

(1978) 12 AP CK 0010
In the Andhra Pradesh High Court

Venkateswara Stainless Steel Wire Industries, Hyderabad	APPELLANT
Vs	
Chief Controller of Imports and Exports, New Delhi	RESPONDENT

Date of Decision : 13-12-1978

Acts Referred:

Citation : (1988) 34 ELT 49

Hon'ble Judges : Seetharam Reddy, J; Sambasiva Rao, J

Bench : Division Bench

Judgement

Seetharam Reddy, J

1. These three writ appeals arise out of a common order in W.P.Nos. 2423, 2424 and 3418 of 1975 made by our learned brother Kondaiah, J., dismissing the same as not competent and maintainable. The parties are common in all these writ appeals as well as the writ petitions, and common questions do arise for consideration out of the same. The same may be disposed of by a common judgment.

2. The price point that arises in these writ appeals, is whether the appellant, who is a manufacturer of automobile ancillaries, is entitled to import Heat Resistance Steel (hereinafter referred to as H.R.S) based on the actual consumption.

3. The appellant - petitioner, who is common in all these three writ appeals, is a Small Scale Industrial Unit owned by a registered partnership known as Keshavji Ravji & Co., Madras, whose principal business is Imports and Exports, with its Head Office at Madras. The petitioner is a manufacturer, inter alia of automobile ancillaries. For the purpose of manufacturing its products the petitioner requires imported stainless steel sheets, strips and circles and also imported H.R.S. The petitioner, who had applied for import licence for importing stainless steel raw material after duly complying with all the formalities like Essentiality Certificate from the Director of Industries, Hyderabad, enabling it to apply for a license to import H.R.S. for the manufacture of automobile ancillaries obtained import licence dated 20th March, 1968. On the basis of the Essentiality Certificate

recommending for the grant of an import licence for HRS the Deputy Assistant Iron and Steel Controller, Madras made an endorsement on 24th September, 1968 by way of an enclosure to the import licence authorising the petitioner to import H.R.S. for the end use automobile parts. This licence is said to constitute an Actual Users Licence. From 1st April, 1968, the Import Trade Policy made a provision for the grant of import licence for the category of actual user to the extent of 75 per cent of the value of exports of aluminium circles. The Head Office of the petitioner - firm exported several lakhs worth of aluminum circles during the years 1968 to 1970. The rules provided that either the exporter or any nominee would be entitled to such an import licence, called, "Replenishment Licence under the Registered Exporters Policy", provided the person who desired to get the import licence must have been a holder of an actual users licence in respect of commodity which he wished to import. There was no restriction on the commodity which the actual user wished to import. The Head Office at Madras nominated the petitioner as the person entitled to the Registered Exporters Policy licenses for the exports made by it. The commodity for which the nomination was made was H.R.S. in respect of which the petitioner was already an actual user under the enclosure dated 24th September, 1968 to the import licence dated 20th March, 1969. In pursuance of the nomination, the petitioner was being granted from 4th December, 1968 actual use licences under the Registered Exporters Policy Scheme for the various periods for which exports of aluminium circles were made by the Head Office. Under these licences, the petitioner was importing and consuming H.R.S. in the manufacture of its products.

4. From the financial year 1969 - 70, the Import Trade Policy provided for the issue of import licences for the value of raw material consumed by the importer in the previous year. The quantities that could be imported under such licences were in addition to the quantities covered by the actual users licences called Registered Exporters Policy licences. The petitioner applied to the 2nd respondent (Deputy Chief Controller of Imports and Exports, Hyderabad) under the aforesaid Policy as per Para 73(1) to (5) of the Import Trade Control Hand Book of Rules and Procedure, 1970, on 17th March, 1970, for the issue of an import licence for H.R.S. of the value of Rs. 1,85,815.00 being the value of the raw material consumed by the petitioner during the period 1st October, 1969 to 10th March, 1970 duly complying with all the procedural formalities such as certificates by a Chartered Accountant and so on. On 15th July, 1970 the 2nd respondent required the petitioner to produce the licences issued to it for the period April - March, 1968 and April - March, 1969. The petitioner submitted the same on 22nd July, 1970. The 2nd respondent wrote to the petitioner on 30th October, 1970 stating that the petitioner could not be treated as an existing unit for grant of a licence on consumption basis as it had not obtained any licence for the periods 1967 - 68 and 1968 - 69 for the end - product auto parts, and therefore, directed the petitioner to apply as a new unit. The petitioner, thereupon, gave a reply on 7th December, 1970 stating that the photostat copy of the actual users licence issued on 24th September, 1968 coupled with the 3

