(1983) 12 DEL CK 0004

In the Delhi High Court

Case No : Civil Writ Appeal No. 1336 of 1983

S.P. Gupta etc. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 05-12-1983

Acts Referred:

Citation : (1984) 17 ELT 74

Hon'ble Judges : Rajinder Sachar, J;Jagdish Chandra, J

Bench : Division Bench

Advocate : Mamta Sarin, D.K. Kapur, C.L. Choudhry, Ajay Kaul and J.P. Chopra, for the Appellant;

Judgement

Sachar, J.

(1) The lure of imported items in this country continues to have a great attraction even after 35 years of independence Apparently that seems the reason why the Government has had to come out with the liberal stand making it easy to import items from outside not necessarily because they cannot be manufactured but because they are more easily available outside. In 1978 exemption from payment of custom duty to the extent of 50% was permitted on cars fitted with special system for handicapped persons. In may 1978, however, the policy was reviewed and it was found that the cars could easily be restored for use of normal persons and hence it was decided not to grant exemption from custom duty on such cars. However, once the attraction of imported items had been introduced in the market it is not easy to get rid of it. So the Government was naturally pestered with restoring the concession and using 1981 as the year of handicapped a policy was brought forth which provided that cars imported for disabled persons would be charged to a total custom duty of 50% ad valorem, as against the prevalent rate of 185% ad valorem subject to the condition that the engine capacity of the cars did not exceed 1000 cc/10 H.P. There were certain other conditions attached to it which were not relevant to be mentioned here. This policy was again reviewed and a press note was issued on 20.7.1982. More

or less the condition imposed earlier continued excepting that the Cif value of the car could not exceed Rs. 65,000.00 and the capacity limit of 10 H.P. was removed. The petitioners who are described as disabled persons are the ones who have filed these writ petitions, mainly on the ground that they applied in pursuance of this policy of July 1982 for the grant of exemption from payment of custom duty but have not been so given. Their grievance further is that a large number of similar situated persons have been given the exemption u/s 25(2) of the Customs Act and for no reason the same benefit is being denied to them. The policy prior to 5.4.1982 was that an applicant had to first get a custom clearance from the department of revenue and then apply for the import license from the Chief Controller of Imports and Exports. By notification of 5.4.1982 the Central Govt. gave general permission to import into India motor cars by disabled persons subject to that the motor cars to be imported shall be adopted for use by disabled person concerned and that the said persons are granted custom duty relief by the Deptt. of Revenue, Min. of Finance. For the purpose of considering these applications an inter-ministerial committee was appointed. To complete the version it appears that a further notifications has been issued on 25.2.1982 whereby exemption has been given as is in excess of amount calculated at the rate of 50% ad valorem duty for import by a disabled person subject to certain conditions laid down therein. It is Common case that the conditions for satisfying about the disability test laid down in the earlier policy which ''was prevalent in July 1982 was different from that which is now laid down in the conditions imposed on 25.5.1983. Whether the earlier conditions were less rigorous as counsel for the respondent says or were, in fact, very practicable as the counsel for the petitioner says is unnecessary to decide for the present case. Petitioners'' case is that they fulfill all the conditions imposed in July 1982 policy and it is in pursuance of this that they applied for exemption from custom duty. And because they have been denied it, the petitioners had to file the writ petition, the first being filed in June 1982. Unfortunately, by then 25.5.1983 notification had been issued and the respondent naturally very conveniently took the stand that as the petitioners do not fulfill the criteria and conditions laid down in 25th May 1983 notification the exemption could not be issued to them. It is this stand which the petitioners are challenging in the present petitions. In support of their claims the petitioners had mentioned in the petitions and also some further facts were brought about on record to urge that many persons had been given custom duty exemption under the conditions laid down by July 1982 notification by showing them custom clearance in Dec. and even in Jan. 1983. The respondents had in their counter taken the stand that though the petitioners'' applications were received earlier to 28.12.1982 the policy was under review and applications received after 13.12.1982 were not processed and now the policy was governed by notification dt. 25.5.1983. Mr. Kapur says that again complaints had started coming in about the possible misuse of of imported motor cars being put to use other than for which they were imported and Therefore the Finance Minister had to pass an order on 23.12.1983 that the policy be reviewed and no more custom exemption be given. The petitioners had, however, placed on record a list of persons who had beep issued the customs exemption in January, 1983. We had directed the respondents to prospers a list indicating to us the applicants who had been given exemption and also on what conditions. This had been directed as it was the petitioners'' case that the matters of granting exemption had been considered by 2 Inter-Ministerial meetings held on 23rd and 27th Dec. 1982. It was further his case that larger number of cars had been cleared for grant of exemption, including to petitioners, whose names find mention in the list given by the petitioner marked as ''B'' but yet no execution order...... had been passed in their favor. Today a list has been produced by Union of India showing ad hoc exemption orders issued after 23.12.1982 in connection with the import of special designed cars for disabled persons. For convenience sake it is marked as ''A''. Mr. Kapur has looked into the file and admits that the cases of these 10 petitioners in list ''B'' were also cleared by the Committee in the meeting held on 28.12.1982. In the list marked ''A'' we find that there are a large number of persons who have been issued the ad-hoc exemption order and none of them had applied in Dec. 1982, even later than many of the petitioners mentioned in list ''B'' We can find no reason much less any legitimate reason why these 10 petitioners should not have been issued ad hoc exemption order in the same manner as issued to those whose names were cleared in the meeting of 28.12.1982 and whose names find mention in Annexure A. Frankly, no justification could even be speculated, much even seriously offered by the respondents because the names of the petitioners in list B having been cleared by the committee the issue of the exemption order should have been automatically issued like the others. We would, Therefore, allow these petitions and issue a direction to the respondents to issue exemption orders in the same manner and on the same principles and conditions as was issued to Principal Vithal mentioned at S. No. 1 in list A.

