners would not, in my opinion, enable them to seek adjustment in respect of claims made under

subsequent exim scrips about which there is no doubt or allegation of fraud. I do not think that it is necessary for me to go into the other detailed

arguments made by the learned counsel for the petitioners because the respondents have not been in a position to point out any provision of law

under which they can refuse payment in respect of a claim under a bona fide exim scrips. In other words, Clause 3 of the directions which I have

quoted in the beginning cannot be sustained in law by the respondents. So far as clauses (a) and (b) are concerned they seem to be perfectly in

order. In fact, in may opinion, the direction contained under clause ''c'' would undermine the very policy and the purpose of the scheme. The

respondents themselves have referred to the fact that the scheme was evolved to simplify the cumber-some procedure and to enable the genuine

exporters to get the incentives quickly. If negotiations of the exim scrips are restricted, or made difficult the entire policy will collapse. Whatever that may be, in law the respondents have not been able to show any provision be it, statutory or contractual which would enable them to refuse the

payment in respect of the tender of genuine exim scrips. Consequently, all the writ petitions are allowed as prayed for. I make it clear that the

respondents are at liberty to take whatever steps, which are available to them, to recover the amounts paid to the petitioners in respect of the exim

scrips which were issued to M/s. Aisha Exports Private Limited, Trimex Agencies (Private) Limited or Trimex Minerals (Private) Limited. In

respect of some of the claims made in the writ petitions, it is stated that payments have been made. Therefore, the present judgment will govern

only those claims under genuine exim scrips which have not already been satisfied by the respondents. The writ petitions are allowed in the above

terms. There will however, be no order as to costs. All the interim orders are vacated. The 3rd respondent shall give effect to this order within four

weeks from today.