Registered Exporters Policy licences issued on 4th December, 1968, proved that the petitioner could not be considered as a new unit. The petitioner pursued by way of a reminder on 12th June, 1972. However, in the meantime, on 14th March, 1972, the petitioner filed another application for an import licence on the basis of actual consumption of imported H.R.S. during the period 1st October, 1971, to 29th February, 1972, which was rejected by the 2nd respondent on 2nd March, 1973. On that lawyer's notice dated 28th April, 1973 was issued to the 1st respondent that Chief Controller of Imports and Exports, demanding the issue of the licences within a period of two months from the date of receipt of the notice. The 1st respondent wrote to the petitioner on 27th December, 1973 to contact the 2nd respondent to whom his views had been communicated. The 2nd respondent directed the petitioner to establish the unavailability of H.R.S. indigenously, which was also complied with. On 28th August, 1974, the 2nd respondent rejected the petitioner's application dated 17th March, 1970 on the ground that H.R.S. is not required for the manufacture of auto parts. It is this order that is impugned in these writ petitions.

5. Our learned brother Kondaiah, J., dealing in the main with the question of maintainability of the petitions under Article 226 of the Constitution of India, relying on the decision in *Andhra Industrial Works Vs. Chief Controller of Imports and Others*, , and the decision of a Division Bench of this Court in *W.A./ NOs. 21 to 42 of 1976* dated 24th February, 1976 dismissed the writing petitions holding that the applicant has no legal right of fundamental or vested right for the grant of import licence on the basis of consumption of the steel material in the previous period. It is further observed by the learned Judge:

"There is clear and abundant authority for the proposition that the petitioner has no legal right much less any fundamental or vested right for the grant of an import licence so as to enable him to demand the issuance of writ of mandamus from this Court by endorsement of such right."

Aggrieved by the aforesaid order, the petitioner has preferred these appeals.

6. Before dealing with the contentions raised on behalf of the appellant, we may give the genesis of the export control scheme. The Imports and Exports (Control) Act, XVIII of 1947 was enacted on 24th March, 1947 with the object of enabling the Central Government to continue not exercise the power to prohibit, restrict or otherwise control imports and exports which had till then been controlled by orders issued in exercise of the powers conferred by Rule 84 of the Defence of India Rules, 1939, as extended by the Emergency Provisions (Continuance) Ordinance 20 of 1954. By Section 3 of that Act, it was provided:

"(1) The Central Government may, by order published in the Official Gazette, make provisions for prohibiting, restricting or otherwise controlling in all cases or in specified cases, and subject to such exceptions, if any, as may be made by or under the order:-

(a) The import, export, carriage coastwise or shipment as ships stores of goods

or any specified description.

(b) the bringing into any part or place in India of goods of any specified description intended to be taken out of India without being removed from the ship or conveyance in which they are being carried.

(2) * * * *

(3) * * * *"

By Section 4, the orders made under Rule 84 of the Defence of India Rules, 1939, or under that rule as continued in force by the Emergency Provisions (Continuance) Ordinance, 1946, and in force immediately before the commencement of the Act were, insofar as they were not inconsistent with the provisions of the Act, to continue to remain in force and to be deemed to have been made under the Act.

7. In exercise of the powers conferred on the Central Government by Section 3, the Central Government issued the Imports (Control) Order, 1955. By paragraph 3 of the Order, it was enacted that :

"(1) Save as otherwise provided in this Order, no person shall import any goods of the description specified in Schedule I, except under, and in accordance with a licence or a customs clearance permit granted by the Central Government or by an officer specified in Schedule II.

(2) If, in any case, it is found that the goods imported under a licence do not conform to the description given in the licence or were shipped prior to the date of issue of the licence under which they are claimed to have been imported, then, without prejudice to any action that may be taken against the licence under the Customs Act (L II of 1962), in respect of the said importation, the licence, may be treated as having been utilised for importing the said goods."

8. The contentions of Sri Ramachandra Rao, learned counsel for the appellant, are these :

(1) The appellant has every right to enforce the administrative orders or instructions contained in the import and export control policy by invoking the jurisdiction of this Court under Article 226 of the Constitution of India.

(2) As no policies are laid down making provisions for the issue licences with regard to certain materials like raw materials, blades, wires and so on, the executive cannot refuse to issue the said licences on the basis that the material is not required.

(3) For the issue of import licence for a particular period in respect of certain raw materials, if there is a change in the subsequent period, the licensee is still entitled to it for the period for which he was sought for, so long as the delay that occurred, was not attributable to the petitioner or the licensee.

(4) The petitioner's fundamental right under Article 14 for the Constitution of

India, is violated because the respondents discriminated against the petitioner as they have granted licences to others similarly situated.

(5) The remedy of appeal which has been provided for under the specific provisions had not been invoked inasmuch as the appellate authority happens to be the same authority who has refused to issue licence and, therefore, it is a redundant exercise.

9. The learned Counsel for the appellant relied on the following decisions in support of his contentions that the administrative instructions are enforceable and he is entitled to a writ or an appropriate order under Article 226 of the Constitutions of India.

