
(1994) 04 CAL CK 0039
In the Calcutta High Court
Case No : Writ Petition No. 3152 of 1993

S.B. International Ltd.

APPELLANT

Vs

Asstt. Director General of Foreign Trade

RESPONDENT

Date of Decision : 11-04-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 300A
Imports and Exports (Control) Act, 1947 — Section 3

Citation : (1994) 74 ELT 210

Hon'ble Judges : Paritosh Kumar Mukherjee, J

Bench : Single Bench

Advocate : N.C. Roy Chowdhury, Nadira Patheria and Subrata Chatterjee, for the Appellant; Jatin Ghosh and Arati Dutta, for the Respondent

Final Decision : Allowed

Judgement

Paritosh Kumar Mukherjee, J.—This writ petition was moved on behalf of the petitioners M/s. S.B. International Limited and another, inter alia, praying for issue of a Writ in the nature of Mandamus, commanding the respondents to withdraw, cancel and/or rescind the instructions/directions, contained in the communication dated October 19, 1992 and to issue advance licences to the petitioner No. 1 for the remaining amounts, pursuant to the five applications, referred to in Annexure "D" to the writ petition, by applying the norms, as prevailing on the dates of filing of the said applications and to act in accordance with law.

2. The writ petition comes up for final hearing before me after completion of affidavits, on several dates.

3. Facts stated in the instant writ petition are as follows :-

The petitioner No. 1 is a Public Limited Company, within the meaning of Companies Act, 1956. The petitioner No. 2 is the Director of the petitioner No. 1 company. Most of the share-holders of the petitioner No. 1 carry on business and/

or hold property through the agency and/or instrumentality of the petitioner No. 1. Formerly the name of the petitioner No. 1 was M/s. Sarda Brothers Limited and that on and with effect from March 18,1993, the name of the petitioner No. 1 has been changed to M/s. S.B. International Limited and in this respect, the Registrar of Companies, Assam, Meghalaya, Shillong, etc. has issued fresh Certificate of incorporation.

4. The petitioner No. 1 carries on the business of exporting frozen marine products from India to various foreign countries. The said marine products are exported after being duly packed in polythene bags. The petitioner No. 1 is a registered exporter and a recognised Export House and is holding a valid Export House Certificate, issued by the appropriate authorities of the Government of India, in this regard.

5. The Import Policies, issued by the Government of India, Ministry of Commerce, from time to time, contain a scheme commonly known as "Duty Exemption Scheme". The said "Duty Exemption Scheme" was contained in Chapter-XIX of the Import Policy, 1992-93, which was announced on March 30, 1990 and was to remain in force for a period of three years from April 1,1990 to March 31,1993. The said Scheme is presently contained in Chapter-VII of the Export Import Policy 1992-97, which was announced on March 30,1992 and is to remain in force for a period of five years, that is, upto March 31,1997.

6. According to the petitioners, it would be evident from the said provisions of the Import Policies, that the objective of the said scheme is to make available to the registered exporters the necessary inputs, needed for export promotion at international prices, without payment of customs duty so as to make the exports competitive in the international market.

7. One of the types of licences, issued under the said "Duty Exemption Scheme" is "Advance licence". An advance licence is issued to registered exporters for import of duty exempt materials, including packing materials and export of the resultant products or to replenish the materials which have gone into the production of the resultant product already exported, in anticipation of the grant of advance licence. An advance licence is always subject to the fulfilment of a time-bound export obligation and value addition as may be specified. Advance licences may be based on either value or quantity and an exporter is free to apply for a value based or quantity based advance licence. Under the provisions of paragraph 66 of the said Import Policy, exports/supplies made from the date of receipt of an application for advance licence by the licensing authority are acceptable towards discharge of export obligation.

8. Paragraph 49 of the said Import Policy provides, that a value based advance licence shall, inter alia, specify the value addition in accordance with the standard input-output norms, published by means of a Public Notice.

9. According to the petitioners, by a Public Notice dated March 31, 1992, bearing No. 2-IIc (PN) 92-97, the Ministry of Commerce published the standard input

output and value addition norms for issuance of advance licence under duty exemption scheme. As per the said norms, in respect of frozen marine products packed in polythene packs, it was permissible to import low-density polythene (hereinafter referred to as LDPE) and the percentage of value addition was 1000. A copy of the said Public Notice dated March 31,1992, has been annexed as Annexure "A" to the writ petition.

