

(1992) 04 BOM CK 0024

In the Bombay High Court

Case No : Writ Petition No. 3167 of 1987 and several others

Ramesh Occhavlal Shah

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 13-04-1992

Acts Referred:

Constitution of India, 1950 — Article 141

Citation : (1992) 3 BomCR 521 : (1992) 62 ELT 280

Hon'ble Judges : V.A. Mohta, J;B.P. Saraf, J

Bench : Division Bench

Advocate : Mr. K.R. Bulchandani, instructed by M/s. Kamal and Co. and R.C. Thaker, K.S. Kumar, D.H. Mehta, N.M. Shah, N.M. Rage, N. Raja, D.C. Gomes, G.B. Kedia, S.D. Nankani and I.D. Bagaria, for the Appellant; Mr. J.P. Devdhar, Mr. R.C. Master and Mr. V.G. Rege, instructed by K.C. Sidhwa, for the Respondent

Judgement

Dr. B.P. Saraf, J.—The question of law for determination in this batch of writ petitions and the relevant facts being identical all these writ petitions were taken up for hearing together and are being disposed of by this common judgment and order.

2. The petitioners in all these writ petitions are transferees of Import Replenishment (REP) Licences issued to manufacturer exporters against the registered contracts under the Import Policies for 1980-81, 1981-82 and 1982-83. Their contention is that they are entitled to import raw materials, components, consumables etc., required by them in terms of para 131(1) read with para 133 of the Import Policy, 1980-81 and para 138(1) read with para 140 of the Import Policies of 1981-82 and 1982-83, notwithstanding the fact that they themselves are not the manufacturer exporters in whose favour the REP Licences in question were issued. According to the petitioners, their cases are squarely governed by the decision of the Supreme Court in Oswal Woollen Mills Ltd and Another Vs. Union of India (UOI) and Another, wherein on consideration of the provisions of para 138(1) read with para 140 of the Import Policy, 1981-82

it was held that the petitioners in that case, who were transferees of the REP Licences issued in the name of the actual manufacturer exporters were entitled to the facilities available under the said licences. It is stated that some of the petitioners in this batch of writ petitions are governed by the Import Policy, 1980-81, some others by the Import Policy, 1981-82, and rest by the Import Policy, 1982-83. According to the petitioners, the provisions in regard to transfer of the REP Licences in all these three Import Policies are identical except for change in numbers of the relevant paragraphs and as such the ratio of the decision of the Supreme Court in *M/s. Oswal Woollen Mills* (supra) is fully applicable to the cases of all of them.

3. The further case of the petitioners is that despite the aforesaid decision of the Supreme Court, the respondents refused clearance of the goods imported by them on the strength of REP Licences obtained on transfer from the original licensees on the ground that the licences produced by them were not endorsed by Respondent No. 4, the Chief Controller of Imports and Exports with requisite paragraph as required under para 131(1) of the Import Policy, 1980-81 or corresponding para 138(1) of the other two Policies. So far as such endorsement is concerned, the petitioners contend that the Respondent No. 4 had issued a circular as back as on 31-8-1981 with reference to Import Policy, 1981-82 wherein it was stated that the facility under para 138(1) was meant only for those manufacturers whose products were actually exported and not for other manufacturers of the said product. The aforesaid circular dated 31-8-1981 read as follows :

"Attention is invited to para 2(iii) of REP Circular No. 108/80 dated the 4th August 1980 regarding endorsement to be made by the Licensing Authority on REP Licence sought to be utilised under para 138 of Import Policy, 1981-82. The said para 138 is meant for REP Licence issued to manufacturers on the exports to the products manufactured by them. Therefore, before making endorsement on the REP Licence under the said para 138 the Licensing Authority concerned should make sure that the REP Licence in question, was issued to the applicant against export of his own products, for which the licence was registered as manufacturer exporters, as per the relevant registration-cum-membership certificate held by him. Similarly, the facility under para 138(1) is meant for the manufacturers only whose product was actually exported and not for other manufacturers of the said product."

