

(2014) 09 CAL CK 0023
In the Calcutta High Court

Case No : W.P. Nos. 414 and 421 of 2013 and 627 of 2014

S.J. Fabrics Pvt. Ltd. and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 22-09-2014

Acts Referred:

Foreign Trade (Development and Regulation) Act, 1992 — Section 5

Citation : (2015) 2 CHN 422 : (2015) 325 ELT 713 : (2015) 3 WBLR 354

Hon'ble Judges : I.P. Mukerji, J

Bench : Single Bench

Judgement

I.P. Mukerji, J.

1. The point involved in these writ applications is very short. The writ petitioners are exporters of "Technical Textiles" which are described in the relevant policy document as Woven fabrics of Synthetic Filament Yarn. It is one of the products under the Focus Products Scheme [FPS] of the Central Government. It is under Table-1 which relates to focus products and falls under serial No. 33 and IPC [HS code 5407].

2. Under the Foreign Trade Policy 2009-2014, against export of these notified products the importer would be entitled to "duty credit scrips" or import duty benefit equivalent to 2% of FOB value of exports. The export should have been made from 27th August, 2009 onwards.

3. The writ petitioners were exporting "Manmade Filament Yarn" with or without embroidery and with or without metalised yarn.

4. There is no dispute about the quantity of export made and the description and quality of the goods exported by the petitioners. These goods had been exported all along under the description of "Technical Textiles".

5. On 21st October, 2011, the Central Government published a policy circular. It was given retrospective effect from 1st April, 2011. In this policy circular the

Government tried to make a definition of "Technical Textiles" by describing it as a textile product manufactured for non-aesthetic purposes. Its purpose was purely functional. Technical textiles were to have applications for automobile, medical, fire fighting etc. purposes. While publishing this notification a list of 33 items were indicated to be Technical Textiles. This did not include the items exported by the writ petitioners.

6. By a demand notice dated 4th March, 2013 in the case of WP No. 414 of 2013 and similar notices in the case of other petitioners, the petitioners were asked to give back the duty benefit availed of.

7. For defining a product, interpreting a heading or setting defined limits for description of goods for exportation and importation the Government has full power under Section 5 of the Foreign Trade [Development & Regulation] Act, 1992. Under this provision, the Government also has the power of amending a policy. In this case, there is no formal amendment of the policy but a restrictive interpretation thereof.

8. Now, when a particular product is defined as a "Technical Textile", any interpretation of it or restrictive definition of it is bound to have the effect of an amendment. This is exactly what has been sought to be done by the policy circular dated 21st October, 2011, with retrospective effect.

9. The Hon'ble Supreme Court of Union of India (UOI) and Others Vs. Asian Food Industries, held that any amendment of the above Act can only have prospective effect. This was also reiterated by Indira Banerjee, J. of our Court in Soubhik Exports Ltd. v. Union of India; reported in 2007(214) ELT 334.

10. To my mind, two other points are involved here. The first is promissory estoppel.

11. The exporter, on reliance of the earlier interpretation and enforcement of the policy made exportation of the said goods with the expectation of earning duty benefits, which were earned on previous occasions. On that basis he exported goods on this occasion too. He thereby altered his position. All of a sudden, enforcement of this notification with retrospective effect deprived him of this duty legitimately earned. This is plainly unjust.

12. Secondly, an administrative action should have finality. When goods are legitimately exported under the existing policy duty is earned. The Government takes a decision in clearing particular exports, which results in earning of this duty benefit. This decision at that point of time is to be taken as final in normal circumstances and cannot be reversed at a later point of time by change of interpretation of the description of the goods by a policy circular, with retrospective effect.

13. Learned counsel for the Central Government took the point of existence of an alternative remedy. It was argued that a remedy lay under the Foreign Trade Development Act. I am not impressed with this submission. In making and

publishing the above notification dated 21st October, 2011 and issuing the said notice dated 4th March, 2013, the respondent authorities have travelled outside their jurisdiction. The notification is against the above law laid down by the Courts. Therefore, I do not think that the so-called alternative remedy suggested by learned counsel for the respondents would at all be efficacious.

14. For those reasons, these writ applications are allowed to the extent that the respondent authorities are restrained by an order of injunction from denying any duty benefit to the writ petitioners earned by virtue of export of goods understood by the parties Technical Textiles, before 21st October, 2011. The notices issued by the department to deny duty benefit to the writ petitioners and making a demand for reversal of the duty benefit are without any effect, for export before 21st October, 2011. But I make it clear that the respondent authorities will be free to proceed in accordance with the said policy circular with regard to exports on and from 21st October, 2011. Certified photocopy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.