(1985) 04 BOM CK 0015

In the Bombay High Court

Case No : Writ Petition No. 638 of 1981

Sarju International, Bombay APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 08-04-1985

Acts Referred:

Citation : (1989) 39 ELT 542

Hon'ble Judges : Sujata V. Manohar, J

Bench : Single Bench

Judgement

1. The petitioners are manufacturers and exporters of cotton ready made garments including T-Shirts, Children''s clothing, Industrial Garments etc.

2. By a circular No. STT-36(1)/1620/78 issued by the Indian Cotton Mills Federation (respondent No. 2) on behalf of the first respondent - Union of India the 1st respondent announced its export assistance scheme for cotton textiles and goods made therefrom effective for the period 1st of April 1978 to 31st of March 1979. Under the scheme a cash assistance at the rates specified in that circular was announced on the F.O.B. value of the cotton goods so exported. The goods covered by the scheme are set out in the circular. Item 6 of the circular deals with cotton ready made garments including industrial garments and children''s clothing and other items of ready made garments. The percentage of export assistance is also set out against these items.

3. On the basis of this export assistance scheme the petitioners entered into, inter alia, nine contracts all dated 21st August 1978 with foreign buyers for export of hosiery T-Shirts. These contracts were order Nos. 78248, 78249, 78345, 78241, 78239, 78173, 78233, 78240 and 78242. Pursuant to these contracts the goods were exported in the months of January and February 1979. Therefore the petitioners submitted to the second respondents their applications for cash assistance incentives under the said scheme in respect of the exports so effected. The petitioners however, have been denied the cash incentives prescribed under the scheme on the basis that under a Circular dated 6th

January 1979, which is Exhibit ''N'' to the petition the cash compensatory support on the cotton garments described therein has been discontinued with effect from 1st of January 1979. The petitioners have challenged the denial of the benefits of the cash incentive scheme to them in respect of these contracts. The 1st respondents have contended that they are entitled to withdraw this scheme at any time.

4. In the case of M/s. Sarju International v. Union of India and another being Misc. Petition No. 1869 of 1979 by brother Pendse J. by his judgment dated 24th November 1983 has held on similar facts that the petitioners in that case had entered into concluded contracts with foreign purchasers on the basis of the said scheme. They had charged lower prices on the footing that they would be given cash incentive on the exports so effected by them under the scheme. In these circumstances for contracts which were concluded prior to the withdrawal of the scheme the petitioners were entitled to the benefit of the scheme and the respondents who had held out a promise under the scheme were estopped from denying such benefits to the petitioners. That petition was filed by the present petitioners in respect of certain other contracts.

5. Similarly, in Writ Petition No. 1898 of 1981 along with a number of other writ petitions which were decided by my brother Bharucha J. by his judgment dated 13th January 1984, Bharucha J. has also come to a similar conclusion. He has held that the contracts were entered into on the basis of the cash assistance scheme and in respect of the contracts which were concluded prior to 1st of January 1979 the petitioners were entitled to the advantage of cash assistance. The fact that the goods were only exported subsequent to January 1979 was not enough to deprive the petitioners of the benefit of the scheme.

6. I am in respectful agreement with the above two judgments. In the present case also the petitioners have averred that the contracts in question were entered into by the petitioners at a low price having regard to the stiff competition in the market abroad. The petitioners had agreed to such low price in view of the cash assistance promised by the Government of India under the said export promotion scheme. In these circumstances the petitioners are entitled for the reasons set out in those judgments with which I am in respectful agreement, to cash assistance as per the scheme in respect of such of their contracts as have been concluded prior to the 1st of January 1979 although actual exporters under these contracts may have been effected at a subsequent date.

7. In the premises the decision of the 1st respondent to the effect that the said exports are not eligible for cash compensatory support under the said scheme is set aside. The 1st respondents are directed to examine each of the contracts mentioned in the petition to determine whether they were entered into under the said scheme and whether they were entered into prior to 1st of January 1979. In respect of such contracts as have been entered into prior to 1st of January 1979 under the said scheme the respondent No. 1 shall grant cash compensatory

support. Such examination to be made and cash assistance to be granted within a period of 6 months from today.

The 2nd respondents have merely acted on behalf of the 1st respondent. The petition is therefore dismissed as against the 2nd respondent.

8. The 1st respondent will pay to the petitioners costs of the petition.