

(1994) 02 DEL CK 0014

In the Delhi High Court

Case No : L.P.A. No. 83/93

Union of India

APPELLANT

Vs

Cosmique International

RESPONDENT

Date of Decision : 09-02-1994

Acts Referred:

Citation : (1994) 54 DLT 71 : (1994) 29 DRJ 554 : (1994) 73 ELT 526 : (1994) 107 PLR 8

Hon'ble Judges : G.C. Mittal, J;Arun Kumar, J

Bench : Division Bench

Advocate : S/Shri F.X. Joseph and Mithilesh Singh, for the Appellant; Shri S.K. Kaul, for the Respondent

Judgement

Arun Kumar, J.—This is an appeal against the judgment of learned Single Judge of this Court whereby the impugned circular dated 6-1-1991 withdrawing cash compensatory support w.e.f. 1-1-1979 was quashed in so far as it affected confirmed contracts already entered into prior to 1-1-1979.

At the outset learned Counsel for the respondents (writ petitioners) urged that the appeal is liable to be dismissed in view of the fact that the same circular was quashed by other High Courts in similar circumstances and the Govt. while accepting the judgments in those cases has already made payments to the parties concerned. Therefore, it is urged that it is not open to the Govt. to agitate the same question now. The Govt. cannot be permitted to discriminate against the writ petitioners herein who have raised claims which are identical to those whose claims have been already honoured as per the judgments of respective High Courts in their cases. The point is well taken and we feel that the Union of India cannot be permitted to continue to agitate the same question once it has accepted the judgments in similar circumstances rendered by other High Courts.

Even on merits of the case of the appellant we are unable to agree with the learned Counsel. However, before dealing with the merits it is necessary to state the facts giving rise to the present dispute.

Brief facts :-

The respondents (writ petitioners) are engaged in exporting ready-made garments to various countries. The Textile Commissioner, appellant No. 2, announced various incentives for the exporters from time to time. On 27th March, 1978 the Textile Commissioner decided to contribute to the Export Promotion Fund of the Indian Cotton Mills Federation (respondent No. 3) from 1st April, 1978 to 31st March, 1979 the cash incentives at the rates mentioned in the said communication on the export of cotton textiles to be made during the year 1st April, 1978 to 31st March, 1979. The case of the petitioners is that relying on the said communication that cash assistance will be available to the exporters on the export of ready-made garments during the aforesaid period they priced their goods for export taking into consideration the cash assistance which would be available to them from the Govt. On 6-1-1979 another circular was issued discontinuing the said cash assistance with effect from 1-1-1979. The effect of the circular was that the cash assistance (Cash Compensatory Support) to the exporters on the export of all the items of the garments mentioned in the said circular was to be discontinued from 1-1-1979. According to the petitioners the discontinuance of the Cash Compensatory Support with effect from 1-1-1979 is in violation of the terms held out by the appellants (respondents 1 and 2 in the writ petition) for granting cash assistance for export of ready-made garments. The petitioners claim that they were induced to enter into firm contracts with various buyers at prices lower than which they would have otherwise charged taking into consideration the cash compensatory allowances offered by the Govt. under the said Scheme. The Scheme itself was meant to support the price to be quoted by Indian exporters in international market. The support was necessary because the international price was lower as compared to prices in India. Withdrawal of the Cash Compensatory Support during the currency of the period for which it had been announced would result in losses to the petitioners qua the firm contracts entered into by them with various buyers prior to the date of withdrawal of the Cash Compensatory Support. If the petitioners did not supply the goods to various buyers, they would be committing breach of contracts which would in turn result in invocation of bank guarantees already furnished by them to various buyers, causing heavy losses to the petitioners. On the basis of the firm commitments the petitioners had also entered into arrangements with suppliers of raw materials to them and the fabricators of garments in order to make the goods ready for export. They had employed staff for this purpose. If contracts were not to be executed this would all result in losses. Secondly, it was submitted that this would result in spoiling the reputation and goodwill of the country in the international market.

