

M/S. Rup Diamonds and Others

Vs

Union of India and Others

Writ Petition No. 411 of 1987

(CJI R. S. Pathak, N. D. Ojha JJ)

02.01.1989

JUDGMENT

VENKATACHALIAH, J. –

1. By this petition under Article 32 of the Constitution, Messrs. Rup Diamonds, a Registered Export House, assails the validity of the decisions dated April 9, 1986 and August 5, 1986 of the Joint Chief Controller of Imports and Exports declining to re-validate and endorse six Imprest Licences for import of Open General Licences items upon the fulfilment by the petitioners of their export obligations under the Imprest Licences. Petitioners seek issue of appropriate writs to the authorities to re-validate the six Imprest Licences, with appropriate endorsement for the import of Open General items under the Import Export Policy of 1982-83 (A-M 1983).

2. This writ petition came up for preliminary hearing along with Special Leave Petition (Civil) Nos. 2579 of 1987 and 2580 of 1987 preferred by the Union of India seeking leave to appeal from two judgments of the Division Bench of the High Court of Judicature at Bombay in two other cases.

3. Petitioners are a recognised Export House for purposes of the Import-Export Policy, 1982-83. They applied for, and were granted, six Imprest Licences : (1) 2932347 dated July 31, 1982 for CIF value of Rs. 65,28,500; (2) 293259 dated August 20, 1982 for Rs. 1,14,49,263; (3) 0470538 dated May 11, 1982 for Rs. 1,43,76,770; (4) 0449604 dated May 12 1981 for Rs. 1,32,39,130; (5) 0468397 dated April 16 1982 for Rs. 5,21,747; and (6) 2927607 dated April 29, 1980 for Rs. 1,47,16,238, for the import of uncut and unset diamonds with the obligation to fulfil certain export commitment for the exports, out of India of cut and polished diamonds of the FOB value, stipulated in each of the Imprest Licences. Petitioners claim that, pursuant to the said Imprest Licences, they had imported uncut and unset diamonds and had also discharged their export obligations by exporting cut and polished diamonds of the requisite value as evidenced by the Redemption Certificates which are annexed as Annexure V to the memorandum of writ petition.

4. Petitioners claim that in terms of para 185(4) of Import-Export Policy, 1982-83, they were entitled to the facility for the import of OGL items as is available in the case of replenishment licences issued to export houses under clauses (1) and (3) of para 185 of A-M 1983 policy. Paragraph 185(4) of the A-M 1983 provided :

(4) The facility for import of OGL items available in sub-para (3) above, may also be allowed, on merits, to Export Houses against their advance/imprest licences on account of which they are rendered ineligible to obtain REP licence. In such cases, however, the value up to which the OGL import may be allowed, will not exceed the

value to which the Export House would have been eligible to the REP licence, had he not obtained advance/imprest licence in question. This facility will be available to the Export House after he has discharged the export obligation imposed on the advance/imprest licence. Therefore, if by the time, the Export House becomes eligible to this facility, the advance/imprest licence has expired, or, if the original validity left unused by that time is less than six months, the licensing authority will revalidate the licence simultaneously so as to give to the licence holder a time of six months for the purpose of importing OGL item under this facility.

5. However, the petitioners did not bestir themselves to seek the revalidation and endorsement for OGL items for quite some time thereafter. It was only in the year 1986 they sought such revalidation and endorsement. That was after a lapse of several years from the completion of their export obligations. The Joint Chief Controller of Imports and Exports by his two decisions, one dated August 5, 1986 pertaining to the Imprest Licence 2927607 dated April 29, 1980 and the other dated April 9, 1986, pertaining to the other five Imprest Licences declined the request. These two orders are challenged in the writ petition.