10. Between June 10,1992 to June 22,1992, the petitioner No. 1 entered into different export contracts, with its various foreign buyers, for export of frozen marine products. Particulars of the said contracts, namely, F.O.B. value of the exports covered by each of the said contracts, name of the buyer, delivery period etc. has been given in a separate statement, being Annexure "B" to the writ petition.

11. Further, it is the case of the petitioners that the petitioner No. 1 duly filed applications for value based advance licences, in respect of the said export contracts, under the Duty Exemption Scheme, in the prescribed forms. Details of the said applications filed by the petitioner No. 1, has been given in a statement, which is Annexure "C" to the writ petition.

12. In the said applications, all relevant facts, namely, the total F.O.B. value of the exports, delivery periods, details of the products to be exported, value of the products to be exported, etc. were duly given by the petitioner No. 1. Copies of the said five applications has been annexed as Annexure "D" to the writ petition, collectively.

13. In the said applications for advance licences, the petitioner No. 1 applied the input-output norms as laid down in the said Public Notice dated March 31,1992, that is, the percentage of value addition was taken at 1000.

14. According to the petitioners, the said Public Notice dated March 31, 1992 was in force and was operative on the dates of filing of each of the said five applications, for advance licences. Before filing the said applications, the required fees were also duly paid by the petitioner No. 1 and copies of the connected TR 6 Challans (including original), were also duly forwarded alongwith the said applications. The petitioner No. 1 also duly forwarded copies of the different purchase orders, placed upon it by its foreign buyers for the said frozen marine products packed in polythene bags, alongwith the said applications.

15. After filing of the said applications for advance licences, the petitioner No. 1 started exporting the said frozen marine products duly packed in polythene bags and as covered by each of the respective orders of the foreign buyers.

16. Further, according to the petitioners, paragraph 66 of the said Import Policy provides, inter alia, that such exports from the date of filing of the application for advance licence are acceptable towards discharge of export obligation.

17. Details of the exports made by the petitioner No. 1 after filing of the said five applications, towards the said five contracts, entered into with the foreign buyers

are given in a statement, included in Annexure "C", as stated hereinbefore. In the said statement, the petitioners have also given details, as regards the percentage of the exports covered by each of the said orders/applications, as actually made by the petitioner No. 1, after the date of filing of the applications, but before September 25, 1992.

18. According to the petitioners, it would be evident from the said statement, (Annexure "C" to the writ petition), that in respect of the application No. 00209 dated May 29, 1992, 00283 dated June 18, 1992 and 00309 dated June 24, 1992, entire 100% exports were duly made and completed by the petitioner No. 1 before September 25, 1992. In respect of the applications bearing No. 00310 dated June 24, 1992 and 00181 dated September 15, 1992, the petitioner No. 1 exported 87.24% and 21.25% of the total quantity before September 25, 1992, respectively. In the relevant shipping bills, as well as, in the connected invoices, it was duly stated by the petitioner No. 1 that it has duly applied for value based advance licences in respect of the said exports.

19. On September 25, 1992, another Public Notice bearing No. 54/PN/92-97 was issued, whereby various amendments were made in the said earlier Public Notice dated March 31, 1992. Entry No. 1 under the main heading "fish and fish products" in the earlier Public Notice was substituted by a new entry and entry Nos. 2 and 3 of the said earlier Public Notice dated March 31, 1992, were deleted by the said amendment. The effect of the said amendments made by Public Notice dated September 25, 1992, inter alia, was that the value addition percentage applicable to value based licences against export of frozen marine products, packed in polythene bags, was changed from 1000% to 1900%. Copy of the said Public Notice dated September 25, 1992 has been annexed as Annexure "F" to the writ petition.

20. According to the petitioners, after the filing of the said five applications, by the petitioner No. 1, the Assistant Director General of Foreign Trade and the Joint Director General of Foreign Trade, Government of India, being the respondents No. 1 and 2 respectively, from time to time, addressed communications to the petitioner No. 1 in the months of July and August 1992, seeking various informations and/or documents and such requisitions of the said respondents were duly complied with by the petitioner No. 1.

