
(1985) 03 BOM CK 0009

In the Bombay High Court

Case No : Appeal No. 232 of 1985 in Writ Petition No. 1465

Union of India

APPELLANT

Vs

V.H. Patel and Co.

RESPONDENT

Date of Decision : 19-03-1985

Acts Referred:

Citation : (1992) 41 ECR 152 : (1990) 46 ELT 45

Hon'ble Judges : S.P. Kurdukar, J;M.H. Kania, J

Bench : Division Bench

Judgement

Kurdukar, J.—This appeal is directed against the order dated 18-9-1984 passed by learned Single Judge, Pendse, J. in Writ Petition No. 1465 of 1984 making rule absolute in items of prayer clause (b) of the petition.

2. The respondent in this appeal constitute a partnership firm and carry on business of exporting diamonds. The respondents are also a recognised export house within the meaning of the relevant import policies.

3. It is common ground that the respondents firm under the relevant import and export policies of 1982-83 applied for import licence relying upon paragraph 185 (4) of the said policy. It is also common ground that an imprest licence was granted to the respondents on or about 15-1-1983 for the CIF value of Rs. 2,44,97,242/- against an FOB value of export Rs. 3,76,88,066/- for the import of uncut and unset diamonds. It is also common ground that the first respondent had accordingly imported and exported the diamonds as per the licence and virtually they have fulfilled the export obligation. The respondents thereafter received from the Competent Authority the redemption certificate dated 9-3-1984. In the meantime the import and export policy for the year 1982-83 was changed and substituted by import and export policy for the year April 1983 to March 1984.

4. Since the respondents had fulfilled the export obligations and in view of the redemption certificate dated 9-3-1984, on 8-6-1984 they applied for revalidation

of the the said application on three grounds; (1) Imprest licence is not valid; (2) No balance value available in the Customs copy of the licence, and (3) there is no provision to endorse the impost licence for OGL items in AM 85 Policy Book. After receipt of this communication from the said authority the respondents moved this Court by filing a writ Petition No. 1465 of 1984. This writ petition was heard by learned Single Judge (Pendse, J.) who by his order dated 18-9-1984 made the rule absolute in terms of prayer cl. (b) of the petition. It is this order which is sought to be challenged in this appeal.

5. Shri Dalal, learned Counsel appearing for the Union of India - appellants firstly urged that the impost licence granted to the respondents was valid for the period AM 1982-83 and by reason of lapse of the said period, the authorities were fully justified in rejecting the revalidation applications made by the respondents. According to the learned counsel the impost licence is not valid and, therefore, they are not entitled for any reliefs. This argument does not appeal to us for the simple reason that the respondents under the said licence had carried out the import and export obligation and pursuant thereto the respondents were granted redemption certificate by the Controller of Import and Exports on 9-3-1984. It is not disputed that the said certificate was in accordance with the policy as then existed and if it is so we see no reason to reject to the revalidation as applied for by the respondents. The learned Single Judge was therefore right in holding that the respondents are entitled for revalidation and endorsement for the import of OGL items on their impost licence.

6. It was the urged by Shri Dalal that if the respondents wanted to take any advantage of the Import of Export Policy of 1982-83 then it was incumbent upon them to apply for such revalidation before the expiry of 31-3-1983. Having not done so any application made after the said date cannot be entertained. This argument is again misconceived because the entitlement and benefit accrued to the respondents under the valid licence cannot be denied merely on the ground that the policy has undergone a change in the subsequent year. During the course of arguments, Shri Dalal was unable to point out any provision which forbids grant of such revalidation under the new policy. All that he contended was that there is no provision in the existing policy i.e. for the year 1984-85 and, therefore, the revalidation cannot be granted. We do not see any substance in this contention also.

7. It was next urged by Shri Dalal that in view of the provisions paragraph 185 (7), of the Import & Export Policy 1982-83, the respondents were not be entitled for any relief in the petition. It is pertinent to note that although the appellants filed the return in the trial Court did not raise this contention in the return. This contention also was not made before the learned trial Judge and, in our opinion, it would not be proper to entertain such a new contention in this appeal. We, therefore, do not wish wish to refer to that part of the argument based on paragraph 185 (7) of the Import and Export Policy 1982-83. After taking into

account the provisions contained in paragraph 185 (4), we are of the opinion that the respondents are entitled for the reliefs as prayed for in prayer clause (b) of the writ petition.

8. There is no substance in any of the contentions raised before us. The appeal is accordingly summarily dismissed.

9. Shri Bulchandani at this stage orally applies for stay of the order of six weeks. Having regard to the facts and circumstance of the case we grant the stay for four weeks on condition that the appellants give four days notice in the event they intend to move the Supreme Court of any interim relief.