(1989) 04 BOM CK 0005

In the Bombay High Court

Case No : Writ Petition No. 670 of 1986

Shingote Processed Foods P. Ltd. APPELLANT

Vs

Chief Contlr. of Imp. and Ex. RESPONDENT

Date of Decision : 03-04-1989

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1989) 42 ELT 389

Hon'ble Judges : Ashok Agarwal, J

Bench : Single Bench

Judgement

1. The petitioners a private limited company are manufacturers of processed foods. Ninety percent of their foods are exported under replenishment licence. Under the said licence, the petitioners are entitled to import components and raw materials used in their manufacture. They are also entitled to cash assistance at 15% of the Free On Board (FOB) value of the goods exported. The petitioners also obtained the benefit of the Simplified Payment Scheme (SPS) which was introduced in June 1976.

2. On 14th February 1983 a firm, M/s. K. B. Shingote & Co. was debarred from receiving export licences for exporting any goods for 10 licencing periods during 1st April, 1983 to 31st March, 1992. This firm had partners who were also the directors of the petitioners-company. On the 20th September 1983, the Controller of Imports & Exports sought to cancel the SPS enrollment of the petitioner on the ground that the directors of the petitioners-company who were partners of the firm K. B. Shingote & Co. have been debarred from receiving licences under the Import policy. However, by the very communication, the petitioners were given liberty to submit their application for cash assistance under the normal scheme. The petitioners were informed that in case they were dissatisfied with this decision, they could prefer an appeal. On 19th January 1984, the Controller informed the petitioners that they had been debarred from receiving licences during the current licencing period. The petitioner on 20th

August 1984 preferred an appeal to the Joint Chief Controller of Imports and Exports but the same was dismissed on 23rd October 1984. It appears that the directors who were the partners of the debarred firm, subsequently resigned from their post of director and thereafter the department withdrew the orders against the petitioners-company and extended the export entitlements which were withdrawn for the period 1st April, 1983 to 31st March 1985. By this petition, the petitioners impugned the said action of the withdrawal of the export entitlements for the aforesaid period. This petition was filed on 17th March, 1986. On 4th of April 1986, when the petition was placed on board for admission, a statement was made on behalf of the department that they will grant to the petitioners such benefits and licences as they will be entitled to after 19th December 1984 when the four directors resigned. On this statement being recorded, the petition came to be summarily rejected by an order dated 4th April, 1986. The petitioners preferred Appeal No. 470 of 1986 wherein the Appeal bench by its order dated 8th October 1987 allowed the appeal, set aside the summary rejection of the petition, issued a rule and expedited the hearing of the petition. It is, in these circumstances, that the petition has been taken up by me for hearing and final disposal.

3. Shri Bulchandani, the learned Counsel appearing in support of the petitioners submitted that there was no justification in taking the impugned action against the petitioners-company. According to him, on the showing of the department, the provisions of Clause 6(i)(d) and 6(i)(dd) of the Imports Control Order, 1955 was not applied to the petitioners. Hence no action could be taken against the petitioners-company on the ground that it had on its board directors against whom action had been taken in their capacity of being the partner of M/s. K. B. Shingote & Co. Placing reliance on the communication dated 20th September 1983, which permitted the petitioners to take benefit of the normal CCS Scheme, he submitted that there was no justification in withdrawing the benefits under the SP Scheme. The petitioners-company, therefore, was entitled to the benefit under the SP Scheme during the relevant period namely 1st April, 1983 to 31st March, 1985.