21. On October 19, 1992, the Assistant Director General of Foreign Trade, Government of India, being the respondent No. 1, addressed five communications to the petitioner No. 1, requiring it, inter alia, to revise its said applications for advance licence keeping in view the revised norms, as contained in the Public Notice dated September 25, 1992.

22. The petitioner No. 1 duly replied to the said five communications of the respondent No. 1, by letters dated October 22/24, 1992. In the said replies, relating to the application Nos. 00283, 00209 and 00309, it was inter alia, stated that the entire exports relating to the said applications had already been made,

prior to issuance of the said Public Notice dated September 25, 1992 and obviously, the said Public Notice and the norms revised thereby, did not and could not have any application.

23. In the replies, relating to application Nos. 00310 and 00181 also, all the relevant facts, as stated hereinbefore, were brought to the notice of the respondent No. 1 and it was submitted that even in respect of the said applications, substantial exports to the extent of about 87% and 21% of the total quantities had already been made prior to September 25, 1992 and the connected advance licences have to be issued on the basis of the norms as prevailing prior to September 25, 1992. It was also submitted on behalf of the petitioner No. 1 that in any event as the applications for advance licences in question were filed prior to September, 25, 1992, the question of application of the revised norms, as contained in the Public Notice dated September 25, 1992, did not and could not arise.

24. On December 21, 1992, a discussion was held between the representative of the petitioner No. 1 and Deputy Controller of Imports and Exports. During the said discussions, entire relevant facts were again clarified to the Deputy Controller and it was submitted before him that the Public Notice dated September 25, 1992 did not and could not have any application in the instant case. During the said discussions, the representative of the petitioner No. 1 requested the Deputy Controller to issue, for the time being, the said licences, as per the present norms, without prejudice to any of the rights and contentions of the petitioner.

25. Thereafter, the Assistant Director General of Foreign Trade, being the respondent No. 1, in the month of February 1993, issued the advance licences, pursuant to the said five applications, in favour of the petitioner No. 1 by applying the prevailing norms, as per the said Public Notice dated September 25, 1992 and the advance licences, so issued, were accepted by the petitioner No. 1, without prejudice to any of its rights and contentions and reserving its right to take necessary actions in accordance with law in case its claims for issuance of the said licences on the basis of the norms prevailing prior to September 25, 1992, were ultimately not accepted and/or rejected by the respondents.

26. In such background, the present writ petition was moved for issue of necessary Writ, against the respondents, referred to hereinabove.

27. After placing the aforesaid facts from the writ petition, Miss. Nadira Patheria, led by Mr. N.C. Roy Chowdhury, learned Advocate for the petitioners, submitted that the applications having been admittedly filed by the petitioner No. 1, prior to September 25, 1992 and on the dates of filing the said applications, the norm for value addition was 1000% in respect of the goods in question, the eligibility of the petitioner No. 1 to get the said import licences and the amounts for which the said licences were to be issued, has to be decided on the basis of the norms as prevailing on the dates of filing of the said applications, that is, prior to

September 25,1992.

28. It is further submitted on behalf of the petitioners that the Public Notice dated September 25,1992, has admittedly not been given any retrospective effect. The amendments made by the said Public Notice dated September 25,1992, are only prospective and can apply only in the applications filed on or after the date of issuance of the said Public Notice, that is, September 25,1992. The said Public Notice dated September 25,1992, did not and cannot have any effect or relevance whatsoever in respect of the applications filed earlier.

29. Miss Nadira Patheria also submitted that there is no provision in the said Import Policy, laying down that the amendments made by such Public Notices, could apply even to the applications filed during the earlier periods and according to her, no such condition or restriction could be assumed or implied or imposed by the respondents.

30. Further, according to the petitioners, there was no provision in the said Import Policy to the effect that the norms to be applied for advance licence would be those prevailing on the date of issuance of such licences and not on the date of receipt of the applications for such licences.

