

(1989) 03 BOM CK 0017

In the Bombay High Court

Case No : Letters Patent Appeal No. 126 of 1981 from Miscellaneous Petition No. 277 of 1978

Union of India

APPELLANT

Vs

Hindustan Platinum Private Limited

RESPONDENT

Date of Decision : 08-03-1989

Acts Referred:

Citation : (1993) 42 ECC 199 : (1989) 24 ECR 757 : (1989) 44 ELT 443

Hon'ble Judges : P.B. Sawant, J;H.H. Kantharia, J

Bench : Division Bench

Judgement

Sawant, J.—Although the learned Single Judge by his impugned decision has allowed the petition of respondents, i.e. the original petitioner, namely Messrs Hindustan Platinum (Private) Limited, on two grounds, namely the doctrine of promissory estoppel and the failure of the Government to show that the withholding of the concessions was in public interest, we are of the view that this appeal can be disposed of only on the first ground and it is not necessary to go into the second ground.

2. The admitted facts are that in exercise of the powers conferred under the Import and Export Trade Control Act, 1947 read with the provisions of the Import (Control) Order, 1955, the Central Government had issued public notices relating to the import policy as well as for promotion of exports. During the financial year ending March 31, 1975 and until May 12, 1975, twin benefits, namely cash assistance and replenishment licences were available for export of various goods. Under the said Policy, the exporters of electrical contacts made of silver alloy or silver/copper bi-metal containing less than 50% silver (used as component) in electrical control gear and switch gear (complete) classified under Serial No. A. 74.4 in the Red-Book were entitled to replenishment licences to the extent of 40% of the F.O.B. value of the product exported and also cash assistance to the extent of 25% of the said value. In order to avail of the assistance, certain formalities were required to be complied with by the exporters and since it is not

in dispute in the present case that the said formalities were fully complied with by the respondents, it is not necessary to refer to them.

3. The respondents are the exporters of said electrical contacts. In pursuance of the said policy of the Central Government, they entered into a contract dated February 27, 1975 with a U.K. based concern Ayrton Metals Limited for the supply of 2,87,000 electrical contacts. This contract was duly registered on March 3, 1975 and the shipments of the goods were not made on June 13 and July 30, 1975. In view of the policy of the Central Government they were entitled to replenishment licences of the value of Rs. 3,60,532.15 and Rs. 5,48,023.71 and cash assistance of value of Rs. 2,37,832.15 and Rs. 3,42,314.82 respectively in respect of the said two shipments.

4. On April 16, 1975 the respondents entered into yet another contract with a German based concern W.C. Herasus Comp. for the export of 60,000 units of electrical contacts. This contract was registered on May 2, 1975 and the shipment was completed on July 16, 1975. In respect of this export, the respondents were entitled to the replenishment licence of the value of Rs. 3,99,659.48 and cash assistance to the tune of Rs. 2,49,787.70.

5. The respondents filed claims in respect of both these shipments with the Joint Chief Controller of Imports and Exports between July, 1975 and December, 1975. In the meanwhile on May 12, 1975 the Central Government had issued a public notice pertaining to the exports of electrical contacts which provided that for the purpose of calculating the REP benefits, the Licensing Authority should exclude the value of silver from the F.O.B. value of the exported products. In view of this public notice, the applications made by the respondent for replenishment licences and cash assistance were turned down by three different orders of August 6, August 11 and December 28, 1976 passed by the Chief Controller of Imports and Exports.

6. The respondents thereupon approached this Court by filing the petition from which the present appeal arises, claiming a direction to the appellants to forthwith issue the replenishment licences and also to pay the cash assistance. The learned Single Judge, who heard the petition, by his impugned decision held, as stated at the outset, that the respondents were entitled to both the replenishment licence as well as the cash assistance on two grounds viz. that the appellants were prevented from denying the said benefits in view of the doctrine of promissory estoppel and the appellants had not shown to the Court that the withholding of the benefits was in public interest. As stated earlier, it is not necessary for us to go into the second question, namely whether the withholding of the concessions was in public interest or not, since we are satisfied that the doctrine of promissory estoppel prevents the appellants from denying the said benefits to the respondents.

7. Shri Sringarpure, the learned Counsel appearing for the appellants, contended that although by its earlier policy the exporters of electrical contacts were

promised the twin benefits of Rep. Licences and cash assistance provided the electrical contacts were made of silver or silver alloy/copper containing less than 50% of silver, the Government had with effect from May 12, 1975 changed the method of calculating the said benefit and in view of the change in the method of calculation, the respondents could not claim the twin benefits on the basis of the earlier method of calculating them. He submitted that the Government had to change the method of calculation, because it was noticed that in the name of the said electrical contacts, what was in fact being exported was silver and the export of silver was detrimental to the economy of the country. He also submitted that in fact even the respondents had in terms admitted that the silver content of the exported electrical contacts, was of the value of 90% of their entire F.O.B. value. This showed that what was being exported in the grab of electrical contacts was silver and not the product for the export of which the twin benefits were promised.

We are unable to accept this contention. It is not disputed and indeed there is no material before the appellants to dispute, that the product which was exported by the respondent had silver-content less than 50%. In fact, there is nothing on record to show that the exported product had 50% or more than 50% silver-content. Mr. Sringerpure submitted that the authorities had required the respondents to furnish a Chartered Accountant's certificate to show that the product exported contained less than 50% silver and the respondents had not furnished any such certificate. It should, therefore, according to him, be held that the silver-content of the exported product was not less than 50%. When we asked Mr. Sringerpure to point out any rule or regulation under which the exporters were required to submit a Chartered Accountant's certificate to certify the content of the product, he was unable to do so. It is also beyond our ken to appreciate as to how any Chartered Accountant can certify the metal content of any product, including the present product, and of what value would be a certificate issued by a Chartered Accountant on the subject. Therefore, the demand of the appellants for a Chartered Accountant's certificate to certify the metal-content of the product was both unintelligible and unreasonable. The respondents had pointed out this fact to the authorities and had objected to the production of any such certificate and they were justified in doing so. If, therefore, there was nothing before the authorities to show that the exported product had more than 50% silver-content, the appellants could not have denied the twin benefits to the respondents.