4. It is this circular that was challenged before the Supreme Court in *M/s. Oswal Woollen Mills* (supra). The Supreme Court, on consideration of the scheme and relevant paragraphs of the Import Policy, 1981-82, held that the aforesaid circular dated 31-8-1981 was invalid inasmuch as the condition mentioned therein was not there in para 138(1) of the Import Policy, 1981-82. The petitioners contend that instead of following the law laid down by the Supreme Court in the aforesaid decision, on or about 27-8-1983, the Respondent No. 4 issued a circular to all the Licensing authorities being Circular No. 53 of 1983

asking them not to entertain requests from other exporters relying on the aforesaid judgment of the Supreme Court. The relevant part of this circular reads :

"2. A question was also raised at the Regional Officers Meeting about endorsement under para 138 of Import Policy, 1981-82 on acquired REP Licence on the basis of recent judgment of the Supreme Court in M/s. Oswal Woollen Mills case. The effect of this judgment is confined only to the exporters in whose case the judgment has been delivered and in respect of therein licence in which request for endorsement under para 138 of Import Policy was rejected during 1981-82. The judgment does not concern other cases, therefore, there is no question of entertaining requests from other exporters relying on the said judgment. Even in case in which judgment in question was delivered, detailed instructions will be issued by the Head Quarters after the judgment has been studied.

5. In continuation of this circular, the Joint Chief Controller of Imports and Exports issued to all the Licensing authorities another circular dated 19-11-1983 on the subject of endorsement of REP licence. By this circular, it was sought to be further clarified that the previous circular dated 23-8-1983 was intended to convey to them that the ratio of the Supreme Court judgment in M/s. Oswal Woollen Mills (supra) would apply only to that case in which it was delivered. All Licensing authorities were directed by the said circular to refer all such cases where the benefits of the said judgment were claimed by any parties to the Head Quarter. The aforesaid is set out below :

"To

All Licensing Authorities.

Sirs,

Sub : Endorsement of REP Licence.

Attention is invited to this office letter No. 3/165/83/EPC dated 23rd August 1983 on the above subject.

With reference of para 2 of the said letter it is clarified that the letter was intended to convey to the Licensing authorities that the ratio of the Supreme Court judgment in the case of M/s. Oswal Woollen Mills would apply to the case in which the judgment was delivered. There may be other parties claiming the benefits of the sane judgment but their cases will have to be examined on merits keeping in view the legal position and their facts to see whether they are exactly similar to the cases in which the judgment of the Supreme Court was delivered, therefore, if any other parties approach for the similar benefit the case may be referred to Head Quarters for detailed examination from policy as well as legal angle.

Yours faithfully, Sd/- Thaker Ram Jt. Chief Controller of Imports and Exports."

6. The petitioners, who in their capacity of transferees of REP Licences, imported various goods, are aggrieved by these two circulars. According to them, the stand of Customs authorities is a clear attempt to defy the law laid down by the Supreme Court in *M/s. Oswal Woollen Mills* (supra) and to nullify its binding effect. Some of the petitioners approached the respondents for requisite endorsements under para 131(1) of the Import Policy, 1980-81 or para 138(1) of the Import Policy, 1981-82 and 1982-83 but on getting no response from them, filed writ petitions before this Court challenging their action or inaction and the aforesaid circulars and also praying for interim orders directing release of the goods imported by them as transferees of REP Licences. Others directly approached this Court even without making any application before the concerned authorities for clearance and/or endorsements as according to them, in view of the clear stand of the respondents not to give effect to the decision of the Supreme Court in *M/s. Oswal Woollen Mills* (supra), which is quite evident from the aforementioned two circulars, it would have been a futile exercise or an empty formality.

