(1985) 08 BOM CK 0014

In the Bombay High Court

Case No : Writ Petition No. 2407 of 1983

Ramesh Chhotalal Doshi APPELLANT

Vs

Union of India and others RESPONDENT

Date of Decision : 29-08-1985

Acts Referred:

Constitution of India, 1950 — Article 226
Imports and Exports (Control) Act, 1947 — Section 3

Citation : (1989) 40 ELT 19

Hon'ble Judges : M.L. Pendse, J

Bench : Single Bench

Judgement

1. The Government of India issued the Imports (Control) Order, 1955 in exercise of powers u/s 3 of the Imports and Exports (Control) Act, 1947. The Act was enacted to enable the Central Government to restrict and regulate or prohibit imports and exports of goods by issuing an order. The Central Government publishes the import policy in the form of a book which is popularly known as ''Red Book'' for every year. The Central Government from the year 1954 devised a scheme known as ''Export Promotion Scheme.'' Under this Scheme, traders were to get themselves registered, then export goods and earn foreign exchange for the country and in return the Government gives certain incentives in the form of replenishment licences and also cash incentives. The Import Policy for the year 1983-84 prescribes that the Export House will be allowed to import OGL items against the REP Licence issued in their own name or transferred to them by others.

The petitioner is carrying on business of financing REP Licences and Commission Agent in the name of M/s. Prashant Trading Company, and the petitioner is the sole proprietor of the firm. M/s. Andhra Pradesh Fisheries Corporation Ltd., Visakhapatnam are the registered exporters and two REP licences bearing Nos. 2851264 and 2851265, both dated March 16, 1983 were issued in their favour. The licences were in respect of items in Column 4 of Appendix 17 of the Import Policy. M/s. Andhra Pradesh Fisheries Corporation transferred the licences in favour of the petitioner for valuable consideration. The petitioner in turn, transferred the licence No. 2851264 in favour of M. Pransukhlal Pvt. Ltd. and licence No. 2851265 in favour of respondent No. 5. Both, M. Pransukhlal Pvt. Ltd. and respondent No. 5 are recognised export houses. Two separate applications were made by the transferees M. Pransukhlal Pvt. Ltd. and respondent No. 5 to the Controller of Imports & Exports, Bombay for endorsement on the REP Licences in respect of OGL items. Respondent No. 4 carried out the required endorsement on the licence transferred in favour of M. Pransukhlal Pvt. Ltd., but declined to do so in respect of the licence transferred in favour of respondent No. 5. It appears that initially endorsement was not made on the licence of respondent No. 5 because some corrections were required in the application, but subsequently after the corrections were carried out the endorsement was turned down in view of the circular issued by the Chief Controller of Imports & Exports on June 1, 1983 to all the Licensing Authorities. This circular provided that additional import entitlements are not allowed to be used for import of OGL item by Export Houses against REP licences under the provisions of Para 185 and against such additional entitlements, only the items specifically permitted in Column 5 will be allowed. The refusal to make the requisite endorsement on the licence of respondent No. 5 has given rise to filing of the present petition under Article 226 of the Constitution of India in this Court on October 21, 1983.

2. To appreciate the contentions of the petitioner, it is necessary to make reference to certain provisions of the Import Policy for the year April 1983 to March 1984. Paragraph 136(1) of this Policy provides that the items permissible for import against each export product covered by the policy are given in column 4 of the Policy statement given in Appendix 17, read with column 5. The licence transferred by the petitioner in favour of respondent No. 5 gives the description of goods as O.T.S. Containers and further provides that the licence represents additional replenishment at the rate of the 15 per cent. Now, turning to Appendix 17/F. 1.3, which comes under the heading ''Fish and Fish Products'', the import entitlements is shown in column 3 as 5% Column 4 reads as under :

"(a) Packing materials, namely, Polyethylene moulding powder, Polyethylene granules, cartons, cardboard and tin plate prime OTS quality/MR type.

(b) Fishing hooks."

The general note which appears in column 5 against F. 1.3 in Appendix 17 reads as under :

"General Notes :-

In cases where the Col. 4 permits the import of Tin plate prime OTS quality/M.R. type, the licence holder may also import OTS containers within the value of the licence. For this purpose, additional import replenishment at the rate of 15% will also be allowed for import of OTS containers."

It is now necessary to make reference to paragraph 185 of the Import Policy under the heading ''Import of items placed on OGL''. Paragraph 185(1) prescribes that the Export Houses will be allowed to import OGL items against REP licences issued in their own name or transfer to them by others. Para 185(3) provides that the Export House who wish to take advantage of this facility of import of OGL items should get the licences endorsed by the licensing authority as under :

"This licence will also be valid for import of OGL items under para 185 of Import-Export Policy, 1983-84 (Vol. I) subject to the conditions laid down, and shall be non-transferable."

With this background, it is now necessary to consider the grievance of the petitioner.