31. According to the petitioners, it would be evident from the various provisions of Duty Exemption Scheme, contained in Chapter VII of the said Policy that it is the date of receipt of application in the office of Import Control Authorities, which could be the relevant date. The said scheme contemplates and specifically provides that after filing the application for licence, the applicant may start making the exports and that all such exports made from the date of receipt of application under the scheme by the licensing authority are acceptable towards discharge of export obligation. The said provision would also establish that the relevant date for fixation of norms is the date of receipt of the application by the licensing authority.

32. It was also contended that in the instant case, out of the five applications, in respect of three applications, full exports of the resultant products had already been made prior to September 25,1992. Even in respect of the remaining two applications, substantial quantities of about 87% and 21% of the resultant export products had already been exported prior to September 25, 1992. In such circumstances, and assuming though not admitting that the advance licences had to be issued by applying the norms, as prevailing on the date of the export, even in that situation, in respect of the exports, already made prior to September 25,1992, there was or is absolutely no scope whatsoever to apply the "new norms", as per the said Public Notice dated September 25,1992.

33. Further, according to the petitioners, applying the old norms in respect of other applicant, simply due to the time taken by the licensing authority, in issuing the licences, would amount to make a hostile and arbitrary discrimination between the said two applicants similarly situated and as such, would be violative of Article 14 of the Constitution of India.

34. It was further contended that by illegally refusing to grant the said import licence to the petitioner No. 1, on the basis of the norms as prevailing prior to September 25, 1992, the respondents are violating the Fundamental Rights of the petitioner No. 2 to carry on trade and/or business, through the agency and/or instrumentality of the petitioner No. 1, guaranteed under Article 19(1)(g) and Article 300A of the Constitution of India.

35. It has further been contended on behalf of the petitioners that by issuing the Public Notice dated March 31, 1992, the Government in fact represented the entire trade about the norms as laid down in the said notice and it is on the basis of such norms that calculations were made by entering into the contracts with the foreign buyers for filing of the said applications, long prior to issuance of Public Notice dated September 25, 1992. In fact, the export orders placed upon the petitioner No. 1 by its foreign buyers were also forwarded along with the applications.

36. It was also contended that in such a situation, because of the promise given in the earlier notice dated March 31, 1992, the petitioners had altered their position to their detriment by acting on the basis of the said Public Notice dated March 31, 1992 on the basis of the norms laid down therein and as such, the respondents are estopped from altering the said norms, at a subsequent date and apply the same to the case of the petitioner, on the basis of amendment, made on September 25, 1992.

37. In support of this branch of submission, Mr. Roy Chowdhury strongly relied on a decision, in the case of Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, .

38. It has further been stated by the petitioners that even the Import Policy was subsequently amended with effect from April 1, 1993 and by the said amendment, it was provided that an advance licence shall be issued in accordance with the policy and procedure in force, on the date of issue of the licence. No such provision was there in the Import Policy, prior to the aforesaid amendment.

39. According to the petitioners, this would also support the stand taken by the petitioners that prior to the amendment made with effect from April 1, 1993, that advance licences were required to be issued by applying the norms as prevailing on the date of application.

40. It was further submitted by Mr. Roy Chowdhury that as a matter of fact, paragraph 66 of the Import Policy, after it was amended with effect from April 1, 1993, was again substituted by a new paragraph by Notification No. 27(RE)/92-97, dated February 8, 1994 and the said new paragraph provides as follows :-

"66. Export/Supplies made from the date of receipt of an application under this scheme by the licensing authority may be accepted towards discharge of export

obligation. If the application is approved, the licence shall be issued based on the input output and value addition norms in force on the date of receipt of application, by the licensing authority in proportion to the provisional exports already made till any amendment in the norm is notified. For rest of the exports, the Policy/Procedure in force on the date of issue of the licences shall be applicable. The conversion of duty free shipping bills to drawback shipping bills may also be permitted by the Customs Authorities in case the application is rejected or modified by the licensing authority. The exports/supplies made in anticipation of the grant of a duty free licence shall be entirely on the risk and responsibility of the exporter and such exports/supplies shall also be subject to the conditions laid down in paragraph 67 of the Policy and paragraph 126 of the Handbook of Procedure."

41. Thus, according to the petitioners for the first time, only with effect from February 8, 1994, it was provided that the licence shall be issued based on the norms in force on the date of receipt of application by the licensing authority in proportion to the exports already made till any amendment in the norm is notified and that for the rest of the exports, the norms on the date of issue of the licence shall be applicable.