7. Before we proceed to examine the various contentions raised in the writ petitions, it may be expedient to briefly state the facts of one of the cases viz., Writ Petition No. 3167 of 1987 which is stated to be of representative type. The petitioner in this case is the sole proprietor of a business run under the name and style of Bharavi Pharmaceuticals, having its office at Baroda. The petitioner claims to be the transferee of the REP licence being Licence No. P/0481316 dated 10-4-1987 issued by the Licensing Authorities at Calcutta to M/s. Chloride India Limited, Calcutta. The licence is Exhibit "D" to the petition. This licence was first transferred to one M/s. Goenka Trading Corporation of Calcutta who, in turn, transferred the same to the petitioner. It had been issued to the original licensee against contract dated 16-9-1980 registered on 9-10-1980. This fact is borne out from a letter addressed by the Controller of Imports and Exports to the first transferee M/s. Goenka Trading Corporation informing them that the aforesaid licence for Rs. 37,98,470.00 in favour of M/s. Chloride India Limited, Calcutta, had been issued against registration of Contract No. 50-0672/II/631 vide Bank Registration No. Con/1007/27 dated 9-10-1980 and contract dated 16-9-1980. The petitioner, as transferee of the aforesaid licence, imported long pepper. He filed two bills of entries in respect of these goods before the Respondent No. 3. Assistant Collector of Customs for clearance of the same for home consumption. Respondent No. 3 refused to process the said Bills of Entries for clearance unless the (REP) licence was produced by the petitioner duly endorsed by Respondent No. 4 under the requisite para 131(1) of Import Policy, 1980-81. Under these circumstances, the petitioner filed the present writ petition praying for directions to Respondent No. 4 to make the endorsement as contemplated by para 131(1) of Import Policy, 1980-81 and to the Respondent No. 3 to allow clearance of the goods in question. The writ petition was admitted and interim orders were passed.

8. The Respondents did not file any affidavit. However, when the cases were

taken up for hearing, the counsel for the respondents raised serious objections in regard to the maintainability of these writ petitions primarily on the ground that the petitioners had not even approached the concerned respondents with necessary application and directly rushed to the High Court by filing the present writ petition solely relying on the decision of the Supreme Court in *M/s. Oswal Woollen Mills* (supra), thereby denying the Respondents an opportunity to examine the eligibility of the petitioners to the benefit of the special facilities under the relevant Import Policy and to give their decision thereon. Counsel submits that the petitioners misconstrued and misinterpreted the two circulars of the Respondent No. 4. The object of these circulars was not to tell the licensing authorities that the cases of the petitioners would not be governed by the ratio of the Supreme Court in *M/s. Oswal Woollen Mills* or that the said decision should not be applied to similar cases. These circulars were simply intended to clarify that every claim required a closest scrutiny both on facts as well as in law and as such no hasty decision should be taken on the assumption that by virtue of aforesaid Supreme Court decision every transferee of REP Licence under all the three Import Policies concerned, were ipso facto entitled to the benefits of special facilities available to the manufacturers exporters under the relevant paragraphs 131(1) or 138(1) of the relevant Import Policy inasmuch as a proper verification of the facts of each case was necessary to ascertain whether all the other conditions specified in different paragraphs of the relevant Policy in this regard were satisfied or not. Counsel for the petitioners refuted this contention on the ground that it is prima facie contrary to what is stated in the two circulars referred to above. Counsel further submitted that as a decision had already been taken by the respondents to the effect that the transferee of REP Licences would not be granted the benefits of special facilities despite the decision of the Supreme Court in *M/s. Oswal Woollen Mills* and the same having been communicated to all the licensing authorities in so many words no fruitful purpose would have been served by approaching the authorities with the relevant materials in regards to items or rate or the transferees themselves.

9. We have considered the rival contentions of the petitioners and the respondents. It is true that due to the petitioners having directly approached this Court without moving the appropriate authorities at the first instance and in the absence of relevant factual informations in the writ petitions, as well as absence of affidavits in reply from the respondents, it is difficult for us to examine the case of each individual petitioners from all angles and to give a final verdict in each such case in regard to the eligibility of the petitioner as transferees of REP Licences to get all or any of the special facilities under the relevant paras of the Import Policy concerned in respect of goods imported by them. That will have to be examined by the concerned authorities on the facts of each case. In that view of the matter we shall have to confine ourselves to the question pertaining to applicability of the ratio of the decision of the Supreme Court in *M/s. Oswal Woollen Mills* (supra) to the transferees in general of the REP licences issued against registered contracts under the Import Policy, 1981-82 and also to

transferees of such licences against registered contracts governed by Import Policies, 1980-81 and 1982-83. For the facility of discussion, we may formulate the following three questions :

(1) Whether the decision of the Supreme Court in *M/s. Oswal Woollen Mills* (supra) is confined only to the case of the petitioners therein or it has laid down law of general application which would also govern the cases of all the transferees of REP licences under the said Import Policy of 1981-82 ?