3. Shri Rana, learned counsel appearing on behalf of the petitioner, submits that the import policy permits the holder or REP licence to import OGL items in accordance with para 185 and therefore it was not permissible for the respondent authorities to decline to make the requisite endorsement on the licence transferred in favour of respondent No. 5 in accordance with paragraph 185(3) of the Policy. The learned counsel urged that respondent No. 4 declined to make an endorsement in view of the circular issued by the Chief Controller of Imports & Exports. It was submitted that as long as the circular was not received in the office of respondent No. 4, the requisite endorsement was effected on the REP licence and indeed it was so effected on the licence transferred by the petitioner in favour of M. Pransukhlal Pvt. Ltd. In answer to the petition, on behalf of the respondent authorities, return sworn on January 14, 1985 by Capt. Shafaat Ahamed, Deputy Chief Controller of Imports and Exports has been filed. The authorities denied that the decision not to make the endorsement on the licence of respondent No. 5 was taken in view of there circular. Shri Lokur, learned counsel appearing on behalf of the authorities, stated at the outset that the decision was not taken because of the circular but independent of that by construction of the relevant part of the policy. Shri Rana was obviously right in his submission that it is not permissible for the authorities to deprive the importers of the advantage conferred by the Policy by issue of departmental circulars, but as Shri Lokur concedes that the decision was not based on the circular, it is not necessary to investigate his aspect of the matter any further.

4. The respondent authorities in paragraph 8 of the return claim that paragraph 185 of the Import Policy deals with import of OGL items against REP licences. It is further claimed that various export products against which replenishment is permissible and the rate and items of replenishment are enumerated in Columns 2, 3 and 4 in Appendix 17 of the Policy. Over and above this entitlement, additional import replenishment has been provided in Columns 5 for the import of specific items and therefore 15% additional entitlement allowed for import of OTS containers cannot be used for any other purpose. In other words, the contention of the respondent authorities is that though in respect of 5% entitlement provided under Column 4 of Appendix 17, it is permissible for the importer to import OGL items, such advantage is not available in respect of 15%

additional entitlement. The contention urged on behalf of the respondents cannot be accepted. Paragraph 185 of the Policy clearly provides that export houses will be allowed to import OGL items against REP licence and this paragraph does not prohibit the importers from importing OGL item in respect of entitlement given under Column 5 of Appendix 17. Shri Lokur submitted that paragraph 185 lays down the general policy permitting the holders of the REP licence to import OGL items but this right conferred under paragraph 185 is not available for additional replenishment given under Column 5 of Appendix 17. I am unable to see any reason for depriving the licence holder the advantage of paragraph 185 of the Policy in respect of additional entitlement under column 5. Shri Lokur submitted that though the licence holders are entitled to import OGL items in respect of 5% entitlement given under column 3, the same advantage is not available for the additional import entitlement under Column 5. The plain reading of columns 3, 4 and 5 in Appendix 17 makes it clear that the additional entitlement of 15% under column 5 is available only in case where column 4 permits the import of tin plate prime OTS quality/MR type. It is, therefore, obvious that the advantage of additional entitlement under column 5 is available only in respect of one item out of several items set out in column 4. Now, it is not in dispute that the petitioner and respondent No. 5 are entitled to import OGL items in respect of 5% entitlement given under the licence for the import of tin plates OTS quality/MR type. It is difficult to appreciate why respondent No. 5 could be deprived of the same advantage in respect of the additional entitlement under column 5. The additional entitlement under column 5 is dependent on the licence holder being permitted to import tin plates prime OTS quality/MR type, and in respect of this item if advantage of paragraph 185 of the Policy is available, then there is no rational to deprive this advantage in respect of additional entitlement under column 5. Shri Lokur urged that the expression "for this purpose" in column 5 should be given appropriate weight to record a conclusion that the additional import replenishment at the rate of 15% is allowed only for import of OTS containers and nothing else. It is difficult to accede to this submission, because the additional entitlement is dependent upon the permission to import tin plates prime OTS/MS type under column 4. Now, if benefit of paragraph 185 is available for the particular item to be imported under column 4, then the same advantage must be available in respect of the entitlement under column 5 which is dependent on column 4. In my judgment, the action of the respondent authorities in declining to make endorsement on the licence transferred by the petitioner to respondent No. 5 in accordance with paragraph 185(3) of the Policy is entirely erroneous. The letter dated June 21, 1983 addressed by respondent No. 4 to respondent No. 5 clearly indicates that the only ground for refusing to make endorsement was that there is no provision in the Policy Book against the additional REP entitlement which is allowed for specific items. As I have found that the objection raised by respondent No. 4 on this count is unsustainable, it is necessary to issue direction to respondent No. 4 to carry out the endorsement on the licence bearing No. 2851265 transferred by the petitioner in favour of respondent No. 5.

5. Accordingly, rule is made absolute and respondent No. 4 is directed to make the endorsement in terms of paragraph 185(3) of the Import Policy of the year 1983-84 on the REP Licence No. 2851265 within a period of four weeks from to-day.

As the period of policy 1983-84 is over during the pendency of this petition, the respondent authorities are directed to revalidate the date of licence only for the purpose of making endorsement and this revalidation would remain in operation only for a period of six months from the date of endorsement. The endorsement on the licence would enable respondent No. 5 to import OGL items permissible under the Policy for the year 1985-88.

In the circumstances of the case, there will be no order as to costs.

August 29, 1985.

For speaking to minutes :

6. Heard Shri Rana for the petitioners, and Shri Lokur for the respondents.

7. The last line in sub-para 2 of paragraph 5, which reads as follows :

"The endorsement on the licence would enable respondent No. 5 to import OGL items permissible under the Policy for the year 1985-88"

is deleted and the following sentence is substituted :

"The endorsement on the licence would enable respondent No. 5 to import OGL items permissible under the Policy - 1983-84 except those items which are banned under the Policy - 1985-88".