42. It has been contended on behalf of the petitioners, that the said amendment made on February 8, 1994, has not been given any retrospective effect and can have no application for the earlier periods. It has also been contended that in any event, even if the said amendment is applied for the first three applications, where 100% of the goods were exported prior to September 25, 1992, the import licences had to be issued by applying the old norms, and from the said notification it is also clear that in cases where export has been completed before issuance of the licence, DGFT itself is establishing that the date of application is relevant.

43. Mr. Jatin Ghosh, learned Advocate appearing for the respondents, has contested the writ petition, but did not file any affidavit.

44. According to Mr. Ghosh, the only point required to be decided in the instant writ petition is whether the petitioners are entitled to grant of advance licence under Duty Exemption Scheme, as per the norms contained in Export & Import Policy, effective from April 1, 1992 or as per the norms of Policy for 1992-97, as modified by the Public Notice dated September 25, 1992.

45. According to Mr. Ghosh, there is no dispute that the norms for value addition for issuance of value based advance licence was 1000% value addition in case of frozen marine products packed in polythene packets. It is also not disputed that the petitioners had submitted five applications, for advance licence, under Duty Exemption Scheme, prior to amendment effected by the Public Notice dated September 25, 1992. It is also not disputed that the policy was amended by the Public Notice dated September 25, 1992, whereby the norms of the value addition was changed from 1000% to 1900%. After the amendment of the said

policy, by the Public Notice dated September 25, 1992, the petitioner was requested by a letter of the Assistant Controller of Imports & Exports to submit a revised application for advance licence, as per the amended norms.

46. On diverse dates, the licensing authorities granted five advance licences, in terms of the norms prevailing on the date of issue of the licence with the following rider :-

"In order that you have no difficulty in operating licence "CPP" please check up whether the licence as well as the list of goods attached with, bear the signature and security seal, No. of the licensing authority and the licence is complete in all respects, if any discrepancy is noticed to submit the licence for necessary amendment immediately on receipt of the licence letter."

47. According to Mr. Ghosh, it does not appear that the petitioner received the said licences under protest or availed the benefit of the licence, under any protest and that the instant writ petition was moved sometime in October, 1993.

48. Mr. Ghosh submitted that prior to April 1992, the policy was announced from time to time by an executive order and not in exercise of powers conferred by Statute. Such policies had no statutory force, as held by the Supreme Court in the case of Andhra Industrial Works Vs. Chief Controller of Imports and Others,

49. In paragraph 12 of the said Judgment, Supreme Court held as follows :-

"A policy statement as distinct from an import or export control order issued u/s 3 of the said Act is not a statutory document. No person can merely on the basis of such a statement claim a right to the grant of an import licence enforceable at law. Moreover, such a policy can be changed, rescinded or altered by mere administrative orders or executive instructions issued at any time."

50. Referring to the submissions made by Mr. Roy Chowdhury, Mr. Ghosh submitted that the Judgment of the Hon'ble Supreme Court, on which Mr. Roy Chowdhury had placed reliance was related to the policies issued prior to 1992. On and from the issuance of policy effective from April 1992, the same had been issued in exercise of the powers conferred u/s 3 of the Imports and Exports (Control) Act, 1947. So the policy has no statutory force being a delegated piece of legislation. The rights and duties of an exporter for issuance of advance import licence are governed by the provisions of the statutory policy, which is now a law. It is an established principle of law that the principles of promissory estoppel are not applicable against law.

51. In this connection, Mr. Ghosh has placed reliance on a decision in the case of Mani Subrat Jain and Others Vs. State of Haryana and Others, , wherein in paragraph 9 it has been observed by the Supreme Court as follows :-

"No one can ask for Mandamus without a legal right. There must be a judicially enforceable right as well as legally protected right before one suffering a legal defence can ask for Mandamus. A person can be said to be aggrieved only when

person is denied a legal right by someone who has a legal duty to be something or for doing something."

