

National Company Ltd.

Vs

Deputy Director of Tax Credit (Exports), Calcutta, and Others

Civil Appeal No. 950 of 1972

(P. N. Bhagwati, Syed M. Fazal Ali JJ)

03.03.1977

JUDGMENT

BHAGWATI J. -

The appellant owns a jute mills situate Rajgunj Railway Station, Andul, District Howrah, in the State of West Bengal and among other jute product it manufactures jute carpet backing cloth at its jute mill. The appellant exported diverse quantities of jute carpet backing cloth manufactured by it to various countries during the period July 13, 1966, to November 30, 1966. There was a tax credit certificate scheme framed by the Central Government under section 280ZE read with section 280ZC of the Income-tax Act, 1961. The scheme was called the Tax Credit Certificate (Exports) Scheme, 1965. The scheme provided for grant of tax credit certificate in respect of certain categories of goods or merchandise specified in column 2 which were exported to destinations specified in column 4 and the dates of export of which fell after 28 February, 1965, for an amount calculated at the rates specified in column 3 of the table attached to the scheme. Jute carpet backing cloth was covered by item 1 in column 2 of the Table which specified "goods made of jute not otherwise specified". If the scheme had remained unamended, the appellant would have been entitled to tax credit certificates in respect of the exports made by it jute carpet backing materials, but a notification was issued by the Central Government of June 6, 1966, in exercise of the powers conferred by section 280ZE read with section 280ZC, whereby paragraph 3 of the scheme which provided for grant of tax credit certificates was amended by renumbering that paragraph as sub-paragraph (1) and adding a sub-paragraph (2) to the following effect :

"No certificate shall be granted under sub-paragraph (1) in respect of any sale proceeds referred to in that sub-paragraph or part of such sale proceeds, received after the of June 5, 1966, in India in accordance with the Foreign Exchange Regulation Act, 1947(VII of 1947) and the rules made thereunder."

This amendment had the effect of disentitling an exporter to tax credit certificate in respect of goods or merchandise exported by him in all case where sale proceeds or part thereof were received in India after June 6, 1966. The necessity for making this amendment in the scheme arose on account of devaluation of the Indian rupee which was made by the Central Government, as it was felt that in view of the devaluation it was not necessary to give any further incentive for export. But it was soon realised that this amendment of the scheme might work hardship in those cases where goods or merchandise were exported before June 5, 1966, on the faith of the Scheme but for some reason or the other, the sale proceeds were not received until after that date and, therefore, a second notification dated August 8, 1966, was by the Central Government further amending the Scheme in exercise of the powers conferred under section 280ZE read with section 280ZC by deleting sub-

paragraph (2) and instead, adding a proviso which provided for grant of tax credit certificate in respect of good or merchandise exported on or before June 5, 1966, even if the said proceeds were received after that date and declared that in the case of goods exported after June 5, 1966, the rate specified in column 3 of the Table shall be deemed to be nil and no certificate shall be granted in respect of such good or merchandise. The exports of jute carpet backing cloth made by the appellant were admittedly after June 5, 1966, and hence both the notifications adversely affected the appellant by disentitling it to tax credit certificate in respect of these exports. The appellant, therefore, filed a writ petition in the High Court of Calcutta for a writ of mandamus for quashing and setting aside both the notifications and directing the Central Government to consider the application of the appellant for tax credit certificate in respect of the exports without taking into account the two notifications. Though there were several grounds on which the validity of these two notifications was challenged in the writ petition before the High Court, only one ground was pressed before us on behalf of the appellant and we shall, therefore, refer only to that ground. That ground was that both the notifications were outside the power conferred on the Central Government under section 280ZE read with section 280ZC, since the Central Government had no power under these sections to make a scheme providing that no tax credit certificate shall be granted in case of any goods or merchandise at all. This ground found favour with the single judge of the High Court but on appeal under clause 15 of the Letters Patent, a Division Bench of the High Court took a different view and negated the challenge. Since the writ petition was dismissed by the Division Bench, the appellant preferred the present appeal after obtaining a certificate of fitness from the High Court.

The Indian Income-tax Act, 1922, as originally enacted, did not contain the fasciculus of sections under Chapter XXII providing for grant of tax credit certificate. This chapter comprising sections 280ZC and 280ZE was inserted by the Finance Act, 1965, with a view to providing incentive for export purpose, which sections 280ZC and 280ZE are material. Section 280ZC reads as follows :

"280ZC. (1) Subject to the provisions of this section, a person who exports any goods or merchandise out of India after the day of February 28, 1965, and receives the sale proceeds thereof in India in accordance with the Foreign Exchange Regulation Act, 1947(VII of 1947), and the rules made thereunder, shall be granted a tax credit certificate for an amount calculated at a rate not exceeding fifteen per cent. on the amount of such sale proceeds.....

(2) The goods or merchandise in respect of which a tax credit certificate shall be granted under sub-section (1) (including the destination of their export) and the rate at which the amount of such certificate shall be calculated shall be such as may be specified in the Scheme :

Provided that different rates may be specified in respect of different goods or merchandise.

(3) In specifying the goods or merchandise (including the destination of their export) and the rates, the Central Government shall have regard to the following factors, namely :

(a) the cost of manufacture or production of such goods or merchandise and prices of similar goods in the foreign markets;

(b) the need to develop foreign markets for such goods or merchandise;

(c) the need to earn foreign exchange;

(d) any other relevant factor."

Section 280ZE conferred power on the Central Government to frame one or more scheme or schemes to be called tax credit certificate scheme or schemes in the following words :

"(1) The Central Government shall, by notification in the Official Gazette, frame one or more scheme or schemes to be called tax credit certificate scheme or schemes in relation to tax credit certificate to be granted under this Chapter.

