
(1987) 07 DEL CK 0008

In the Delhi High Court

Case No : Civil Writ Petition No. 1777 of 1987

S.S. International and Another

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 22-07-1987

Acts Referred:

Citation : AIR 1988 Delhi 196 : (1987) 2 ARBLR 10 : (1987) 33 DLT 47 : (1987) 14 ECC 77 : (1989) 44 ELT 440

Hon'ble Judges : R.N. Aggarwal, J; Jagdish Chandra, J

Bench : Division Bench

Advocate : R.K. Anand, S.P. Sharma, S.L. Watel and R.K. Watel, for the Appellant;

Judgement

Aggarwal, J.

(1) The challenge in this petition is to the legality and virus of the public notice No. 119-ITC(PN)/85-88 dated 26th September 1986 issued by the Ministry of Commerce, Import Trade Control, by which amendments were made in the policy relating to the import of the spices, that is, (1) cinnamon/cassia and (ii) cloves. By the said public notice the amendment made was that the items of the aforementioned spices was deleted from appendix 6 and it was added in part A appendix 5, as item 32-A.

(2) On 1st April, 1986 an order No. 49/85-88 was issued in exercise of the powers conferred by section 3 of the Imports and Exports (Control) Act, 1947 by the Central Government whereby general permission (OGL 15186) was given to import in Rto India from any country except the union of South Africa/ South West Africa goods of the description specified in the schedule annexed to the order subject to the conditions mentioned therein. The schedule contains the items cinnamon/ cassia and cloves (serial No. 10).

(3) On the same date, another order No. 40/85-88 under the heading Open General license No. 6/86 was issued u/s 3 of the Imports and Exports (Control)

Act, 1947 by the Central Government which gave general permission to import into India from any country except the union of South Africa and South West Africa the goods of the description specified in appendix 5 of Import and Export Policy, 1985-88 (volume 1) by designated public sector (canalising) agencies mentioned in the appendix. We may notice here that the said appendix before the amendment made therein did not cover the spices cinnamon and cloves.

(4) On 26th September 1986 a public notice No. 119-ITC (PN)185-88 was given informing the general public that the amendments/corrections as specified therein shall be made in the policy. One the amendments was deletion of cloves and cinnamons from appendix 6 of the policy (which pertains to Ogl to general public and addition of the said items in part A of appendix 5 (which pertains to canalised items). On 26th September 1986 an order u/s 3 of the Act No. 63185-88 was made deleting the entries relating to cloves and cinnamons from the schedule appended to Ogl 15/86. On 6th October 1986 another public notice was issued deleting the entries relating to cloves and cinnamons from list 4 of appendix 6 of the policy.

(5) The State Trading Corporation which is one of the public sector (canalising) agencies imported the spices cinnamons and cloves between 23rd January 1987 and 31st March 1987.

(6) To appreciate the contention of Mr. R. K. Anand, learned counsel for the petitioner, we may reproduce the relevant portion of section 3 of the Imports (Control) Order. 1955, and it reads as under :

"3.Restriction of Import of certain goods.-(1) Save as otherwise provided in this Order, no person shall import any goods of the description specified in Schedule I, except under and in accordance, with a license or a customs clearance permit granted by the Central Government or by any Officer specified in Schedule II."

(7) The contention of Mr. Anand is that the government could only have made an amendment in order No, 40185-88 by issuing an order u/s 3 and that since there is no order u/s 3, amending appendix 5, the addition of the items of cloves and cinnamons in appendix 5 by issuing a public notice is not valid. The counsel to fortify his argument contended that an order u/s 3 was issued for deleting the entries relating to cloves and cinnamons from Ogl 15186 which proves that the amendments and additions in appendices 5 and 6 could only be made by an order u/s 3 and not by issuing public notices.

(8) The Imports and Exports promotion policy for the years 1985-88 is contained in volume I known as red book. Appendix 5 and appendix 6 are contained in volume 1. Para 2 of Chapter I of the Imports and Exports Policy for April 1985 to March 1988 volume I reads as under :

"(2)The Import and Export Policy is being announced this time for the three years" period from the date of announcement till 31st March, 1988 in consonance with the Government's objective of bringing in continuity and

stability of Import and Export Promotion policies. However, the Government reserves the right to make amendments I changes in this policy which may become necessary in public interest from time to time during the above period. Amendments etc., if any. will be notified, as usual, by means of public notices/ amendment orders etc. issued by the Chief Controller of Imports and Exports from time to time. Provisions of this Policy Book are subject to such amendments or charges as and when notified."

(9) From the aforesaid para it is clear that the government can make amendments in the Import Policy for the years 1985-88 by issuing public notices/ amendment orders etc. The issuance of the order u/s 3 on 26th September 1986 was necessitated because the amendment was to be made in the schedule appended to Ogl 15/86, which order also was u/s 3 of the Imports and Exports (Control) Act. The amendments in appendices 5 and 6 were made by public notices.

(10) We see no legal infirmity in the amendments made in appendix 5.

(11) We otherwise also see no legal justification for interference. Admittedly, the general public cannot import cinnamons and cloves under the Open General license. The items canalised for import through designated public sector agencies are listed in appendix 5 part A and part B. Whenever a shortage arises or is apprehended in respect of any item, the import of which is not permitted, its import is arranged by the Chief Controller of Imports and Exports, New Delhi, through a public sector agency. It is obvious that the government had felt the shortage of cinnamon and cloves in the market, and, Therefore, arranged to import the same through the agency of the State Trading Corporation. It also is clear that in case any restriction is now imposed on the import of the said items it will cause a scarcity of the said items in the market and that will raise the prices of the cinnamons and cloves in the market and it is the general public which is going to be affected. The effort of the petitioners obviously is to sell their goods at a higher rate by creating scarcity.

(12) We may mention here that in another case which went from this court by way of special leave to appeal [SLP (civil) No. 6179-80187 M/s. Suresh Chand Bansal and another v. Union of India and ors.] The Supreme Court dismissed the SLP with the following observations : Having heard Shri F. S. Nariman, learned counsel for the petitioners and Shri B. Datta, learned Addl. Solicitor Genl. at quite some length, we do not think that, in the facts and circumstances of the case, any interference with the impugned order passed by the Joint Chief Controller of Imports and Exports, dated 12-5-1987, shifting the items "Cinnamon/Cassia, Cloves" from Appendix 5, Part "A" to Appendix 5, Part "B", is called for as it was done in the public interest Special leave petitions are accordingly dismissed."

(13) In the result we see no merit in the petition and dismiss the same. The stay order granted on 3rd June 1987 in C. M. No. 2490/87 is vacated.