

(1967) 03 MAD CK 0071
In the Madras High Court

V.A.K. Krishna Nadar, represented by partner V.A.K.
Manickavachaka Nadar

APPELLANT

Vs

The Joint Chief Controller of Imports and Exports, and
Another

RESPONDENT

Date of Decision : 28-03-1967

Acts Referred:

Citation : (1967) 2 MLJ 602

Hon'ble Judges : P.S. Kailasam, J

Bench : Division Bench

Judgement

P.S. Kailasam, J.—Writ Petition No. 727 of 1966 is preferred by the reconstituted firm of V.A.K. Krishna Nadar for the issue of a writ of certiorari calling for the records relating to the refusal to grant licences to the petitioner for the period prior to April 1962 to March 1963 contained in the order of the Joint Chief Controller of Imports and Exports, Madras, dated 5th January, 1965 and confirmed by the Chief Controller of Imports and Exports, New Delhi, in his order dated 6th July, 1965 and quash the same;

2. Writ Petition No. 728 of 1965 is filed by the same firm for the issue of a writ of mandamus directing the Joint Chief Controller of Imports and Exports, Madras, and the Chief Controller of Imports and Exports, New Delhi, to grant licences to the petitioners for the back periods from April, 1961, onwards viz., for the periods April to September, 1961 and October, 1961 to March, 1962.

3. As the two writ petitions arise out of the same order they may be dealt with together.

4. The petitioner firm was started on 24th July, 1942 with V.A.K. Manikkavachaka Nadar and V.A.K. Krishna Nadar, who were doing business as undivided members of a joint Hindu family. After the brothers partitioned themselves, the firm was continued with the brothers as partners. On 24th March, 1961 V.A.K. Krishna Nadar died. His eldest son V.A.K. Kamarajan took his place in the firm as the

kartha of the joint family consisting of himself and his brothers with the consent of all the members of the family with effect from 24th March, 1961. The petitioner applied for transfer of quota rights on 17th October, 1962. The respondents required certain documents for satisfying themselves about the reconstitution of the firm and the petitioner-firm complied with all the requirements on 24th June, 1963. On 18th October, 1963 the respondents approved the transfer of quota rights and intimated that instructions were issued to the licensing authorities to the effect that quota licences admissible to the old partnership firm on the basis of the past imports-exports should in future be issued in favour of the petitioner-firm and that the petitioner-firm might produce the quota certificate to the licensing authorities for necessary endorsement. On 29th June, 1964 the petitioner firm was informed that the transfer of quota rights in favour of the reconstituted firm was allowed only with effect from April-March, 1964 on the ground that affidavits from the legal heirs were submitted only on 24th June, 1963, and that the licences could not be issued for the earlier periods. The petitioner-firm filed an appeal to the Chief Controller of Imports and Exports, New Delhi, praying that licences for the back periods might also be granted and relied on paragraphs 77(vi) and 82(iii) of the policy book for the year 1963. The first respondent intimated the petitioner-firm that the validity of the transfer of quota rights in favour of the reconstituted petitioner-firm would be allowed with effect from April, 1962 to March, 1963. The respondents declined to grant licences for the two periods, April to September, 1961 and October, 1961 to March, 1962, and the two writ petitions are filed against the refusal to grant licences for the above periods.

5. The partnership consisted of two partners, and one of the partners V.A.K. Krishna Nadar died on 24th March, 1961. An application for transfer of quota certificates was made on 10th July, 1962 and the defects pointed out in the application were rectified on 24th June, 1963. The transfer of quota rights was approved by the Joint Chief Controller of Imports and Exports, Madras, on 18th October, 1963. It is common ground that for the two half years for which licences were refused applications for licences were made within time. On these facts the question arises whether the petitioner-firm is entitled to have the transfer of quota rights recognised from the date of death of Krishna Nadar, that is 24th March, 1961. The respondent originally recognised the transfer of quota rights from 24th June, 1963, that is from the date on which the application was re-presented after rectifying all the defects. Subsequently it was recognised up to the date of the application for transfer of quota rights originally made on 17th October, 1962. The contention of the petitioner-firm is that when once the transfer of quota rights is recognised it must date back to the date on which the partnership firm was reconstituted.

6. The system of licence and transfer of quota rights regarding imports and exports is controlled by the provisions of the Imports and Exports (Control) Act XVIII of 1947 and the Imports (Control) Order, 1955. Apart from the statutory provisions under the Act and the rules for granting licences for the purpose of

guiding the licensing authorities in the matter of granting import licences, the Central Government have been issuing instructions to be followed by the licensing authorities. The effect of the instructions issued by the licensing authorities for the period January to June, 1957 had been considered by this Court in *The Joint Chief Controller of Imports and Exports Vs. H.V. Jain*, , and by the Supreme Court in *Joint Chief Controller of Imports and Exports, Madras Vs. Aminchand Mutha Etc.*, . The relevant instructions for the half year January to June, 1957 are contained in paragraph 71 of the Red Book of Rules and Procedure for Import Trade Control (1957). The High Court as well as the Supreme Court on a consideration of the instruction contained in the above paragraph came to the conclusion that the approval of the transfer of quota rights would date back to the date of the agreement. The contention of the learned Counsel for the respondents is that the instruction for the relevant period, that is the date of application for transfer, is contained in the Red Book for the period April, 1962 to March, 1963, in which the instructions are changed and the petitioner-firm, according to the instructions, is not entitled to have the transfer of quota rights recognised from the date of agreement. In order to appreciate this contention it is necessary to refer to the instructions during the two relevant periods.

