

(1989) 04 BOM CK 0055

In the Bombay High Court

Case No : Writ Petition No. 2040 of 1988

Shree Krishna Woollen Mills P. Ltd.

APPELLANT

Vs

Controller of Imp. and Exp.

RESPONDENT

Date of Decision : 21-04-1989

Acts Referred:

Citation : (1989) 43 ELT 50

Hon'ble Judges : Ashok Agarwal, J

Bench : Single Bench

Judgement

1. The Petitioners were granted Advanced Licence for import of Synthetic Waste. Between the 25th of May 1981 and 22nd of September 1983 the Petitioners not only fulfilled the export obligation under the Advance Licence but exported excess goods which entitled them to an export entitlement certificate for Rs. 1,04,80,680/-. On account of this the Petitioners became entitled to a Replenishment Licence upto 30% of the value of the Export Entitlement Certificate, viz., a licence in the sum of Rs. 31,44,200/-. The Petitioners therefore applied to the Joint Chief Controller of Imports and Exports for a Replenishment Licence. The same was granted on the 2nd of September 1987. The Petitioners by their application dated the 25th of March 1988 applied to the Joint Chief Controller of Imports and Exports for splitting up of their Replenishment Licence. The same was served on the Joint Chief Controller on the 26th of April 1988. Under the Import Policy for 1983-84 and 1985-88 there was a provision for splitting the value of the Replenishment Licences. Such licences could validly be sold in the market. However, the aforesaid Import Policy of 1983-84 and 1985-88 came to an end on the 31st of March 1988 and a new Policy of 1988-91 came into force with effect from the 1st of April 1988. On the 13th of May 1988 the Joint Chief Controller's Office informed the Petitioners that their request for splitting up the licence could not be granted since there was no provision of splitting of licences in the 1988-91 Import Policy. The Petitioners by their representation dated the 20th of May 1988 addressed to the Joint Chief Controller reiterated their request for splitting of licence but the same was turned

down by a communication dated the 1st of June 1988. Being dissatisfied, the Petitioners have presented the present Petition.

2. It is clear that the claim of the Petitioners for splitting of Replenishment Licence has been denied merely on the ground that their application dated the 25th of March 1988 was received by the Office of the Joint Chief Controller on the 26th of April 1988, by which time the new Policy of 1988-91 had come into force. No further reasons have been assigned for denying the claim of the Petitioners. In my view, the Petitioners' claim cannot be rejected on the aforesaid ground as what is necessary to be seen is when the Petitioners could be said to have earned the right to get the said licence. That right came into effect under the 1983-84 Import Policy. In my judgment that cannot be taken away by any changes made in the subsequent Import Policy. The Petitioners' claim for splitting up cannot be frustrated merely on the ground that the application was served upon the Joint Chief Controller's Office about 26 days later. The Petitioners' licence was granted under the 1985-88 Policy. Under that Policy the Petitioners were entitled to splitting of the value of the Replenishment Licence. The Petitioners are thus entitled to the splitting up of the said licence. I am fortified in the view I have taken hereinabove by the decision of this Court in Writ Petition No. 1493 of 1987 of my learned brother H. Suresh J. of 28th July 1987, wherein on facts similar to the one arising in the present Petition it was held that the Petitioners are entitled to the splitting up despite the application there for having been made after the 1988-91 Policy came into force.

3. In the result, the Petition succeeds. The impugned order dated the 13th of May 1988, Exhibit "E", and the order dated the 1st of June 1988, Exhibit "G", are quashed and the Respondents are directed to split up the Petitioners' Replenishment Licence as per their prayer contained in their application dated the 30th of July 1987. The Respondents shall deliver the licence so split up after revalidating the same for a period of one year from the date of the issue of the split up licences. The aforesaid directions shall be complied with within a period of six weeks from today.

4. Rule made absolute in the aforesaid terms. In the facts and circumstances of the case, there shall be no order as to costs.