(2) A scheme framed under sub-section (1) may provide for -

(a) the form and manner in which, and the authority to which, applications for the grant of tax credit certificate shall be made;

(b) the form in which, and the intervals at which, and the authority by which, such certificate shall be issued;

(c) the verification of any information or particulars furnished, or contained in any application made, by or on behalf of any person entitled to tax credit certificates;

(d) the determination of the rights and obligations of a person to whom such certificate has been granted and the circumstances in which any right in or title to the said certificate may be transferred to or devolve on any other person by succession or otherwise;

(e) the determination of the rights and obligations of persons who jointly subscribe to an eligible issue of capital;

(f) the determination of the rights and obligations of persons who subscribe to an eligible issue of capital, on behalf, or for the benefit, of any other person;

(g) the appointment of any office of Government or of the Reserve Bank of India to exercise any rights or perform any duties in connection with the grant of the said certificates;

(h) the goods or merchandise and the rate or rates for the purposes of section 280ZC and section 280ZD and the destination of the export of such goods or merchandise for the purpose of section 280ZC;

(i) any other matter which may be necessary or proper for the effective implementation of the provisions of this Chapter or the scheme.

(3) The Central Government may, by notification in the Official Gazette, add to, amend, vary or rescind, any scheme made under this section."

It was in exercise of the power conferred on the Central Government under section 280ZE read with section 280ZC that the Central Government made the Tax Credit Certificate (Exports) Scheme, 1965. The first notification dated June 6, 1966, amended paragraph 3 of the scheme by providing that no tax credit certificate shall be granted in respect of exports where the sale proceeds were received after June 5, 1966. This provision was relaxed by the second notification dated August 8, 1966, by providing that in case of exports made on or before June 5, 1966, tax credit certificate shall be granted according to the provisions of the scheme even if the sale proceeds were received after that date, but in respect of exports made after June 5, 1966, the rate specified in column 3 of Table A shall be nil and no tax credit certificate shall be granted in respect of such exports.

The argument urged on behalf of the appellant was that it was not competent to the Central Government to provide in the scheme framed under section 280ZE read with section 280ZC that no tax credit certificate shall be granted in respect of exports of any goods or merchandise. The only power which, according to the appellant, the Central Government had under these two sections was to frame a scheme specifying some goods or merchandise the export of which would entitle an exporter to tax credit certificate. The appellant conceded that the Central Government was not bound to specify any particular category of goods or merchandise in the scheme framed by it but the limited contention was that some goods or merchandise must be specified in the scheme and since in the present case the scheme as amended provided that tax credit certificate shall not be granted in respect of exports of any goods or merchandise, the two notifications making this amendment in the scheme were ultra vires the power of the Central Government under section 280ZE and 280ZC. This contention, though it found favour with the single judge of the Calcutta High Court who heard the writ petition in the first instance, is in our opinion wholly without force and cannot be sustained. A mere look at the scheme of the provisions of section 280ZC and 280ZE is sufficient to expose the invalidity of this contention.

Sub-section (1) of section 280ZC undoubtedly provides that a person who exports any goods or merchandise out of India after February 28, 1965, and receives the sale proceeds thereof in India in accordance with the Foreign Exchange Regulation Act, 1947, and the rules made thereunder, shall be granted a tax credit certificate for an amount calculated at a rate not exceeding 15 per cent. of the amount of such sale proceeds. But this right conferred on an exporter is subject to the provision of section 280ZC and these other provisions include sub-sections (2) and (3). Sub-section (2) provides in so many terms that the goods or merchandise in respect of which a tax credit certificate shall be granted under sub-section (1) and the rate at which the amount of such certificate shall be calculated, shall be such as may be specified in the scheme. It is, thus, left to the scheme to be framed by the Central Government to specify the goods or merchandise in respect of which an exporter shall be entitled to tax credit certificate as also the rate at which the amount of such certificate shall be calculated. It is not in respect of every category of goods or merchandise that an exporter can claim to be entitled to tax credit certificate but it is only in respect of such good or merchandise as are specified in the scheme. The policy and the principle which would guide the Central Government in selecting the goods or merchandise for this purpose are set out in sub-section (3) which provides that in specifying the goods or merchandise as also the rates, the Central Government shall have regard to the various factors set out in that sub-section. These are the factors which would influence the choice of the Central Government in selecting the goods or merchandise for the purpose of grant of tax credit certificate and also in determining the rates at which tax credit certificate should be given. Section 280ZE, sub-section (1), confers power on the Central Government to frame one or more schemes in relation to tax credit such scheme or schemes may provide, inter alia, for the goods or merchandise and the rate or rates for the purpose of section 280ZC. We fail to see how any obligation can be spelt out from these provisions requiring the Central Government to frame a scheme specifying the goods or merchandise in respect of which tax credit certificate shall be granted. It would indeed be absurd to suggest that the Central Government is under an obligation to make a scheme and the requirement of the statute would be satisfied so long as the Central Government specifies some goods or merchandise in the scheme. There is no reason why the Central Government should not be entitled to say that having regard to the factors set out in sub-section (3) of section 280ZC, it does not think it desirable that tax credit certificate should be granted in respect of any goods or merchandise for the time being. Sub-section (3) of section 280ZC confers power on the Central Government in so many terms to rescind a scheme made by it and that also supports the view that the Central Government may, keeping in view the

factors set out in sub-section (3) of section 280ZC, decline to make a scheme or provide in the scheme that there shall be no goods or merchandise in respect of which tax credit certificate shall be granted. In the circumstances, we think that the Division Bench of the High Court was right in holding that the Central Government was entitled to issue the two impugned notifications directing that no tax credit certificate June 5, 1966.

We accordingly dismiss the appeal with costs.

Appeal dismissed.

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