10. In *Union of India v. Anglo - Afghan Agencies (2)*, AIR 1968 S.C. 718 , the Textile Commissioner published on October 10, 1962, a scheme called the Export Promotion Scheme providing incentives to exporters of woollen goods. By the scheme as extended to exports to Afghanistan, the exporters were invited to get themselves registered with the Textile Commissioner for exporting woollen goods, and it was represented that the exporters will be entitled to import raw materials of the total amount equal to 100 per cent of the f.o.b value of the exports. Under clause 10 of the Scheme, the Textile Commissioner authority, if it was found that fraudulent attempt was made to secure an import certificate in excess of the true value of the goods exported, to deduct the import certificate. Dealing with the position that the license was entitled to have licence for the import of raw material on the representation so made by way of import and export policy laid down, though it was not statutory in character. Shah, J., as he then was speaking for the Court, held :

"The question whether the Import Trade Policy is legislative in character has not been expressly dealt with in any decision of this Court. It appears to have been assumed in certain cases, that it is executive in character, but even so it had been held that when it is declared under an export policy that a citizen exporting goods shall be entitled to certain import facilities, in appropriate cases the Courts have the power to direct the concerned authority to make that facility available to the citizen who had acted to his prejudice acting upon the representation in the policy and has been denied that facility."

It was further observed :

"It cannot be assumed merely because the Imports Trade Policy is general in terms and deals with the grant of licences for Import of goods and related matters. It is statutory character. The Imports and Exports (Control) Act, 1947, authorises the Central Government to make provisions prohibiting, restricting or otherwise controlling import, export, carriage etc., of the goods and by the Imports (Control) Order, 1955, dated 7th December, 1955 and by the provisions which were sought to be repealed restrictions already imposed. The order was clearly legislative in character. The Import Trade Policy was evolved to facilitate the mechanism of the Act and the orders issued thereunder. Even granting that

the Import Trade Policy notifications were issued in exercise of the power u/s 3 of the Imports and Exports (Control) Act, 1947 the order as already observed authorised the making of executive or administrative instructions as well as legislative directions. It is not the form of the order, the method of its publication or the source of its authority, but its substance, which determines its true character. A large majority of the paragraphs of the Import and Export Schemes are in the form of instructions to departmental officers and advice to persons engaged in the export and import business with their foreign counter - parts. It may be possible to pick out paragraphs from the Scheme which appear in isolation to be addressed generally and have direct impact upon the rights and liberties of the citizens.

But a large number of paragraph of the Scheme refer to matters of procedure of departmental officers and heterogeneous material " it sets out formsof applications, the designations of licensing authorities, amounts of application and licensing fees, last dates for applications, intermixed with definitions of "Established Importers" "Actual users", "New comers" and others and details of different schemes such as Quota Registration Schemes, Export Promotion Schemes etc. There is no pattern of order or logical sequence in the policy statement; it is a jumble of executive instructions and matters which impose several restrictions upon the rights of citizens. Some of the provisions which impose restrictions upon citizens in the exercise of their right to carry on trade without statutory limits may be open to serious objections, but we do not find it necessary to embark upon an enquiry whether the provision which authorises the issue of import entitlement certificate for the full f.o.b. value of the goods exported is legislative in character. Granting that it is executive in character, this Court has held that the Courts have the power in appropriate cases to compel performances of the obligations imposed by the Scheme upon the departmental authorities."

11. This decision is binding on us.

12. Sri. K. Subrahmanya Reddy, learned Standing Counsel for the Central Government, contended that the import trade control policy is only an administrative instruction and the same does not confer any right enforceable under Article 226 of the Constitution of India. Reliance was placed on the decisions in *Joint Chief Controller of Imports and Exports, Madras Vs. Aminchand Mutha Etc.*, . *G.J. Fernandez Vs. State of Mysore and Others*, . *The Deputy Assistant Iron and Steel Controller and Another Vs. L. Manickchand, Proprietor, Katrella Metal Corporation, Madras*, . *Vishwakarma Industries Vs. The Union of India and Another*, . *Andhra Industrial Works v. Chief Controller Imports* (1 Supra), *J. J. Fernandes and Co. Vs. Deputy Chief Controller of Imports and Exports and Others*, and *SHA Poosafi Mangilal v. Ministry of Commerce* (8), AIR 1976 Mad 82. The decision in *J.C.C. of Imports and Exports v. Aminchand* (3 Supra) deals, in the main with the proposition as to how the partners shall get their respective shares in the quota rights after the dissolution of the firm. It was

held that once such shares are approved eventually by the Chief Controller, even if it is much later than the period for which the partners were entitled to the quota, it should give the approved quotas from the date of agreement so that such persons may not suffer on account of the delay in the Chief Controller's Officer in the matter of according approval. While dealing with such proposition, the Supreme Court, where they were concerned with Article 32 of the Constitution of India, observed :

"It will be seen that these administrative instructions do not create any right as such in favour of persons with whom they deal. They are for guidance of the authorities in the matter of granting quotas for the purpose of the Order.