(2) Whether the ratio of said decision is applicable to the transferees of REP licences issued against the registered contracts under the Import Policy of 1980-81 ?

(3) Whether the ratio of the said decision is also applicable to transferees of REP licences issued against registered contracts under the Import Policy of 1982-83 ?

For answering the first question we shall have to carefully analyse the decision of the Supreme Court in the context of the controversy raised therein and the relevant provisions of the Import Policy, 1981-82. For the other two questions, we shall have to scrutinise the relevant provisions of the Import Policy, 1980-81 and Import Policy, 1982-83 with a view to seeing whether they are substantially identical to those in Import Policy, 1981-82 on which the decision of the Supreme Court was based or there is any material difference which might render the ratio of the said decision inapplicable.

10. Before taking up these questions, it may be expedient at this stage to state briefly the facts of the case of *M/s. Oswal Woollen Mills Ltd.* (supra). The petitioner in that case was originally a registered Export House within the meaning of para 5(7) of the Import Policy, 1981-82 and had been a manufacturer exporters since 1971. It had become a recognised Trading House as its Export House Certificate had been converted into a Trading House Certificate in terms of paragraph 195(1) of the Import Policy 1981-82. Recognised Trading Houses are entitled to certain facilities under paragraph 195(4) and one of them is import replenishment (REP) licence transferred to them by others. An import replenishment (REP) licence had been issued to a manufacturer exporter against his actual export. The petitioner got the said licence transferred to it by a letter dated 5-7-1981 as provided in paragraph 140 of the Import Policy, 1981-82 for obtaining the facility under paragraph 195(4) (ii). Thereafter an application was made by the petitioner for recognition of that transfer and for endorsement being made on the said licence to enable the petitioner to import raw materials, components, consumables and packing materials required by it for use in its own factory as per the first part of paragraph 138(1) of the Import Policy 1981-82. In that letter it was also stated that the endorsement may be made on it to make it valid for import of the items permissible under para 138 with the "Actual User" and non-transferable condition. This request was rejected on the ground that "the (REP) licence in question was issued to the licensee against the export of his own products i.e. for

which the licensee was registered as a manufacturer exporter as per the relevant registration-cum-membership certificate held by him".

11. The petitioner was aggrieved by this rejection. Its contention was that it was entitled to import the raw materials, components consumables and packing materials required by it for use in its own factories in terms of para 138(1) of the Import Policy, 1981-82 as the transferee of the (REP) licence permitted by para 140 of the Import Policy, 1981-82 notwithstanding the fact that it was not the manufacturer exporter against whose export the (REP) licence in question had been issued but a Trading House, who got the same licence transferred to it. The respondent's contention was that as the petitioner was not the manufacturer exporter to whom the REP licence was issued against his export it was not entitled to import the raw materials etc., under para 138(1) of the Import Policy, 1981-82. The question for determination before the Supreme Court was which of these contentions is correct. The Supreme Court referred to paragraphs 138, 140, 195(4)(ii) of the Import Policy, 1981-82, which are in the following terms :

"Special facilities to manufacturer exporters

138(1) - REP licences issued to manufacturer exporters will be valid for import of any other items of raw materials, components, consumables, and packing materials required by them for use in their factories. However, import of banned items will be allowed only upto 20% of the face value of REP licence subject to the condition that the value of "single" item should not exceed Rs. 1 lakh. REP licences issued to manufacturer exporters who want to avail of this facility will be issued with an "Actual User" condition and such licences will not be transferable. It is also open to the manufacturer exporter to make use of this facility only for a part of his REP entitlement and to get for the remaining part a freely transferable REP licence.

