
(1994) 02 MAD CK 0013
In the Madras High Court
Case No : W.A. No's. 294 to 297/94

Union of India (UOI) and Another APPELLANT
Vs
Rajendra Enterprises and Another RESPONDENT

Date of Decision : 21-02-1994

Acts Referred:

Citation : (1997) 57 ECC 148

Hon'ble Judges : K.A. Swami, C.J.;Somasundaram, J

Bench : Division Bench

Judgement

K.A. Swamy, C.J.—All these writ appeals are preferred against the common order dated 22.12.1993 (printed at page 151 infra) passed by

the learned single Judge in W.P. Nos. 17894, 18294, 18295 and 18382 of 1992 respectively. Learned single Judge has allowed the writ petitions

and issued the following directions:

Consequently, all the writ petitions are allowed as prayed for. I make it clear that the respondents are at liberty to take whatever steps which are

available to them to recover the amounts paid to the petitioners in respect of the exim scrips which were issued to M/s. Aisha Exports (P) Ltd.,

Trimex Agencies (P) Ltd. or Trimex Minerals (P) Ltd. In respect of some of the claims made in the writ petitions, it is stated that payments have

been made. Therefore, the present judgment will govern only those claims under genuine exim scrips which have not already been satisfied by the

respondents. The writ petitions are allowed in the above terms. There will, however, be no order as to costs. All the interim orders are vacated.

The 3rd respondent shall give effect to this order within four weeks from today.

In these appeals, it is not in dispute that the petitioner in each of the writ

petitions has produced the exim scrips of the value of Rs. 19,47,315, Rs.

15,94,400, Rs. 35,000 and Rs. 8,83,400 respectively and sought for payment of the amounts. It is also not in dispute that the exim scrips on the

basis of which the petitioners have sought for payment of the aforesaid amounts, are accepted to be genuine scrips. However, the appellants have

withheld payments on the basis of the instructions given by the second appellant to the State Bank of India in the following terms:

- a. not to make premium payments against cancelled scrips.
- b. to recover any amount paid already as premium on the cancelled exim scrips.
- c. till recoveries are effected not to make payments on any other scrips presented by those who had taken payments against cancelled scrips.

It is also not disputed before us and so also before the learned single Judge that as regards the exim scrips produced by the petitioners, prior to

the production of the exim scrips in question, the genuineness of the same is under investigation. The exim scrips produced by the petitioners on the

earlier occasion were for the following value:

The aforesaid sums have been paid by the appellants to the petitioners. The fact that the present exim scrips are valid and genuine is not in dispute.

2. The question for consideration, merely because on an earlier occasion these petitioners had produced certain exim scrips, the genuineness of

which is under investigation, and obtained payments, the payments as against the genuine exim scrips can be withheld. Investigation, according to

learned Counsel for the appellants, has been going on since July, 1992. Even to this, day, the appellants are not in a position to claim that the exim

scrips which were produced by the petitioners in the past and which are now [under] investigation, were bogus ones. It can be stated only after

investigation is completed, as to whether those exim scrips were bogus or genuine. In the event they are found to be bogus, it shall have to be

determined whether the writ petitioners herein are liable for the amounts. As the matter is under investigation, the interests of the appellants can

very well be safeguarded if each of the petitioners is directed to furnish adequate security of immovable property having clear and marketable title

to the satisfaction of the second appellant. It is not disputed that on furnishing of security in the aforesaid terms, the interests of the appellants and

also of the Revenue would be sufficiently safeguarded. At the same time, we are

also of the view that, when the petitioners are entitled to the payment as against the present exim scrips which are accepted to be genuine and valid, the payments cannot at all be directed to be withheld, nor can it be withheld by the appellants. Therefore, we are of the view that safeguarding the interest of the appellants, the amounts payable under the present exim scrips can very well be directed to be paid. Accordingly, we dispose of the writ appeals in the following terms:

3. If the petitioners as detailed below, furnish adequate security of immovable property having clear and marketable title or bank guarantee

whichever is convenient to the writ petitioners, to the satisfaction of the second appellant (Joint Chief Controller of Imports and Exports, Madras)

the appellants shall on accepting such security, pay the amounts payable on the present exim scrips.

The order of the learned single Judge stands modified accordingly. The payments shall be made within four weeks from the date of acceptance of

the security offered. There will be no order as to costs.