
(1991) 10 BOM CK 0036

In the Bombay High Court

Case No : Appeal No. 937 of 1988 in Writ Petition No. 4001 of 1987

Union of India

APPELLANT

Vs

Gum Export Corporation

RESPONDENT

Date of Decision : 01-10-1991

Acts Referred:

Citation : (1992) 58 ELT 26

Hon'ble Judges : S.P. Bharucha, J; S.M. Jhunjhunwala, J

Bench : Division Bench

Advocate : Shri S.M. Shah, for the Appellant; Shri R.G. Seth, for the Respondent

Judgement

Bharucha, J.—On 30th June, 1986 the Spices Export Promotion Council issued a circular letter to all registered exporters setting out the rates of cash compensatory support applicable to the exporters of spices, whole or ground, spice mixtures and powders. The rate was specified as a percentage of the f.o.b. value. It was 10% "for consumer packs under specified brand names" and 5% "for all others in consumer packs". The rates were intended to be applicable to exports made on and after 1st July, 1986 and upto 31st March, 1989 but Government reserved the right to withdraw or alter them at any time it merit. By another circular dated 20th February, 1987, it was noted that representation were being received that in the absence of brand names being specified exporters were not getting any cash compensatory support. It had therefore been decided to grant CCS at the rate of 7% for exports under brand names in consumer packs and this decision would be applicable to exports made on and after 1st July, 1986 until brand names were specified by the Government or 31st March, 1989, whichever was earlier. A third circular was issued by the concerned Ministry on 16th July, 1987. It recorded the earlier decisions and then stated that the matter had been reconsidered and it had now been decided to authorize the Spices Board to register brand names of spices for export in consumer packs and the brand names registered with the Spices Board would be treated as "specified brand names" for the purposes of grant of CCS at 10%. This decision would be

applicable to exports of spices in consumer packs with effect from 16th July, 1987.

2. The Writ Petitioner contended that persons dealing in spices were, on the basis of the circular dated 30th June, 1986, meant to proceed on the basis that 10% of the f.o.b. value would be granted as CCS for consumer items (under specified brand names) and 5% would be granted for other spices under consumer packs. The expression "specified brand name" was meant and understood to mean "specific brand names". The circular did not lay down any guidelines as to the meaning of that expression. The petitioners had been exporting spices under their own brand names and it was submitted that it was their own brand name which was a specified brand name for the purpose of this circular. The petitioners were, therefore, entitled to CCS at the rate of 10% and there was no power to reduce the percentage of the CCS later. By the writ petition the circulars reducing the rate of CCS were sought to be quashed.

3. In the affidavit filed to oppose admission, it was submitted that the petitioners were misinterpreting the expression "specified brand name". It was submitted that the petitioners' brand name should have been specified by some Governmental authority and the petitioner themselves could not specify their own brand name. The affidavit however admitted that the licensing authorities themselves had misinterpreted the expression "specified brand name" and given cash assistance at 10%.

4. By the order under Appeal, the learned Single Judge admitted the writ petition and passed the following interim order :-

"Pending disposal of petition, the respondents to give cash compensatory support at the rate of 10% as per Exh. "A" dated 30th June, 1986 to the petitioners, on the petitioners furnishing a bank guarantee of a nationalised bank for the differential amount together with interest thereon at the rate of 15% per annum from due date of payment till actual payment to the second respondent from time to time. The bank guarantee should be initially for the amount of Rs. 25,000/- and when the limit is exhausted, the petitioners shall furnish additional bank guarantee in similar manner. Such bank guarantee should be kept alive till the final hearing and disposal of the petition."

5. The respondents to the writ petition are in appeal against the interim order.

6. The expression "specified brand name" in the circular of 30th June, 1986, must be contrasted with the expression "all others in consumer packs". It must also be read in the context of the fact that there was no Governmental agency then specified and entrusted with the task of specifying brand names. It is therefore possible to argue with some authority that the expression "specified brand names" only meant brand names specified by the exporters themselves.

7. Mr. Shah, learned Counsel for the Appellants, submitted that, at any rate, the interim order should not operate for the period subsequent to 16th July, 1987 for

the Government was entitled to change its earlier decision and had in fact done so by stating that only those exporters who exported under brand names registered with the Spices Board would be entitled to CCS at 10%. We would have given this argument serious consideration had it not been for the fact that in the present appeal it appears to be an admitted position that the respondents to the appeal have no exports after the date of the interim order.

8. In the circumstances the Appeal is dismissed. There shall be no order as to costs.