Utilisation of REP Licence

"140. - The REP licence will be issued in the name of the Registered Exporter only and will be subject to Actual User condition. Except for cases covered by paras 136(2), 185(2) and 186(2) a licence holder may transfer the licence in full or in part in favour of any other person. The licence holder or such transferee may import the goods permitted therein, but the facility of paragraphs 136(2), 137 and 146 shall not be available to any transferee, unless the transferee is himself a registered exporter and can satisfy the custom authorities at the time of clearance of the goods, of his bona fides.

Trading Houses

195(4) - Trading Houses will be granted the following facilities under the Import Policy :-

(i) xx xx (ii) Import replenishment (REP) licence transferred to them by others."

12. On the reading of these paragraphs, the Supreme Court repelled the

contention of the respondents that under paragraph 138(1), the facility to import raw materials etc., under the (REP) licence is available only to the actual manufacturer exporter against whose export the REP licence was issued. It was observed that such a contention "amounts to reading into paragraph 138(1) the words "against the exports of products manufactured by them" after the words "manufacturer exporters" and before the words "will be valid"....." It was further observed :

"We are unable to find any such condition in paragraph 138(1) of the Import Policy, 1981-82".

The Supreme Court also noticed that paragraph 138(1) was not mentioned in paragraph 140 of the said Import Policy, 1981-82.

13. The Court also took note of the significant fact that in the Import Policy for the subsequent year 1982-83, the said words "against their exports of products manufactured by them" had been actually inserted in paragraph 138(1) after the words "REP licence issued to manufacturer exporters" and before the words "will be valid".

14. In the light of these observations, the Supreme Court in M/s. Oswal Woollen Mills (supra) rejected the contention of the respondents and held that the circular dated 31-8-1981 issued by the respondents which sought to introduce such a condition was invalid and the rejection of the request of the petitioner for endorsement unwarranted.

15. From the foregoing narration of the facts, relevant paragraphs of the Import Policy, 1981-82 and the observations of the Supreme Court, it is clear that the Supreme Court decided in clear terms that a transferee of a (REP) licence under the Import Policy, 1981-82 is also entitled to the facilities of import under para 138(1) of the said Import Policy. This decision, which had been rendered on a close reading of the relevant provisions of the Import Policy, 1981-82 cannot, in any event, be held to be confined to the particular case in which it was delivered. It is of general application. The ratio of this decision will apply to all transferees of (REP) licences who claim the benefit of import facility under para 138(1) of the Import Policy, 1981-82, subject however, to the fulfilment of other conditions, applicable in that regard.

16. In the light of this decision the impugned circular No. 53 of 1983 and the further circular dated 19-11-1983 purporting to clarify the same, cannot be approved. In view of the decision of the Supreme Court rendered in such clear terms, there was absolutely no justification for issuing the impugned circular by the Respondent No. 4 to all the licensing authorities telling them that the effect of this decision was confined only to the exporters in whose case it had been delivered and that it did not concern other cases and that there was no question of entertaining requests from other exporters relying on the said judgment. Equally unjustified is the clarification dated 19-11-1981 reiterating that the ratio of this judgment applied only to the case in which it was delivered. Evidently this

circular and the clarification had been issued with the sole object of not giving effect to the decision of the Supreme Court which was otherwise binding on them. We cannot approve such action of the respondents. We want to remind the respondents, that under Article 141 of the Constitution, the law declared by the Supreme Court is binding. No attempt, therefore, should be made to side-track a binding decision of the Supreme Court on any pretext or pretence or to whittle down, wish away or be unbound by the ratio thereof.

17. In the light of the foregoing discussion we are of the opinion that the decision of the Supreme Court in *M/s. Oswal Woollen Mills* (supra) is not confined only to the petitioner in that case but is applicable to all transferees of REP licences issued against registered contracts under the Import Policy, 1981-82.

18. We now turn to the second question which pertains to the applicability of the ratio of this decision to the provisions of Import Policy, 1980-81.