(2) The list Annexure A shows, that it is also further clarified by Mr. Kapur, that the cases only of those persons were put up in the meeting held on 28.12.1982 whose applications had been received by 13.12.1982. No doubt, a justification was given that as the committee meets for couple of hours it could not by the very nature of it dispose of all these applications and that is why those applications which were received up tol3.12.1982 were put up before it and this was urged as a justifiable date permitting the respondents to consider only those applications which had been received by that date i.e. 13.12.1982. Mr. Kapur as well as Mr. Chaudhary urge that this would be a relevant and rational date and any person whose applications were received subsequent to that date cannot claim that their cases should have been considered for ad hoc exemption in terms of July 1982 notification. We find that the Explanation that only applications received prior to 13.12.82 were considered at the meeting of 28.12.i982 is not factually correct because list ''C'' filed by Union of India shows the dates when applications were received by an applicant whose applications has been cleared and items had been received on 13.12.1982 like S.N. 13. In any case, we do not think that the cut off date ofl3.12.1982 has any real

rationality to justify the claim for non-consideration. There must be some real reason. No artificial date can be imposed. The reason is that there was no cut off date mentioned for the receipt of the applications. In July, 1982 notification inviting applications in general without indicating that they must be filed by any particular date. The mere fact that for convenient reason a limited number of applications were placed before the committee which had to give the exemption order on 28.12.1982 is no reason why all the applications complete in all material particulars which have been received earlier to 27.12.1982 should not have been placed before the committee. This is more so because even according to Mr. Kapur though the Minister had passed an order on 23.12.1982 the same was not within the knowledge of the committee prior to 29 12.1982. On 28.12.1982 Therefore the committee should have decided that every application received up to 27.12.82 was to be treated at par unless there was a change of policy which was communicated to them on 29th only. We feel that it would be fair if everyone is treated alike so that the applications complete in all material particulars and received by 27th December 1982 had been considered by the committee. However, they were not so considered and so mandamus should go directing the respondents to constitute a committee which considered the cases of the other persons so that it would now consider the applications of all these petitioners whose cases were not considered by the committee and to see whether they are eligible to the grant of exemption order in terms of July 1982 notification. This is being issued notwithstanding that there is at present notification of May 1983, the reason is that it was no fault of the petitioners that their cases were not considered at the meeting held on 28.12.82. The position Therefore would be that they are naturally to be relegated to the position which existed on the date, i.e. 28.12.82. Naturally the issue of exemption order depends upon the petitioners having complied with the requirements laid down in terms of July 1982 press note and the notification. The issue of exemption order will naturally depend upon the petitioners satisfying the committee that they fulfill the conditions laid down in the July 1982 notification. Miss Sarin has, however, sought to urge that till May 1983 notification was issued all applicants if they had applied prior to that dale should be entitled to be considered on the basis of July 1982 notification. Miss Sarin has urged that till May 1983 notification was issued July 1982 notification should be treated to be the only notification by which all applications should be tested between this period. Now an order u/s 25(2) is passed because if the Central Govt. is satisfied that it is necessary in the Public Interest so to do, it may, by special order in each case, exempt from the payment of duty under circumstances of an exceptional nature to be stated in such order, any goods on which duty is leviable. Section 25(2) really contemplates an individual order but since in the present case large number of cases were involved the Central Govt. rightly drew out a general policy and laid down that if an applicant satisfied the conditions laid down therein he would be granted an exemption order. But nevertheless in point of fact an exemption order has to be passed in each specified case. There is no general exemption as is contemplated in S. 25(1) of the Customs Act. Though no doubt till May 1983 notification was issued the general policy laid down was one which was given in July 1982 notification and in the normal course cases for exemption would have been required to satisfy the test till another order was passed u/s 25(2) in May 1983 but when the Central Govt. on 23.12.82 decided to review this policy and also gave a direction that no more exemption order will be issued, we cannot say that it was unreason- able for the committee not to allow any further exemption till the review is completed by the Central Govt. It would be quite anomalous and against the set principle that after an order is passed on 23.12.1982 by the Minister and the same has been received by the committee on 29.12.82 the committee should continue to pass exemption orders in terms of July 1982 notification when specifically the Minister has directed that the policy is under consideration and no more exemption order be issued. The reason is that it is now well settled that Government is not estopped from varying or modifying even a general order passed u/s 25(1) of the Customs Act. There is no inherent right of an applicant to claim that an exemption once given u/s 25(1) should continue for any particular period of time so that it would have been perfectly right for the Minister to have passed an order on 23.12.82 rescinding the general exemption given in terms of July 1982 notification. Had that been done the petitioners could not have claimed that the exemption benefit should continue for any further period. If that be so there is no reason why the committee should have been expected to issue exemption orders after having been apprised that this policy was under review. This is not make believe but a fact, is clear by the fact that the revised policy has in fact been brought about in May 1983 which even according to the petitioners does make a vital change and which according to the respondents has taken further steps to see that by the conversion, these cars are not misused for the purposes other than for which it is imported. A serious policy was, Therefore, under contemplation and we could not, Therefore, accede to the prayer of the petitioners that the applications that were filed subsequent to 28.12.82 should also be directed to be disposed of in terms of July 1982 notification. The respondents have taken the stand that applications filed subsequent to 28.12.82 are to be disposed of in terms of May 1983 notification and to that extent we can hardly find any fault. The position that emerges is that so far as 10 petitioners mentioned in list B are concerned their petitions are allowed and mandamus is given to issue an exemption order in the same terms as has been given to those whose cases were accepted by the Committee at its meeting held on 28.12.82.