However, we may refer to the observation made by Mudholkar, J., who wrote a separate judgment though concurring with the majority judgment. The observations are as under:

"Where, therefore, the recognition of a division of quota right is accorded by the Chief Controller of Imports and Exports, as was done in these cases, only in respects of future imports, the erstwhile partner has no right to seek redress from a Court or even in the High Court under Article 226 of the Constitution. His position would be no better if upon that ground the licensing authority refused to grant a licence for a licensing period antecedent to the recognition of division of quota rights. The reason is that for an application for grant of a licence to be a proper application, it must conform to the form prescribed in that behalf and that were it does not do so, it is liable to be rejected." In *Fernandez. State of Mysore* (4 Supra) where the Supreme Court was concerned with regard to the rejection of a tender called for construction of a masonry dam on the ground that it was contrary to the Public Works Department Code, after holding that the Code had no statutory force, their Lordships held as under :

"If they have no statutory force, they confer no right on anybody and a tenderer cannot claim any rights on the basis of these administrative instructions. If these are mere administrative instructions, it may be open to Government to take disciplinary action against its servants who do not follow these instructions but non - observance of such administrative instructions does not in our opinion confer any right on any member of the public like a tenderer to ask for a writ against Government by a petition under Article 226."

In *Vishwakarma Industries v. Union of India* (6 Supra) while dealing with the proposition as to whether the petitioner has a legal right to claim the quota of stainless steel sheets on the basis of the Public Notice dated 4th August, 1966 which was issued in pursuance of the import and export policy laid down by the Central Government and whether the public notice confers any enforceable right on the petitioner, the Supreme Court held that the petitioner cannot claim any legal right to receive the full entitlement in terms of the public notice and no writ can be issued to the respondents calling upon them to do so.

13. In *Andhra Industrial Works v. Chief Controller, Imports* (1 Supra) the

petitioner - firm was a manufacturer of automobile parts. It made four applications for the grant of licence of import stainless steel. However, on the basis of an adverse report against the firm, the applications were rejected. The Supreme Court, while dealing with the said situation under Article 32 of the Constitution of India, held as under : -

"Herein, it is not contended that the Imports and Exports (Control) Act, 1947 or any order or rule made thereunder is ultra vires. Nor is the validity of the Import Control Policy Statement (for the period April - March, 1969) known as Red Book impeached. Indeed, this policy statement is the sheet - anchor of the petitioner's claim. Such a policy statement, as distinguished from an Import or Export Control Order issued u/s 3 of the said Act, is not a statutory document. No person can merely on the basis of such a statement claim a right to the grant of an import licence, enforceable at law. Moreover such a policy can be changed, rescinded or altered by mere administrative orders or executive instructions issued at any time."

In *J. Fernandez & co. v. Dy. Chief Controller of Imports & Exports* (7 Supra) the Supreme Court, while referring to the decision in *Andhra Industrial Works v. Chief Controller, Imports* (1 Supra) laid down as under:

"In the case of *Andhra Industrial Works*, an objection was raised on behalf of the respondents that the petition was not competent because there was no violation of fundamental rights. This Court upheld that objection and said that neither the Imports and Exports (Control) Act nor any order thereunder was alleged to be ultra vires nor was the Import Control Policy impeached. A policy statement was held to be not a statutory document. No person can on the basis of a policy statement claim a right to the grant of an import licence. This Court also held that there is no absolute right much less a fundamental right, to the grant of an import licence."

The commonness that could be assessed from the aforesaid decisions is that no absolute right or fundamental right is created by the executive instructions in contradistinction to the statutory instructions. It is also significant to be noticed that in none of the decisions rendered subsequent to the decision in *Union of India v. Anglo Afghan Agencies* (2 Supra) the said decision has been brought to the notice of the Supreme Court. It is equally prominent that in none of the decisions, Courts were addressing themselves as to whether the contravention of administrative instructions conferred enforceable right so that writs could be issued under Article 226 of the Constitution, whereas the decision in *Union of India v. Anglo Afghan Agencies* (2 Supra) to which we referred earlier, has been emphatic on the proposition that whenever there is a contravention of even the administrative instructions in the absence of statutory rules covering the field, a citizen has got a right to invoke the jurisdiction of the Courts under Article 226 of the Constitution if he has been adversely affected by such contravention and the Courts had the power in appropriate cases, to compel performance of the obligations imposed by the said administrative instructions upon the

departmental authorities.

14. It is, therefore, manifest that administrative instructions do confer rights upon the citizens in the absence of statutory rules and any contravention thereof, adversely affecting the citizens, would enable them to enforce those rights under Article 226 of the Constitution of India.