2. The learned Single Judge held that if on the basis of the circular offering cash compensatory benefits, the petitioners entered into firm commitments with foreign buyers, they cannot be denied the benefits under the Scheme. Relying on principles of promissory estoppel it was held that the petitioners altered their position by entering into firm contracts at reduced prices keeping in view the

cash incentives receivable from the Govt. under the Scheme. The Govt. is, Therefore, bound to honour the policy to the extent of all such firm contracts.

3. The learned Counsel for the appellant has urged the following points to challenge the judgment under appeal :-

(i) The respondents (writ petitioners) did not base their prices on the Cash Compensatory Scheme. Therefore, they did not suffer financially.

(ii) Ingredients of Promissory Estoppel are not met.

(iii) The Govt. has a right to change its policy.

So far as the first point is concerned it is relevant to notice the object behind grant of Cash Compensatory Support. The object was to offset the losses to the trade which would result if exports were made keeping in view the prevailing international market. The prevailing international price of the garments covered under the Scheme was low and in order to encourage the Indian exporters to export their goods at the international price it was necessary to give them cash compensatory allowance. The purpose was to offset their losses. The Cash Compensatory Support was made available to the exporters only after verification of the facts of their firm contracts of exports and the actual exports made on the basis thereof. Therefore, there can be no element of doubt that the prices of the garments exported or to be exported under the Scheme took into consideration the allowance which would be available from the Govt. under the Scheme. Without it the prices would not have been viable to the exporters. In these facts it is not open to the appellants to argue that the prices charged by the petitioners were not based on the Cash Compensatory Support or that the petitioners would not have suffered any loss in the absence of the Scheme. The purpose of the Scheme was to encourage exports by making the prices competitive in the international market for which the support offered by the Govt. was necessary. If the petitioners could make the exports in the international market according to the price of their own choice there was no need to offer the Cash Compensatory Allowance at all by the Govt. Cash Compensation was offered to offset the losses which the exporters would otherwise have suffered on account of lower international prices of the goods. The learned Counsel for the appellant submitted that whatever the exporters received under the Cash Compensatory Support was an extra profit. This appears to be totally misconceived and also contrary to the very object of the Scheme.

This finds further support from the reasons given for withdrawal of the Scheme with effect from 1-1-1979. The reason given is that the floor price of the categories of garments in respect of which Cash Compensatory Support was withdrawn had substantially risen in the international market and more particularly in the countries in respect of which the said decision was applicable. This established that exporters entering into contracts prior to 1-1-1979 would do so at a loss and would need the cash assistance under the said Scheme to compensate for the loss. Thus it is wrong to say that the petitioners would not

suffer financially in the absence of the Scheme during the period involved.

4. The next point urged on behalf of the appellant is that ingredients of promissory estoppel are not met and Therefore, no reliance could be placed on the said principle. This argument is again totally misconceived and untenable. The Govt. held out the promise to provide cash credit assistance on exports to be made during the particular period. On the basis of the said promise, the petitioners made exports or entered into firm commitments to make exports at prices which would not have been viable to them in the absence of the cash credit assistance. Why was the Govt. giving assistance ? Because it was aware that otherwise Indian exports will not be able to stand in the international market because of lower international price. The Govt. wanted to encourage exports and, Therefore, provided the cash assistance. The promise of the Govt. to provide the assistance led the petitioners to enter into firm commitments which otherwise they would not have made. Based on the promise the petitioners have altered their position. The Govt. cannot be allowed to go back on its promise. The arguments on behalf of the Govt. fails.

5. This brings us to the last point urged by the appellant's learned Counsel. It was not disputed on behalf of respondents 1 and 2 that the Govt. has a right to change its policy. But the right is to be exercised for valid reasons. Except making a bald assertion of the right nothing is said to justify the action. Change of policy cannot be arbitrary or as per whims and fancy. In fact as noticed earlier the reason for withdrawal of the cash compensatory support justifies that for the period of the operation of the Scheme it should have been continued.

The result is that the appeal fails and is dismissed with no order as to costs.