19. The relevant paragraphs of Import Policy, 1980-81 which correspond to paragraphs 138(1), 140 and 195(4)(ii) of the Import Policy, 1981-82 are paragraphs 131(1), 133 and 174(ii). These paragraphs are reproduced below :

"Special facilities to manufacturer exporters

131(1) - REP licences issued to manufacturer exporters will be valid for import of any other items of raw materials, components, consumables, and packing materials required by them for use in their factories. However, import of banned items will be allowed only upto 20% of the face value of REP licence subject to the condition that the value of "single" item should not exceed Rs. 1 lakh. REP licences issued to manufacturer exporters who want to avail of this facility will be issued with an "Actual User" condition and such licences will not be transferable. It is also open to the manufacturer exporter to make use of this facility for a part of his REP entitlement and to get for remaining part a freely transferable REP licences.

Utilisation of REP licences

133. - The REP licence will be issued in the name of the Registered Exports only and will not be subject to Actual User condition. Except for cases covered by paras 129(2), 176(2) and 177(1) a licence holder may transfer the licence in full or in part in favour of any other person. The licence holder of such transferee may import the goods permitted therein but the facility of paragraphs 129(2), 130 and 139 shall not be available to any transferee, unless the transferee is himself a registered exporter and can satisfy the customs authorities at the time of clearance of the goods, of his bona fides".

Import facilities available to Export Houses.

174. - Export Houses will be granted the following facilities under this policy :

(i) xx xx xx (ii) import replenishment (REP) licences transferred to them by other."

20. A comparison of these paragraphs with the corresponding paragraphs of the Import Policy, 1981-82 clearly goes to show that these two sets of provisions are identical. There is no material difference between them. The ratio of the decision of the Supreme Court in *M/s. Oswal Woollen Mills* (supra) will, therefore, equally apply to transferees of (REP) licences issued against registered contracts under the Import Policy, 1980-81 also.

21. We may now turn to the third question which relates to the applicability of the ratio of *M/s. Oswal Woollen Mills* (supra) to transferees of (REP) licences issued against registered contracts under the Import Policy, 1982-83. For the purpose of deciding this question we have to carefully go through the relevant paragraphs of this policy. On perusal of the same, we find that there is a material difference in the relevant paragraphs in this Policy from those of the Import Policy, 1981-82. The language of paras 138 and 140 of this policy is materially different from that of the corresponding paragraphs of Import Policy of 1981-82. The words which were not there in para 138(1) of the Import Policy, 1981-82 but were sought to be read therein by the Customs authorities, which was not permitted by the Supreme Court, were specifically incorporated in this para in this Policy. This material change was also noticed by the Supreme Court in its judgment in *M/s. Oswal Woollen Mills* (supra). Consequent change was also made in para 140 in the Import Policy, 1982-83.

22. Paras 138 and 140 of Import Policy, 1982-83 so far as relevant, are reproduced below :

"Special facilities to Registered exporters. 138(1) - REP licences issued to manufacturer exporters, against their exports of products manufactured by them, will be valid, within their overall value, for import of any items of raw materials, components, consumables, spares and packing materials required by them for use in their factories, subject to "Actual User" condition. This special facility will be subject to the conditions laid down hereunder :

(2) The facility will also be available to manufacturing Export Houses against REP licences issued to them on their export of products manufactured by them.

(3) xx xx (4) xx xx (5) xx xx (6) xx xx (7) xx xx (8) xx xx (9) Manufacturer exporters wanting to make use of this facility should get their licences endorsed from the licensing authorities concerned. The licensing authorities will make the following endorsement on such licences -

"This licence will also be valid for import of items permissible under para 138 of Import Policy, 1982-83 and shall be subject to "Actual User" condition as laid down in Schedule V to the Imports (Control) Order, 1955."

(10) The facilities available to manufacturer exporters in this para will also be available to manufacturers whose products are exported by others".

(11) xx xx xx (12) REP licence endorsed for utilisation under this para shall be non-transferable. It is however, open to an exporter to make use of this facility

only for a part of his REP entitlement, and to get for the remaining part a freely transferable REP licence. In such cases, the REP entitlement will be split up into two separate licences, namely, transferable and non-transferable. The transferable licence will be issued for the items as permitted in Appendix 17 against the relevant export product. The non-transferable licence will be issued for "raw materials, components, consumables, spares and packing materials as permitted under para 138 of Import Export Policy, 1982-83". In the case of such non-transferable licences, the additional value for import of restricted items referred to in sub-para (8) above will be 10% of the fob value of exports against which the main REP licence was issued, and not the proportionate part of fob value."