8. Mr. Sringerpure's contention that the Government had not changed its earlier policy but had only changed the method of calculating the basis of the benefits, is still less acceptable. When by the new policy of May 12, 1975, the Government directed the licensing authorities to exclude from the F.O.B. value of the exported product the value of the silver-content in its entirety, what in fact it did was to change the nature of the product for which the benefits were made available. The new policy in effect stated that whatever the metal-content of the exported product, if any amount of silver was used in it the value of such silver should not

be taken into consideration. This policy is opposed to the earlier policy, according to which even though the product contained silver, it would be entitled to the twin benefits, provided the silver-content of the product was less than 50%. Thus by the new policy, the Central Government in effect changed the category of the product for the export of which the benefits were earlier available. We are, therefore, more than satisfied that this is not a case of a mere change in the method of calculation of the benefits. According to the earlier policy, what had to be seen for reckoning the benefit was whether the silver content of the product was less than 50% and not whether the value of such silver-content was less than 50% of the total F.O.B. value of the product.

9. This being the case, the next and the most important question that falls for consideration is whether the Government was entitled to deny the benefits to exporters such as the respondents on the ground that it had changed its policy in the meanwhile. Shri Srirangpur contending that the Government had such power, relied on two decisions of the Supreme Court reported in *Chairman, Ramappa Gundappa Sahakari Samyaktta Besava Sangha Ltd. Vs. State of Mysore and Others*, *Bennett Coleman and Co. and Others Vs. Union of India (UOI) and Others*. In the first case, the question that fell for consideration was whether the terms on which the Government had granted land for cultivation could be changed after the earlier tenure was over. Observing in that case that the tenure on the basis of which the earlier cultivators were given land had expired and the Government had proposed a new tenure, the Court held that the Government had such power. We fail to understand how this case can help the appellants since this was not a case where the terms of the tenure were sought to be changed before the expiry of the tenure granted earlier. In the latter case one of the questions that fell for consideration was whether the Government could change the policy of import of newspaper. While answering that question the Court observed as follows and Shri Srirangpur relies on these observations :-

"The power of the Government to import newsprint cannot be denied. The power of the Government to control the distribution of newsprint cannot equally be denied. It has, of course, to be borne in mind that the distribution must be fair and equitable. The interests of the big, the medium and the small newspapers are all to be taken into consideration at the time of allotment of quotas. In the present case, there was some dispute raised as to whether there should be more import of newsprint. That is a matter of Government policy. This Court cannot adjudicate on such policy measures unless the policy is alleged to be mala fide. Equally, there was a dispute as to the quantity of indigenous newsprint available for newspapers. This court cannot go into such disputes."

Again, we fail to see what relevance these observations can have to the facts before us. Mr. Srirangpur, then relied on two decisions of the Delhi High Court, viz. those reported in *Indo Foreign Commercial Agency (Produce) Pvt. Ltd. Vs. Union of India and Others*, and 1983 E.L.T. 1688 (Del.) *Jain Shudh Vanaspati Ltd. & Anr. v. Union of India & Ors.* Both these decisions were admittedly on the

basis of the old law. The old law was crystallised in the Supreme Court decision in *Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others*, . That decision itself was in conflict with the earlier decision of the Supreme Court in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, . The conflict in the two decisions was ultimately resolved by the Supreme Court in its decision in *Union of India (UOI) and Others Vs. Godfrey Philips India Ltd.*, . The view expressed in this case was reiterated in two later decisions of the Supreme Court in *Shri Bakul Oil Industries and Another Vs. State of Gujarat and Another*, , *Pournami Oil Mills and Others Vs. State of Kerala and Another*, , *Pournami Oil Mills v. State of Kerala*. It is, therefore, clear from this latest law on the subject that the doctrine of promissory estoppel is available against the Government in the exercise of its public or governmental function and that the doctrine of executive necessity or executive action cannot be invoked to defeat the applicability of the doctrine of promissory estoppel. It cannot be denied that the public notice of May 12, 1975 had been issued by the Central Government in the exercise of the Government's executive function. Since, in the present case the respondents had already entered into the contracts prior to the coming into operation of the new policy on May 12, 1975, they were clearly entitled to the benefits as promised under the earlier policy.

10. Shri Sringarpure then made a faint attempt to contend that even if the respondents are entitled to avail of the doctrine of promissory estoppel, the only benefit that they can get from the appellants is of the Rep. Licence and not of cash assistance. We fail to understand on what basis such argument can be advanced. In the first instance, no such argument was advanced before the learned Single Judge. Even before us, Shri Sringarpure is unable to show any ground for denying the cash assistance, when both the benefits were promised as a package. The argument, therefore, is only to be stated to be rejected.

11. The appeal, therefore, fails and is dismissed with costs.

12. At the time the admission of the appeal on April 8, 1982, operation of the impugned decision of the learned Single Judge was stayed on the appellants depositing in Court the entire amount of cash assistance, and the respondents were allowed to withdraw the amount on furnishing a Bank guarantee. Accordingly, the appellants had deposited the amount and the respondents had withdrawn the same. Since the respondents succeed in this appeal, the Bank guarantee given by them is hereby discharged. The Prothonotary and Senior Master will return the Bank guarantee to the respondents duly discharged. The Prothonotary to act on the certified copy of the minutes.