52. Mr. Ghosh submitted that the petitioners have got no right to get the advance licences, which could be enforced through this writ petition. He has also submitted that under the scheme of Duty Exempted Advance Licence, eligibility for application is distinctly different from entitlement of grant of licence. The essence of duty exempted scheme for advance licence had always been to the effect that a merchant exporter is entitled to apply once he has confirmed order for export, but his entitlement to get licence is on the norms prevailing at the time of issuance of licence. If he exports anything from the date of application in the expectation of grant of licence, he will do so, at his own risk and he will not be entitled to any benefit, if his application is rejected.

53. In this connection, Mr. Ghosh strongly relied on paragraphs 3 and 4 of the Policy effective from 1st April 1992 to 31st March, 1997 in Chapter I, which runs as follows :-

"3. The Central Government reserves the right in public interest to make any amendments to this policy. An amendment shall be made by means of a Notification published in the Official Gazette.

4. Any Notification made or Public Notice issued or anything done under the previous Export-Import Policies, and in force immediately before the commencement of this policy shall, in so far as they are not inconsistent with the provisions of this policy, continue to be in force and shall be deemed to have been made, issued or done under this Policy. Licences issued before the commencement of this policy shall continue to be valid for import/export of the items permitted therein."

54. Mr. Ghosh has further submitted that the Import Policy is issued for 3 years or 5 years and is not sacrosanct for the entire period and the Central Government has got full right to amend the same at any time. Mr. Ghosh referring to paragraphs 4 and 59 of the Import Policy, submitted that in such circumstances, the licences in the instant case could only be issued on the basis of the norms as prevailing on the date of issuance of the said licences.

55. In this connection Mr. Ghosh placed reliance on the decisions of the Supreme Court in the cases of Keshavan Madhava Menon Vs. The State of Bombay, and Bhikaji Narain Dhakras and Others Vs. The State of Madhya Pradesh and Another, .

56. Lastly, Mr. Ghosh submitted that the eligibility for application is governed by paragraph 59 of the Import Policy, whereas, the entitlement is governed by paragraph 4 read with paragraph 66 of the said Import Policy.

57. On the basis of the aforesaid submissions made on behalf of the parties, this Court has to decide as to whether the petitioner company is entitled to get the advance licences on the basis of the norms, as prevailing prior to the Public

Notice dated September 25,1992 or on the basis of the norms as contained in the Public Notice dated September 25,1992.

58. In my view, there is no dispute between the parties that the value addition norms for the export products in question were 1000% on the date, when the five applications for advance licences were filed by the petitioner company. It is also not in dispute that the said value addition norms continued to remain in force during the periods when full 100% of the exports connected with the first three applications and 87.24% and 21.25% of the exports connected with the last two applications were actually made, prior to September 25,1992, by the petitioner company.

59. All the aforesaid exports were made prior to September 25, 1992, that is, before issuance of the Public Notice dated September 25,1992, amending the norms. It is also not in dispute that the Public Notice dated September 25,1992, only amended the norms from 1000% to 1900%, and the Public Notice dated September 25,1992 was not given and cannot be given any retrospective effect, being an administrative order.

60. Accordingly, the amendments made to paragraphs 48 and 66 of Import Policy are to be given effect from April 1,1993 onwards and the further amendments made to paragraph 66 of the Import Policy are to be effective from February 8, 1994 onwards, as none of the aforesaid amendments have been given retrospective effect.

61. Further, in my view, it would be absurd to suggest that even though the applicant entered into the export contracts on the basis of the old norms and even though such old norms prevailed on the date of filing of the application and even though the applicant was in fact allowed to export the goods immediately after filing of the application and without waiting for actual grant of the licence and even though such exports are to be accepted towards discharge of the export obligation, the licence will be issued not by applying the old norms as prevailing on all the aforesaid dates but by applying the norms as prevailing on some future unknown date, when the licence is actually issued.

62. It is a known fact that the processing of the application for import licence may take long periods in the office of the Import Trade Control authorities and if the contention of the respondents is accepted, it would mean that even though the applicant acted on the basis of the old norms, entered into the export contracts and filed its application for licence when the old norms were prevailing, all his rights to get the licence on the basis of the old norms will be nullified, due to the time taken by the authorities for processing the application during which period, the norms were altered by a new Public Notice and the applicant cannot be held to be liable to suffer for the delay on the part of the licensing authorities, in the matter of issuing the licences. In this connection, it will be necessary to refer to the provisions of paragraphs 48 and 66 of the Import Policy, which have been amended with effect from April 1,1993.