15. The second and rather crucial question is, whether the Executive Authority can refuse to follow the representation made by it, or, in other words, whether the principle of estoppel operates against the executive. Sri. T. Ramachandra Rao, learned Counsel for the appellant, vehemently argued that the Government are bound by the representations made by them and in case of denial, they are enforceable on the basis of equity and also on the basis of the doctrine of estoppel. He relied upon the decisions in *Union of India v. Anglo Afghan Agencies* (2 Supra) wherein the export were invited to get themselves registered with the Textile Commissioner under the Export Promotion Scheme for woollen goods, for exporting woollen goods and it was represented that the exporters will be entitled to import raw materials of the total amount equal to 100 per cent of the f.o.b. value of the exports. When the authorities failed to carry out the terms of the scheme, the Supreme Court held as under:

"But the authority vested in the Textile Commissioner by the rules even though executive in character was from its nature an authority to deal with the matter in manner consonant with the basic concept of justice and fairplay. If he made an order which was not consonant with the proceeding was open to scrutiny and rectification by the Courts."

We hold that the claim of the respondents is appropriately founded upon the equity which arises in their favour as a result of the representation made on behalf of the Union of India in the Export Promotion Scheme, and the action taken by the respondents acting upon that representation under the belief that the Government would carry out the representation made by it.

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Therefore, even assuming that the provisions relating to the issue of trade notices offering inducement to the prospective exporters are in charter executive, the Union of Government and its officers are, on the authorities of this Court, not entitled at their mere whim to ignore the promises made by the Government. We cannot therefore, accept the plea that the Textile Commissioner is the sole judge of the quantum of import licence to be granted to an exporter, and that the Courts are powerless to grant relief, if the promised import licence is not given to an exporter who has acted promised import license is not given to an exporter who has acted to his prejudice relying upon the representation. To concede to the Departmental authorities that power would be to strike at the very root of the rule of law."

16. The argument of the learned Counsel for the appellant, Sri Ramachandra Rao

is that from the financial year 1969 - 70, the Import Trade Policy provided for the issue of import licences for the value of the material consumed by the importer in the previous year. The quantities that could be imported under such licences were in addition to the quantities covered by the Actual Users Licence called "Registered Exporters Policy Licences." Therefore the appellant applied to the 2nd respondent under the aforesaid policy as per para 73(1) to (5) of the Import Trade Control Hand Book of Rules and Procedure, 1970, on 17th February, 1976 for the issue of an import licence for H R S of the value of Rs. 1,85,815 - 00 being the value of the raw material consumed by the appellant during the period 1st October, 1969 to 10th March, 1970 with due compliance of all the formalities. the 2nd respondent, though initially raised objections to treat the appellant as an existing unit and also regarding the satisfactory certificate to be submitted with regard to non - availability of H R S did not press the after further after duly verifying the material furnished by the appellant. the 2nd respondent, nevertheless, eventually rejected the application of he appellant on 28th August, 1974 on the ground that H R S is not required for the manufacture of auto parts. This ground, according to the learned Counsel for the appellant, is baseless and untenable on two counts:

(1) The licence issued in favour of the appellant on 24th September; 1968 contains the following enclosure:

"Import of H R S O 5 MM with carbon 0.06%, Chromium 18%, Nicel 11.5%, Titanium 5 XC is allowed in the licence to the extent of Rs. 2,000 subject to the condition that this inclusion will not qualify for import of this material on conversion basis as contemplated in para 85 of the Hand Book of Rules and Procedures, 1968 manufacturing and use automobile parts for exports."

This demonstrates that H R S is necessary for the purpose of manufacturing auto parts.

(2) Under nomination by virtue of "Replenishment Licence under the Registered Exporters Policy", the appellant was being granted from 4th December, 1968, actual used licences under the Registered Exporters Policy Scheme for which exports of aluminum circles were made by the Head Office. Under these licences, the Petitioner appellant was importing and consuming in the H R S manufacture of its products.

17. Paras 73(1) of the Import Trade Control Policy Hand Book of Rules and Procedure, 1969 reads as under:

"Import applications on consumption basis - The existing units engaged in the priority industries should make their import applications for raw materials and components, end - product - wise (including related end - products) by way of claiming replenishment of imported raw materials and components consumed by the unit within a given period in accordance with the relevant import policy."

Para 16 of the Import Trade Control Policy for the year 1969 70 reads as under:

"In the case of 59 priority industries listed in Appendix 1, the need - based policy for import of raw materials, components and spares will continue during the period April, 1969 - March 1970. The procedure for the grant of import licences to units engaged in these industries will be as indicated below."

Again Para 25 of the said Import Trade Control Policy reads as under:

"The existing units engaged in the priority industries should make their import applications for raw materials and components, end - products - wise (including related end - products) by way of claiming replenishment of imported raw materials and components consumed by the unit within a given period as indicated below."

"Automobile ancillaries" is mentioned as Item 43 in the List of Priority Industries laid down in Appendix 1 to the Import Trade Control Policy for the year 1969 - 70.