4. In my judgment, there is considerable merits in the aforesaid contentions of Shri Bulchandani and the same merits are accepted. The petitioners had been granted enrolment under the Simplified Payment Scheme since the inception of that scheme in the year 1976. The petitioners enrolment under the scheme had been renewed for the period 1st April, 1983 to 31st March, 1984 under letter dated 4th June 1983 which was subsequent to the order dated 14th February 1983 cancelling the licences of the firm M/s. K. B. Shingote & Co. for a period of 10 licencing years. It is curious that under the communication dated 20th September 1983, the Controller of Imports & Exports decided that the SPS enrolment already granted to the petitioners was cancelled and yet liberty was given to the petitioner to submit an application for cash assistance under the normal scheme. If action was to be taken against the petitioners-company on the ground that their directors had been debarred from receiving licences how could

the petitioners be given entitlement of cash assistance under the normal scheme ? The petitioners company is a distinct legal entity. If one refers to the communication dated 19th March 1985 addressed by the Assistant Chief Controller to the petitioners, it is clear that the debarred order has been issued against the firm M/s. K. B. Shingote & Co. and its partners. It clarifies that if there is any other firm and other partners which are not covered by debarring order, the question of issuing any clarification does not arise as there is no practice of entering into correspondence with any firm which is not subject to any action under the penal provisions of the Imports (Control) Order. The petitioners were therefore advised to approach the section where their request was pending. If one has regard to the aforesaid communication, it could be clear that even according to the department the debarring order had been passed only against the aforesaid firm and not against the petitioners. In this view of the matter, it would have to be held that the order dated 19th January 1984 debarring the petitioners-company is contradictory and cannot be sustained. It is obvious that the provisions of the Clause 6(1)(d) & (dd) of the Import (Control) Order, 1955 had not been applied to the petitioners. The order dated 14th February 1983 does not purport to apply the aforesaid clauses. On facts similar to the facts arising to the present petition, one Rasiklal Hiralal & Co. (Pvt.) Limited had filed in this Court Writ Petition No. 2423 of 1985 wherein the department had clarified that the provisions of the aforesaid clause had not been made applicable in its case and hence it was decided not to contest the said petition. Hence rule issued in that petition was made absolute. At the hearing of the Appeal No. 470 of 1976, which was filed against the summary rejection of the present petition, reliance was placed on the aforesaid Writ Petition No. 2423 of 1985 when the learned Counsel appearing on behalf of the respondents sought leave to place an affidavit in the present petition indicating the reason why the department was not following the same course as is followed in that petition. However, no affidavit in that behalf has been filed. If on facts identical to the facts arising in the present case, the department chose not to contest the Writ petition No. 2423 of 1985 one fails to see why the same course was not followed in the present case. Hence, the impugned action refusing the petitioner the benefits under the Simplified Payment Scheme for the period 1.4.1983 to 31.3.1985 will have to be quashed.

5. Shri. Shringarpure, the learned Counsel appearing on behalf of the respondents sought to resist the petition by contending that the petitioner has chosen to prefer their First Appeal dated 27th June 1984 which was dismissed on 24th October, 1984. The petitioners had been informed that it was open to them to prefer a second appeal to the Chief Controller of Exports and Imports. No such appeal was preferred. The present petition which was filed on 17th March, 1986 suffers from delay and latches and therefore deserves to be dismissed. According to him this was a fit case for piercing through the corporate veil. The partners of the firm who had been debarred on account of fraud and malpractices were directors of the petitioners-company. Therefore, this is not a fit case for

interference under Article 226 of the Constitution of India.

6. In my judgment, there is no merits in the aforesaid contentions and the same deserve to be rejected. It appears that the department was not sure of the action it was proposing against the petitioner. I fail to see any wisdom in cancelling SPS benefit of the petitioners and yet extending the benefits under the CCS scheme. If the petitioners were required to be debarred, resort could have been had to Clauses 6(1)(d) & (dd) of the Imports (Control) Order, 1955. No such thing was done. Indeed, the letter dated 19.3.1985 indicates that no action was taken against the petitioners-company and it was on that ground that the department refused to entertain any correspondence made on behalf of the petitioners. Since no departmental enquiry or action has been taken against the petitioner, there can arise no occasion for piercing through the corporate veil. If the entitlement of the petitioners is clear and cannot be assailed on any legitimate ground, the rights of the petitioners cannot be defeated on technical grounds such as of not filing of second appeal or filing of the petition after some delay.

7. The petition thus succeeds. Rule is made absolute in terms of prayer clauses (a), (bi), (bii), (biii) and (biv). The petitioners will be entitled to the costs of this petition.

