(1989) 11 CAL CK 0033

In the Calcutta High Court

Case No : C.R. No. 9616 (W) of 1981

Rajesh Plastic Industries APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 02-11-1989

Acts Referred:

Citation : (1990) 47 ELT 303

Hon'ble Judges : Susanta Chatterji, J

Bench : Single Bench

Advocate : S.K. Bagaria and A.N. Mukherjee, for the Appellant;Vijay Kumar, for the Respondent

Final Decision : Allowed

Judgement

Susanta Chatterji, J.—The present case is a glaring example as to how the respondents Union of India and its connected officers are not taking effective steps before this court for adjudication of the matter in dispute. It is no use of arguing at length before this court on behalf of the respondents without filing any affidavit and without controverting any allegation made by the petitioner and even without production of any record. The rule was issued on 27-8-81. Since then the respondents are found sleeping over their rights. The writ petitioner has prayed for issuance of a writ of mandamus commanding the respondents to withdraw, cancel and/or rescind the impugned Notification No. 205/ F.No.355/141/80-Cus.-I, dated 16-10-1980 and/or the assessment made on the said bill of entry No. 1243, dated 3-12-1980 and to refund to the petitioner the sum of Rs. 92,981.26p. wrongfully and illegally realised from it and to act according to law.

2. It is alleged in the said notification dated 15-3-1979 as amended that the exemption granted thereunder would remain in force up to and inclusive of March 31, 1981. The said representations were made by the Government of India fully knowing that the importers of P.V.C. resins including the petitioner would be acting thereupon. It is the specific case of the petitioners that in fact they acted

on the basis of the said representation made by the respondents Union of India and entered into a contract for import of P.V.C. resins and opened letters of credit in respect thereof. Thus acting on the basis of representations made by the respondents Nos. 1 and 2, the petitioner altered its position to its prejudice. Therefore, the respondents Nos. 1 and 2 are bound by the promise and/or representations made in the said notification dated 15-3-1979 as amended and they have got no right and authority or jurisdiction to go back upon the same. By the said notification dated 16-10-1980 the respondent Nos. 1 and 2 are seeking to go back and/or resile from the promises and/or representations contained in the notification dated 15-3-1979 as amended and the said respondents have got no right and/or authority or jurisdiction to do so.

3. Unfortunately the respondents have not used any affidavit as indicated above. Mr. Bagaria, learned Advocate appearing for the petitioner has drawn the attention of this court to a decision reported in (1988) 70 S.T.C SC. (Assistant Commissioner of Commercial Taxes (Asstt.) Dharwar and Ors. v. Dharmendra Trading Company) wherein the Supreme Court held that the mere recital in the preamble that the earlier order had given room for many types of misuse by itself could not establish that the concession was in fact misused. It was the duty of the Government and the concerned authorities to file a counter-affidavit and place before the court the relevant facts establishing misuse. In the said case before the Supreme Court the Government had failed to do so. Further the Supreme Court found that it is well-settled that if the Government wants to resile from a promise or an assurance given by it on the ground that undue advantage was being taken or misuse was being made of the concessions granted, the court may permit the Government to do so, but, before allowing the Government to resile from the promise or go back on the assurance, the Court would have to be satisfied that allegations by the Government about misuse being made or undue advantage being taken of the concessions given by it were reasonably well-established. The attention of the court has also been drawn to a decision of this court reported in Eastern Spinning Mills Limited Vs. Union of India (UOI), Having considered the number of decisions of the Supreme Court and of other courts, this Court concluded that there is no doubt as to the principle of estoppel and promissory estoppel as available in appropriate cases and the writ court will not grant relief unless sufferance of the petitioner in appropriate cases are demonstrated in the proper perspective. Various decisions on the point of estoppel and promissory estoppel were considered by this court as noted in the aforesaid decision.

4. By looking to the aforesaid position once again and looking to the facts of the case, this court is of the view that in the instant case the sufferance of the petitioner have well been demonstrated and the allegations made by the petitioner had not been controverted by the respondents in any manner whatsoever. Applying the test as laid down this court does not find any bar and/or impediment to grant relief to the petitioner as prayed for.

5. For the foregoing reasons the rule is made absolute and the writ petition is allowed. Let a writ of mandamus issue commanding the respondents to refund to the petitioner the sum of Rs. 92,981.26P. as wrongfully and illegally realised from it, within a period of six weeks from the date of communication of this order.

6. There will be no order as to costs.