18. Under Appendix 41, as per para 93 of the import licensing policy for iron and steel items and ferrous alloys for the licensing period April 1969 - March 1970, Schedules A to D have been annexed for various items of steel and ferrous alloys. Item 11 in Schedule C pertains to 'stainless steel, including heat resisting type.' The import licence regarding Item 11 under the sub - head (a) "Sheets, Plates and Strips" will be issued in favour of industries maintained under four heads. Under (i) (ii) and (iv), there is not express mention with regard to automobile ancillaries. However, under 11(a)(iii), it is mentioned that,

"Import of 50 per cent of requirements of all industries, other than those mentioned above, except.

Utensils, domestic ware, cutlery, kitchen - ware, table top and furniture industries will be allowed after placement of firm orders for balance 50 per cent, quantity on the producer mentioned at Sl. No. 4 of Schedule 'E'. This applies to the following grades and sizes:

302, 304 - L, 316, 316 - L, 317, 321 and 321 - L qualities, 0.8 mm to less than 1.25 mm CR sheets, 1.25 mm to less than 4.00 mm. CR/HR sheets; 4 mm to 12 mm. HR (sheared) sheets/plates; Over 12 mm. and upto 25 mm. HR (unsheared) plates width 750 mm to 1200 mm, length 2 meters to 4 meters max. weight 600 kgs. Finishes 1, 2B and 2D."

The Import Trade Control Policy for the year 1971 - 72 makes a provision for the import of stainless steel and H R S under item 12 of Schedule C Item 12 (viii) reads:

"Heat resistance steels in IS 15 CR 13 Ni 24 (AISI 30 & 1S20G25 NI20 (AISI310) or equivalent quality will be allowed for import in any section or size to furnace mfrs. only."

But, insofar as manufacture of auto parts is concerned, only stainless steel in specific strips has been allowed. In the Import Trade Control Policy for the year 1973 - 74, a provision for import of stainless steel and heat resisting steels has

been made in Item 11(iv) of Schedule C as under:-

"For end uses other than those mentioned at (i), (ii) and (iii) above, import sheets of Order 71 mm to below 5 mm and plates 5 to 14 mm in all grades of stainless steel and heat resisting steels will be allowed only against from producers mentioned at S. No. 4 of Schedule F and import of sheets thinner than 71 mm and plates thicker than 14 mm is allowed in all grades."

Here again, provision is made for the import of stainless steel in the form of strips in various denominational coils for the manufacture of autoclaves. In the Import Trade Control Policy for the year 1974 - 75, a provision for import of stainless steel and heat resisting steels has been made Item 11, in Department C of Appendix 41. For the manufacture of wiper arm blades, a provision for the import of specified strips in coils has been made under Item 11(ii). Again, it has been specified in Item 11(v) that for automobile ancillaries or automobile parts, import of stainless steel sheets or strips will not be allowed other than those specified under Item 11(ii). In the Import Trade Control Policy for the year 1975 - 76 under Item 9 in Schedule C of stainless steel and heat resisting steel in any form was banned for industries engaged in manufacture of utensils, domestic ware, cutlery, kitchenware furniture, automobile ancillaries or parts and air - conditioners.

19. Sri K. Subrahmanya Reddi, learned Standing Counsel for the Central Government, contended that for any replenishment, the prerequisite is consumption of the said raw material and therefore if it is not required in the manufacture of automobile parts, the question of replenishing the same does not arise. He based his argument on the ground that the Ministry of Steel and Mines, which is the technical authority, had sent a communication on 27th June, 1974, stating that as per ground that the Ministry of Steel and Mines, which is the technical authority, had sent a communication on 27th June, 1974, stating that as per the Import Trade Control Policy (Appendix 41 Schedule C.S. No. 11) stainless steel and heat resisting steel have been clubbed together mainly because they fall almost under the same group of alloy steel, that these two varieties of steel have some specific uses and the question of import is to be examined after considering the essentially for the specific end - product. It also stated that the use of heat resistant steel is mainly for working at high temperature conditions and to have unit corrosive properties, and it is mainly required for certain furnaces, factors etc., and that the items like wiper arms blades and other automobile parts/components where processing at high temperature condition is not necessary, the import of heat resisting steel is not considered justified. This was communicated in reply to the letter dated 9th April, 1974 of the Chief Controller, Imports and exports. Therefore, in none of the Policies, there is any express provision made with reference to heat resisting steel for the manufacture of automobile parts. The mere fact that licence was issued in favour of the appellant in the year 1968, cannot be taken as a representation said to have been made for the supply of H R S with reference to Import Trade

Policy. It is in the public interest not to grant any import licence for the import of H R S which is earmarked specifically for the manufacture of certain commodities like furnaces, reactors etc. It is equally significant that in the matter of import of raw materials, the question of foreign exchange is also involved. Therefore, taking all these circumstances into consideration, the prayer made by the appellant in the writ petitions should not be acceded to as the contention raised are untenable and devoid of any merit.