7. The relevant instructions relating to the half year January to June, 1957 is contained in paragraph 71 of the Red Book of Rules and Procedure for Import Trade Control, 1957. The instructions are that licences are granted on the presupposition that no change has taken place in the constitution of the applicant firm and that when a change occurs in the constitution or the name of a firm or the business changes hands, the reconstituted firm will not be entitled to the quotas of the original firm until the transfer of the quota rights in their favour has been approved by the Chief Controller of Imports and Exports or other licensing authority. Paragraph 71 provides for transfer of quota rights in the case of transfer of the business of a firm, in the case of change in the constitution of the firm due to retirement of partners and in the case of change of the name of a firm. In the case of dissolution of a firm without making provision for transfer of its business, nobody will be entitled to the quota rights. Paragraph 71(b) is relevant for the present discussion and may be extracted in full:

When a firm is dissolved, and the partners agree to divide its business, assets and liabilities, and its goodwill is taken over by one of the partners or none of them is allowed to use it the partners shall get their respective share in the quota rights according to the provision to the agreement.

Considering paragraph 74(b) relating to the period July to December, 1956, which is in *pari materia* to paragraph 71(b) a Bench of this Court in *The Joint Chief Controller of Imports and Exports Vs. H.V. Jain*, , observed at page 859 as follows:

Sub-clause (b) of paragraph 74 is quite clear that where a firm is dissolved and the partners agree to divide its business, assets and liabilities the partners shall

get their respective share in the quota rights according to the provisions of the agreement. Such rights would accrue to each of the partners from the date of the agreement. The fact that approval of the agreement (assuming such approval is necessary) is given by the Chief Controller of Imports and Exports on a later date, it can not be said that the rights of the partners would accrue only on and from the date of such approval. The words "in future" can be understood to mean "from the date of the dissolution".

This view was approved by the Supreme Court in *Joint Chief Controller of Imports and Exports, Madras Vs. Aminchand Mutha Etc.*, . The instruction relating to the period April, 1962 to March, 1963 during which the application for quota rights was made by the petitioner-firm is changed. The instruction contained in paragraph 74 is to the effect that licences are generally granted in the name of the business belonging to the established importer and that hence, where there is any change in the ownership of the business, the new owner or owners are not established importers and will not be eligible for grant of licences as established importers. But paragraph 75 provides as follows:

In public interest and for continuity of any business, however, the Chief Controller according to the principles stated below, may recognise any person or persons as established importers in respect of any business after examining their connection with the old owners thereof. The newly recognised established importers will then be granted a quota. Such newly recognised established importers will be eligible for the grant of licences from the date of their said recognition only.

It may be noted that according to altered instructions in paragraph 75, the newly recognised established importers will be eligible for the grant of licences from the date of their recognition only. There was no such corresponding instruction in the half year relating to the period January to June, 1957. An exception is made to the instructions in paragraphs 74 and 75 in paragraph 82(3), which provides among other things that where the change in ownership is on account of admission of partner as in paragraph 77(vi), then the new owners on recognition shall be considered established importers from the date of the change itself instead of from the date of the recognition and will be eligible for licences accordingly. According to this instruction, if the change of ownership is on account of admission of a partner as in paragraph 77(vi), the new owners as established importers will be eligible for licences from the date of change itself. Paragraph 77(vi) relates to a new partner being admitted in the business, wherein it is provided that the entire quota will be continued to the new owners. The present is not a case of a new partner being admitted in the business, for by one of the two partners dying the partnership had become dissolved, and when paragraph 77(vi) is not applicable the importers will be eligible for grant of licences from the date of recognition only. Paragraph 77 provides for the death of a partner, the retirement of a partner, the transfer of the business to any other person, the dissolution of the partnership, the adjudication of a partner as

insolvent, and the admission of a new partner in the business. It is only in the case of admission of a new partner an exception is made to the instruction in paragraph 75. In other cases the eligibility for licence is only from the date of recognition. In this view it is unnecessary to consider whether the present case would fall under paragraph 77(vi).

