

(2016) 05 RAJ CK 0123

In the Rajasthan High Court

Case No : Civil Writ Petition No. 5616 of 2006

Sangam (India) Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 05-05-2016

Acts Referred:

Citation : (2016) 337 ELT 53

Hon'ble Judges : Govind Mathur and G.R. Moolchandani, JJ.

Bench : Division Bench

Advocate : Dr. Manish Singhvi and Shri S.M. Toshniwal, Advocates, for the Petitioner; S/Shri Ravi Bhansali, Senior Advocate assisted by Rajvendra Saraswat, Advocate, for the Respondent

Final Decision : Allowed

Judgement

1. Section 5 of the Foreign Trade (Development & Regulation) Act, 1992 empowers the Central Government to formulate export and import policy and amend the same from time to time. In exercise of the said power, the Central Government issued Foreign Trade Policy for the period 2004-2009. Paragraph 3.7.3 therein stipulates that the entitlement towards duty credit will be contingent on the minimum percentage incremental growth of certain percentage in FOB value of exports in the current licensing year over the previous licensing year in the manner laid down therein.

2. The grievance of the petitioner is that whereas the relevant paragraph envisage slabs and duty rates for each slab by the impugned notification dated 12-6-2006, a flat rate of 5% has been prescribed superseding the earlier notification with retrospective effect, i.e., from 1-4-2005. The case of the petitioner is that the incentive provided in Paragraph 3.7.3 was in the nature of promise, which cannot be withdrawn, much less with retrospective effect with a subordinate legislation.

3. The issue in question has already been examined by the Apex Court in

Director General of Foreign Trade and anr. v. Kanak Exports and anr. reported in (2016) 2 SCC 226 : 2015 (326) E.L.T. 26 (S.C.). In the case aforesaid, Hon''ble Apex Court held that the notification dated 12-6-2006 cannot be applied retrospectively and that would be effective only from the date it was issued.

4. The instant petition for writ is also allowed in terms of the judgment referred above.