(3) We also find that the Government was justified in refusing to consider the cases of those whose applications have been received in the first instance after 28.12.82. This is because as a decision had been taken to review the earlier policy necessarily these application would have to await their clearance in terms of She new revised policy which in this case is now to be found in the notification of May 1983. So far as the other petitioners arc concerned we would issue a mandamus directing the respondent Union of India to convene a Committee to consider the cases of those petitioners whose applications were complete in

material particulars and were available in the department by 27th December 1982. We wish to make it clear that even if the application had been filed earlier and had been refiled by giving extra material particulars but so long as they had reached the authorities by 27th December 1982 the cases of the said petitioners would be entitled to be considered. The Committee will consider the cases of these petitioners in the light of the principles, conditions and eligibility by which it considered the cases of those persons whose cases were approved and accepted at its meeting held on 28th December 1982 which was naturally in terms of the notification of July 1982. We are not in a position to pass any specific order with regard to these cases of the petitioners because there are various factual requirements and information which had to be supplied by the various petitioners and which necessarily must be examined by the department and Committee concerned. This is more so because the department had returned the original applications so that these details could not even be supplied by the counsel to us. But as we are holding that applications which had been filed by the petitioners by 27th December 1982 and which were complete in all material particulars deserve to be considered by the Committee on merits. It is thereafter that the Committee would pass orders either granting exemption or refusing exemption depending upon the circumstances of each case. In order to enable the Committee to do so we feel that the proper course would be that the petitioners concerned should within six Weeks from today apply to the authorities concerned giving various details relevant to the claim for the grant of exemption. The representation must specifically bring out that the applications in material particulars had been filed by 27th December 1982 with the authorities concerned. Our this direction to make representation to the department is not in any manner to permit the petitioners to file fresh applications because we are very clear that any applications which were not complete in material particulars by 27th Dec. 82 will not fulfill the criteria for being considered by the Committee. We also make it clear that our this direction applies only to the petitioners who have moved this Court. We are not intending to give any direction for fresh applications to be filed by other persons. Nor do we intend to permit other persons who have been refused exemption order even though they had filed their applications by 27th December 1982 but have not moved this Court, The reason for this is that we do not wish to open the flood gates for applications because it appears that whereas the normal expectation was that only about 100 applicants may apply but the applications have run out over 700. We take it that those who are denied the exemption order but have not moved this Court notwithstanding that the matters were pending here must be deemed to have given up their rights to be treated for their claim for exemption in terms of July 1982 notification. As the matter is already being delayed it is expected that the authorities may take the decision with the greatest of expedition after the representations have been received from the petitioners.

C.W.19.12/83 : The petitioner says that he does not know the reason for rejection of his application because none had been conveyed to him. He may, Therefore apply to the authorities requesting for conveying of the reasons for rejection of his application. In the light of the reasons given to him, he may, if he feels, that it satisfies the criteria by which application was approved at the meeting hold on 28.12.82 also make representation to the Government as directed by us above.

CW1505/83 : The counsel for the petitioner in this writ petition as well as in the other writ petitions stated that many of them had filed original documents along with the petition and it would be necessary to have them back so that they could be shown to the authorities concerned. The registry is directed to return the original documents on the petitioner''s filing copies of the same (copies attested to be true copies by the counsel may be accepted by the registry)....[Facts of other writs are briefly noticed].