20. Sri Subrahmanya Reddi relied on the decision in *Dy. Assistant Iron & Steel Controller v. K.M. Corporation* (5 Supra) wherein it has been observed:

"Now, it has to be borne in mind that in the present stage of our industrial development imports requiring foreign exchange have necessarily to be appropriately controlled and regulated. Possible abuses of import quota have also to be effectively checked and this inevitably requires proper scrutiny of the various applications for import licence. In granting licences for imports, the authority concerned has to keep in view various factors which may have impact on imports of other items of relatively greater priority in the large interest of the overall economy of the country which has to be the supreme consideration, and an applicant has no absolute vested right to an import licence in terms of the policy in force at the time of his application because from the very nature of things at the time of granting the licence the authority concerned may often be in a better position to have a clearer overall picture of the various factors having an important impact on the final decision on the allotment of import quota to the various applicants."

It is significant to be noticed that in none of the Import Trade Control Policies, any explicit provision has been made with reference in H. R. S. for importing the same for the manufacture of auto parts. No doubt, in the licence issued in favour of the appellant on 24th September, 1968, there is a mention about the import of H.R.S. for the manufacture of auto parts, on the basis of consumption. But, that by itself does not confer any right on the appellant, nor can it be taken as a representation said to have been made with reference to the succeeding years. From a perusal of the Import Trade Control Policy laid down year after year, it becomes at once manifest that this raw materials, viz., H.R.S. is not only circumscribed to certain industries like furnaces and reactors and so on, but even stainless steel itself was taken completely out of the import policy vis - a - vis the manufacture of auto parts. Apart from this, it is equally vital that the technical authority concerned, furnished the necessary information as to whether H.R.S. was a must for the manufacture of automobile parts. In fact, the learned Standing Counsel for the Central Government placed before us the letter addressed by the Ministry of Steel and Mines to the Chief Controller of Imports and exports, wherein, as mentioned earlier, it has been stated that items like wiper arm blades another automobile parts, where processing at high temperature conditions is not necessary, the import of H.R.S. is not considered justified.

21. We may also usefully refer to the decision in *State of Punjab and Others Vs. Amrit Banaspati Co., Ltd. and Others*, . Dealing with the doctrine of equitable estoppel, their Lordships of the Punjab & Haryana High Court held:

"This kaleidoscope of precedents, Indian, American and English, shows us that in the final analysis the doctrine of equitable estoppel is but a rule of fairplay founded on the principle of justice, equity and good conscience. Good administration demands that rules of fairplay should be observed by all Government and Public Authorities. Good administration requires that the Government and other Public Authorities should be bound by promises made by them, upon which others have acted as much as parties are bound by similarly promises. But, there is a difference. The Government acts for the people. It acts in the public interest. The people, for whom the Government acts require to be protected against the unauthorised, prejudicial or mischievous acts of the person who act for the Government. The people cannot be bound by promises which are unauthorised, or, which are prejudicial to the public interest or which are productive of public mischief. Therefore, the need to restrict the application of the doctrine of equitable estoppel to Governmental activity. Therefore, the unwisdom and inexpediency of applying the doctrine too widely. There are, of course, certain obvious limitations; when the Government acts in a sovereign capacity there can never be any question of estoppel. Nor can there even be an estoppel to prevent Parliament from making a law. Nor can the Government while functioning as a delegate of Parliament, be estopped from legislating contrary to the promises earlier held out by it in an executive capacity. Nor can there be an estoppel to prevent the Government from carrying out the mandates of Parliament. Parliament is supreme and the executive Government cannot stop itself from discharging the obligations imposed upon it by Act of Parliament. Nor can the Government do something or be compelled to do something which is prohibited by statute or which is opposed to obvious legislative policy. And, the Government cannot be directly; it cannot bind itself to circumvent a statute. Again a Government cannot bind itself or a succeeding Government, by an estoppel, to a fixed policy. The political dynamism of the State requires review and revision of policy and a Government must have the right at all times to change its policy. Accrued rights have to be honoured no doubt. But, no rights based on promissory estoppel can ever be considered to accrue which are against the public interest and opposed to the public policy or which affect the public revenues. No one can be permitted to take under advantage of a representation made by a servant of the people and claim rights of against the people themselves and to their proven detriment, as against the people themselves and to their proven detriment, if such rights are not consistent with the public good. A rule of evidence such as equitable estoppel may not be invoked against the people and the State if it is shown to be against the general interest of the people and the State or against the advancement of their known social policy or if it affects the public revenues. Precise definition of the limits is difficult as this branch of the law is yet evolving. Boundaries will have to be determined in

individual cases with reference to the facts of the cases."

From the forgoing, it is evident, viewed from any angle that the appellant's claim for the issuance of Import Licence for H.R.S. is not justified.