Utilisation of REP licence

140. - The REP licence will be issued in the name of the Registered Exporter only and will not be subject to "Actual User" condition. Except for cases covered by paras 136(2), 138, 185(2) and 186(1), a licence holder may transfer the licence in full or part in favour of any other person. The licence holder or such transferee may import the goods permitted therein but the facility of paragraphs 136(2), 137 and 146 shall not be available to any transferee, unless the transferee is himself a registered exporter and can satisfy the customs authorities at the time of clearance of the goods, of his bona fides.

141. The transfer of the licence will not require any endorsement or permission from the licensing authorities i.e. it will be governed by the ordinary law. Accordingly, clearance of the goods covered by a REP licence issued under this policy, will be allowed by the custom authorities on production by the transferee of only the document of transfer of the licence concerned in his name.

To highlight the changes made, the relevant portion or words or figures indicating deviation from the previous policy have been underlined by us.

23. From a reading of the relevant clauses of the aforesaid paras 138 and 140, it is evident that the transferable (REP) licence can be issued only for the items as permitted in Appendix 17 against the relevant export product. It cannot be issued for "raw materials, components, consumables, spares and packing materials" as permitted under para 138 of the Import Export Policy, 1982-83. In respect of such items only a non-transferable licence can be issued. Para 140 has also been changed. Para "138" has been added to the other paras referred to in the second sentence of para 140 which now reads :

"Except for cases covered by paras 136, 138, 185(2) and 186(1), a licence holder may transfer the licence in full or in part in favour of any other person...."

These changes in paras 138 and 140 have made it abundantly clear that a transferable (REP) licence under Import Policy, 1982-83 can be issued only for the items as permitted under Appendix 17 against the relevant export product. The special facilities under para 138 are no more transferable.

24. In view of what is stated above, we are of the clear opinion that the special facilities under para 138 are not available to a transferee of a REP licence under para 138 of the Import Policy, 1982-83. In fact, the transferable licence itself is only for the items permitted under Appendix 17 and not under para 138. The transferee of such a licence, thus cannot claim the special facilities under para 138. The ratio of the decision of the Supreme Court in M/s. Oswal Woollen Mills is, therefore, not applicable to transferees of (REP) licences under the Import Policy, 1982-83.

25. Having decided the basic controversy in regard to the applicability of the ratio of the Supreme Court decision in M/s. Oswal Woollen Mills" case (supra) to transferees of (REP) licences under the three Import Policies of the years 1980-81, 1981-82, and 1982-83, we may now examine whether it is possible in these writ petitions to give any definite finding in regard to the entitlement of the petitioners to the import of the particular items imported by them under the respective (REP) licences obtained by them on transfer. As observed earlier, in view of the various constraints indicated in the beginning of this judgment, absence of requisite pleading and non-availability of relevant factual material informations, it is not possible on our part to do so. Counsel for the respondents rightly pointed out to us that there are a number of requirements specified in different paragraphs and Appendix 20 which have to be fulfilled in order to avail the benefit of the special facilities under para 138. In support of this submission, the counsel referred as an instance to the Writ Petition No. 3167 of 1987 wherein the petitioner, who is transferee of (REP) licence has imported long pepper. It was submitted that nothing is available in the petition to show that this item falls under para 138(1). All these matters need scrutiny by the concerned authorities. It was also pointed out that in any event a transferee cannot claim a higher or better entitlement than the original licensee himself. We find force in this submission. We, therefore, direct the petitioners to apply to the concerned authorities with requisite informations and details for necessary endorsement/ clearance or permission. This should be done within one month from today. The authorities concerned shall scrutinise the claim of each petitioners carefully in the light of this judgment and the relevant provisions of the Import Policy concerned and give its decision thereon by passing reasoned order within two months therefrom.

26. In the result, these writ petitioners are allowed to the extent indicated above.

27. In view of the facts and circumstances of the case we make no order as to costs.