8. Mr. Venkatarama Ayyar, learned Counsel for the petitioner-firm, submits that the introduction of new instructions for the year April, 1962 to March, 1963 would not make any difference, as the rights of the petitioner-firm has been declared by the Supreme Court in *Joint Chief Controller of Imports and Exports, Madras Vs. Aminchand Mutha Etc.,* . According to the contention of the learned Counsel for the petitioner, when once the recognition of the transfer of quota rights had been granted, the importers will be entitled for licences from the date of the agreement. The decision of the Supreme Court will have to be examined at some length to consider whether it lends any support to the contention of the learned Counsel. The facts of the case before the Supreme Court were as follows. The firm in question was dissolved on 1st July, 1957. An application was made by one of the partners on 25th March, 1957 for the grant of a licence for the period January to June, 1957. An application was also made to the Chief Controller on behalf of the dissolved firm for division of the quota immediately after the constitution of the new firm. In September, 1957 the partner was informed by the Chief Controller that instructions had been issued to the licensing authority that quota certificates admissible to the dissolved partnership firm should in future divided between the three partners in certain proportions. On 9th January, 1958 the Joint Chief Controller, who was approached to grant a licence, informed the partner concerned that it was regretted that his request for the issue of licence for the period January-June, 1957 could not be acceded since the transfer of quota rights in his favour had been recognised by the Chief Controller only after the expiry of the licensing period to which the application related. The High Court and the Supreme Court, where appeals had been filed, held that the Chief Controller could not refuse to issue licence on the ground that the Chief Controller's approval had been made after the period January to June, 1957. The reason for coming to this conclusion by the Supreme Court is given by the Supreme Court in paragraph 9 of its judgment, where it is observed as follows:

We have already pointed out that on a proper interpretation of instruction 71 (January to June, 1957) there is no doubt that the Chief Controller is bound to divide the quota of a firm consisting of partners which has been dissolved in accordance with the provisions of the agreement between the partners provided the necessary evidence has been produced before him, as required by instruction 72 in that behalf. Such being the nature of the proceeding before the Chief Controller it follows that when he gives approval to the division of the quota between the partners of a dissolved firm in accordance with the agreement between them, the approval must take effect from the date of the agreement between the partners. It might have been a different matter if the Chief Controller had the power to refuse division of the quota rights under these

instructions; but he has no such power and must divide the quota in accordance with the agreement if he is satisfied as to the dissolution on the evidence produced in accordance with instruction 72. If such approval by the Chief Controller were not to date back to the date of agreement it would mean that the partners who were otherwise entitled to approval under instructions 71 and 72 might lose the advantage that they would have before the licensing authority by delay in the approval by the Chief Controller.

Reading the above passage it is clear that the conclusion of the Supreme Court was arrived at on a consideration of instructions 71 and 72, where it is provided that when the Chief Controller gives approval to the division of the quota between the partners of a dissolved firm in accordance with the agreement between them, the approval takes effect from the date of the agreement between the partners. The Supreme Court has also held that the approval of the Chief Controller under instruction 71 was a mere recognition of the division made by agreement between themselves and in that view the recognition must clearly relate back to the date of the agreement. The decision of the Supreme Court is based mainly on the duty of the Chief Controller as provided for in paragraph 71. The Supreme Court has not held that the newly recognised importer has any independent right to demand for licence from the date of the agreement. On the other hand the observation of the Supreme Court that "It might have been a different matter if the Chief Controller had the power to refuse division of the quota rights under these instructions;" would indicate that the Chief Controller is under an obligation to follow the Instructions and that the petitioner-firm cannot insist on any other right. Under the altered instructions for the year April, 1962 to March, 1963, the period during which application was made, it is provided that the newly recognised importers will be eligible for the grant of licences from the date of the said recognition only. Exception to this instruction is provided for in paragraph 82(iii), which provides for the recognition from the date of the change itself instead of from the date of recognition. As already pointed out, the present case does not fall within the exception provided for in paragraph 82(iii). Therefore, according to the instructions governing the present case the petitioner-firm is eligible for licence only from the date of recognition. The Chief Controller in exercise of the discretion vested in him in paragraph 90 as a matter of grace granted licence for the period intervening between the date of application for recognition and the date of recognition. As in this case the application was made on 17th October, 1962, the licence was granted for the period April, 1962 to March, 1963. The petitioner-firm, according to the instructions, is not entitled to licence rights for the period before it made the application for recognition of transfer of quota rights.

9. In Writ Petition Nos. 936 to 938 of 1964 this Court has also taken the view that after the amended instructions the newly recognised established importers would be eligible for grant of licence from the date of recognition only.

10. In this case it may also be noted that, though one of the partners, V.A.K.

Krishna Nadar died on 24th March, 1961, the application for transfer of quota rights was made only on 17th October, 1962, after an interval of more than eighteen months. It has been held by this Court and by the Supreme Court that the newly recognised importers should not be held liable for any delay that might occur in the office of the Controller of Exports. But the delay of eighteen months in making the application is entirely by the petitioner-firm. The petitioner will be responsible for the laches on its part and it cannot claim that though there was a delay of eighteen months on its part in making the application the licence should be given from the date of the agreement or from the date on which the partnership was dissolved due to the death of one of the two partners.

11. The refusal to grant licences for the period March to September, 1961 and October, 1961 to March, 1962 is justified. These two writ petitions are therefore dismissed.

12. No order as to costs.