22. The denial of import licence under the impugned order is justified not only in the larger interest of the overall economy of the country, which has to be the super consideration, but also in view of the fact that there was no technical sanction in the sense that the technically competent authority had placed an embargo on the issuance of enumerate licence for H.R.S. as it was not at all essential for the manufacture of automobile parts and further, in view of the fact that no specific representation by way of Import Trade Control Policy has been made representation by the authority concerned to the effect that import licence will be issued for H.R.S. for the manufacture of automobile parts in respect of the licence which emanated in the year 1968.

23. In view of the above, the contention raised by the Learned counsel for the appellant cannot be acceded to.

24. The next submission made by the learned Counsel for the appellant is, that the appellant was discriminated against, inasmuch as licences have been issued in favour of M/s. Mithena Industries, Madras for the import of H.R.S. for the manufacture of automobile parts and a similar licence for import of H.R.S. for the end product of automobile ancillaries was issued in favour of M/s. Bemini Metal Works, Madras, and also an import licence was issued for H.R.S. sheets in favour of the Ramann Koshatkinn, New Delhi, for the same end - product, automobile ancillaries, who are similarly situated, and, therefore, denial to the appellant is violative of Article 14 of the Constitution of India.

25. In the counter - affidavit, it has been stated.

"With reference to the averments made in para 12, it is denied that M/s. Rackmann Koshatkinn Regd., New Delhi, was allowed H.R.S. sheets for the manufacture of automobile ancillary, as alleged. In any case, a case has been registered against this firm for misutilisation of the raw material and prosecution has been launched. I submit that the rest of the two cited firms of Madras were allowed licenses during much earlier periods when the policy did not specifically prohibit the import...."

Though in the reply affidavit, it has been averred,

"It is false to state that M/s. Ramann Koshatkinn Regd., New Delhi was not allowed H.R.S. sheets for the manufacture of automobile ancillaries. The original licence which was seen by the deponent of this affidavit specifically mentions auto leaf springs which is an automobile ancillary as one of the end product for which the import licence for H.R.S. sheets has been issued. The 2nd respondent appears to have made ties averments without actually verifying the facts from the licence. It may be mentioned that the above licence was issued in 1974 - 75 which is the same year in which the two applications of the petitioner were

rejected. The averments that proceedings are being taken against that firm for misutilisation of the raw material, even if true, is wholly irrelevant because the issue is the grant of import licence for H.R.S. to the firm for the end use automobile ancillaries."

We cannot conclude, in the absence of positive material placed before us by the appellant, that the allegations made by the appellant have been made out. Even in the case where import licence for the raw material concerned, has been issued, it is said to be under certain misrepresentation and fraud, and necessary action also has been instituted. Therefore, these circumstances cannot be taken into reckoning for the purpose of establishing a positive case that there has been violation of Article 14 of the Constitution and discrimination has been made against the appellant.

In the view we have taken, the contention in this behalf by the appellant's counsel does not hold good.

26. The learned Standing Counsel for the Central Government has raised an objection with regard to the maintainability of the writ petition on the ground that there was an alternative remedy by way of first appeal and second appeal as per the provisions laid down in the Import Trade Control Handbook of Rules and Procedure, 1970. Chapter 12 thereof deals with the provisions for appeals. Under para 254 (1) first appeals in regard to the applications dealt with in the Import Trade Control Office, Visakhapatnam, will be with the Joint Chief Controller of Import and Exports at Madras. Under sub - para. (2) of para. 254, the first appeal against the decision of a licensing authority in respect of an application made under the policy for registered exporters, will lie with the head of the office in which the application was dealt with. Para. 255, which makes a provision for second appeal, is as under:-

"255. Second appeal - (1) If the appellant is not satisfied with the decision of the appellate authority as indicated in paragraph 254 above, he may make a second appeal to the Chief Controller of Imports and Exports, New Delhi."

Sri Ramachandra Rao, learned Counsel for the appellant, submits, that any appeal to the same authority which has rejected the application, is of no use inasmuch as the authority has already concluded by rejecting the same. In view of the circumstances of the case, when the licensing authority had, at one stage, referred the matter to the second appellate authority for the purpose of ascertainment as to whether licence for the import of H.R.S. for the manufacture of automobile parts should be issued or not, invoking the jurisdiction of either the first appellate authority or the second appellate authority would not have served any purpose. Therefore, the objection raised by the learned Standing Counsel for the Central Government has no foundation. We are inclined to agree with the contention of the learned Counsel for the appellant.

27. In conclusion, we observe that the vital allegation made by the appellant that fair deal has not been given to it with regard to the non - issuance of licence for

the import of H.R.S. read in the pragmatic light of the counter averments of the respondents and understood realistically, cannot make the contentions of the Counsel for the appellant, credible. The impugned order is wholly justified in the circumstances of the case and in the broader aspect of economic goal as well as in the large interest of the public which should be of paramount important in the matter of dealing with the cases of such a nature.

28. In the result, the writ appeals are dismissed. There will, however, be no order as to costs.