

M/s. Star Diamond Co., India

Vs

Union of India and Others

Civil Miscellaneous Petitions Nos. 20021-22 of 1986 in Civil Appeal No. 2924 of 1984

(R. S. Pathak, Sabyasachi Mukharji JJ)

12.09.1986

JUDGMENT

SABYASACHI MUKHARJI, J. -

1. These two Civil Misc. Petitions are by Star Diamond Company India. The applicant has referred to the judgment of this Court in Raj Parkash case [Raj Parkash Chemicals Ltd. v. Union of India, (1986) 2 SCC 297] dated March 5, 1986 and Indo Afghan Chambers of Commerce case [Indo Afghan Chambers of Commerce v. Union of India, AIR 1986 SC 1567 : (1986) 3 SCC 352] dated May 15, 1986. The applicant states that the applicant was neither a party nor was served with any notice of the said proceedings resulting in the said two decisions. According to the applicant, it was not bound by the directions therein. We are unable to accept the said contentions. Such decisions of Court laying down the position in law binding on all.

2. In the order of this Court dated April 18, 1985 [Union of India v. Rajnikant Bros., CA 1423 of 1984, dated April 18, 1985 (SC)], the question of entitlement under certain circumstances came up for consideration. The government had wrongfully refused to allow Export House Certificates to those who had not diversified their exports. It was held by this Court following the decisions of several High Courts that his was wrong. This Court in the order dated April 18, 1985 in Civil Appeal No. 1423 of 1984 [Union of India v. Rajnikant Bros., CA 1423 of 1984, dated April 18, 1985 (SC)], (a) confirmed the orders of the High Court, quashed the impugned orders of the government and directed the government to issue necessary Export House Certificates for the year 1978-79; (b) it was further directed that Export House Certificates should be granted within three months from this date; (c) save and except items which are 'specifically banned under the prevalent import policy at the time of import', the parties - the merchants - would be entitled to import all other items whether canalised or uncanalised, and in accordance with the relevant rules. Both canalised and uncanalised items could be imported in accordance with the relevant rules except those which were specifically banned under the prevalent import policy at the time import. The effect of this direction came to be considered in Raj Parkash Chemicals Ltd. v. Union of India [Raj Parkash Chemicals Ltd. v. Union of India, (1986) 2 SCC 297]. We have this date explained the effect of the same in Union of India v. Godrej Soaps Pvt. Ltd. [(1986) 4 SCC 260]. This question further came up for examination in the case of Indo Afghan Chambers of Commerce v. Union of India [Indo Afghan Chambers of Commerce v. Union of India, AIR 1986 SC 1567 : (1986) 3 SCC 352]. This day we have also in the judgment in Godrej Soaps case [(1986) 4 SCC 260] explained the true purport of the said decision.

3. The respondents have not permitted, according to the applicant clearance of the goods in view of the said two decisions referred to hereinbefore.

4. The case of the applicant is that it is not bound as the applicant was neither a party to any of the aforesaid proceedings nor any notice was given. We are unable to accept this position. For what we held in the said two decisions, we crave leave to refer to the said two decisions. We reiterate as we have mentioned in Godrej Soaps case [(1986) 4 SCC 260] whether importation of canalised items would be covered by the order was not adverted to in the first order dated April 18, 1985. Use of the expression "whether canalised or not" was intended to convey that both canalised and non-canalised items would be covered within the ambit of the order.

5. The position has been clarified by the letter dated June 18, 1986 written by the respondent which appears at page 132 of the paper-book. It has been mentioned that the holders of Additional Licence issued for 1978-79 would be entitled to import only those goods which are included in Appendix 6 Part II of AM 85-88. The fact that the Additional Secretary to the Government of India, Ministry of Finance (Department of Revenue) on April 23, 1986 wrote a letter which is not in consonance with the subsequent direction would not in any way affect the position or create any estoppel. Nor can such a letter be used as an argument that that was the government's understanding of the matter. That is irrelevant.

6. In the premises the interim order prayed for in these applications is refused.

7. The applications are thus disposed of. There will be no order as to costs.

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