63. After the amendment, paragraphs 48 and 66 of the Import Policy which provides that an advance licence shall be issued in accordance with the Policy and Procedure in force on the date of issue of the licence. There was no such provision in the Import Policy earlier. The respondents in fact are seeking to proceed on the basis that even if amended provisions were not there in the earlier Import Policy, it may be assumed in the earlier provisions. In my view, there is no scope to make such assumption.

64. Similarly, I am also of the opinion that by substitution of amended paragraph 66 of the Import Policy, by a new paragraph by a notification dated February 8, 1994, also clearly established that it is on the said date that for the first time it was provided in the Import Policy that if after filing the applications and before issuance of licence, any exports are made by the applicant, the licence shall be issued based on norms in force on the date of receipt of application by the licensing authority in proportion to the provisional exports already made till any amendment in the norm is notified and that for the rest of the exports, Policy/ Procedure in force on the date of issue of the licence shall be applicable.

65. In my view, the amendment cannot be given any retrospective effect and even if the said amendment would have been given any retrospective effect, the petitioner company was entitled to get import licences on the basis of the old norms in respect of 100% value of the first three applications and 87.24% and 21.25% of the value of the last two applications, inasmuch as, the said exports were already made prior to the amendment of the norms. However, since the said amendment made by the notification dated February 8, 1994 has not been given any retrospective effect, the same is irrelevant for the present writ petition.

66. It has been contended on behalf of the respondents that the Chief Controller of Imports & Exports always has the liberty to modify the norms. There is no dispute about the aforesaid position. However, the modified norms cannot be applied in respect of the pending applications, that is, the applications already filed before such modification. This aspect of the matter has already been dealt with above.

67. Subsequent amendments in the norms, if sought to be applied, will clearly be hit by the Doctrine of Promissory Estoppel or the principles analogous thereto. The judgments relied upon by Mr. Ghosh do not, in any way go against the aforesaid proposition. In the case of Andhra Industrial Works Vs. Chief Controller of Imports and Others, , the facts were completely different. It was not a case where the petitioner had acted on any representation and filed the applications and made the exports accordingly.

68. In fact, no provision similar to the Duty Exemption Scheme and particularly paragraph 66 of the Import Policy was at all considered in the said decision. Similarly, the case of Mani Subrat Jain and Others Vs. State of Haryana and Others, , only lays down that no one can seek a mandamus without a legal right. There can be no quarrel with this proposition.

69. In the instant case, the petitioner has clearly established its legal right and the Import Control Authorities of the Government of India are bound to issue the said advance import licences to it by applying the old norms as prevailing prior to September 25,1992. The other two decisions relied upon by Mr. Ghosh and as mentioned above, have got no relevance of any nature in the instant case.

70. Similarly, the distinction sought to be made by Mr. Ghosh between the eligibility for filing the application for advance licence and the entitlement of advance licence is mis-conceived. The eligibility of the petitioner to get the advance licences in question, is not at all in dispute.

71. On the basis of the legal position, as stated above, I am of the view that the writ petition is entitled to succeed and the petitioner company is entitled to get advance licences on the basis of the norms as prevailing prior to amendment by the Public Notice dated September 25,1992.

72. The respondents and each one of them are accordingly directed to issue advance licences to the petitioner company for the remaining amounts, pursuant to the said five applications, included in Annexure "D" to the writ petition, forthwith, preferably within a period of ten days from communication of this Judgment, by applying the norms prevailing on the date of filing of the applications, that is, before September 25, 1992 and in accordance with this Judgment.

73. Such licences must also be made transferable in accordance with law, subject to the petitioner company's complying with the required formalities.

74. The writ petition is allowed to the extent, indicated above.

75. There will be no order as to costs.

76. Prayer for stay of the operation of this Judgment made by Mrs. Arati Dutta, the learned advocate appearing on behalf of the respondents, is considered and refused in the facts of the present case.

77. All parties concerned are to act on a xerox signed copy of this Judgment on the usual undertaking.