6. The grounds for refusal in both the decisions are similar except for the reference to certain relevant dates. The grounds are, broadly, on two aspects. The first pertains to the inordinate delay in seeking revalidation and endorsement. On this the communication says :

We are surprised to have received your letter No. nil dated April 21, 1986 forwarding therewith Imprest Licence No. 2927607 dated April 29, 1980 (exchange control copy) for the period A-M 83 for grant of revalidation and endorsement for import of OGL items without debiting the licence in terms of para 185 of Import Policy for the period of 1982-83 after 5 years of the expiry of the licence for which the export obligation period was discharged on October 25, 1980, October 22/25, 1980, October 29, 1980, May 19, 1981, June 22, 1981, May 5, 1981, May 20, 1981, June 29, 1981 and September 22, 1981. In other words, you have made a request for revalidation and endorsement under para 185 of A-M 83 policy after 4 years and 7 months from the discharge of the export obligation. It is, therefore, obvious that you have not cared to apply immediately after discharge of export obligation and as such your request is grossly time-barred

The second aspect is as to the merits and permissibility of the claim. The communication says :

Moreover, in terms of para 185(7) to A-M 83 Import Policy, import of OGL items by Export Houses under the provisions to sub-paras (4) and (5) of para 185 of the said policy is subject to the condition that the shipments of goods shall take place within the validity of the OGL i.e. March 31, 1986 or within the validity period of the Import Licence itself (without grace period) whichever date is earlier. Since this date is over and the request has been made after 4 years and 7 months after the discharge of export obligation, question of permitting facility under the aforesaid provision does not arise. Besides, there is no provision in the Import-Export procedures for the period 1985-86 for grant of revalidation, in which period your request has been received. Para 73 of the said procedures states that no revalidation of import licences of emergency licences for CCPs will be allowed

7. The present writ petition challenge these orders. The petitioners allege that their claims are similar to those made by M/s. Ripal Kumar & Co. and M/s. H. Patel & Co. who had filed Writ Petitions No. 2477 of 1984 and No. 1465 of 1984 respectively in the High Court of Judicature at

Bombay for the issue of appropriate writs to the authorities to re-validate the Imprest Licences; that those writ petitions were allowed by the learned Single Judges of the High Court, whose decisions came to be affirmed in appeal by the Division Bench; that Special Leave Petitions Nos. 4670 of 1986 and 7389 of 1985, respectively, preferred by the Union of India, against the said two judgments of the Bombay High Court were dismissed by this Court and that, therefore, the rejection by the authorities, of the petitioners' claim for similar revalidation of the six Imprest Licences and endorsement for OGL items would, in view of grant of revalidation and endorsement in those cases, be discriminatory and violative of Article 14. It is contended for the petitioners that the grounds for refusal put forward by the authorities in the case of M/s. Ripal Kumar & Co., and M/s. H. Patel & Co., were exactly similar to those preferred in the case of petitioners also and that those grounds had been found by the courts to be insufficient in law to support the refusal. Petitioners say that they made the demand for revalidation immediately after the decision of the Bombay High Court in M/s. Ripal Kumar & Co.'s case and that the rejection of the petitioners' claim is wholly discriminatory, as there was no basis for any distinction to be made in petitioners' case.

8. Apart altogether from the merits of the grounds for rejection - on which it cannot be said that the mere rejection of the special leave petitions in the cases of M/s. Ripal Kumar & Co., and M/s. H. Patel & Co., could by itself, be construed as the imprematur of this Court on the correctness of the decisions sought to be appealed against - there is one more ground which basically sets the present case apart. Petitioners are re-agitating claims which they had not pursued for several years. Petitioners were not vigilant but were content to be dormant and chose to sit on the fence till somebody else's case came to be decided. Their case cannot be considered on the analogy of one where a law had been declared unconstitutional and void by a court so as to enable persons to recover monies paid under the compulsion of a law later so declared void. There is also an unexplained, inordinate delay in preferring this writ petition which is brought after almost an year after the first rejection. From the orders in M/s. Ripal Kumar & Co.'s case and M/s. H. Patel & Co.'s case it is seen that in the former case the application for revalidation and endorsement was made on March 12, 1984 within four months of the date of the redemption certificate dated November 16, 1983 and in the later case the application for revalidation was filed on June 20, 1984 in about three months from the Redemption Certificate dated March 9, 1984.

9. On a consideration of the matter we think that, apart altogether from the merits of the other grounds for rejection, the inordinate delay in preferring the claim before the authorities as also the delay in filing the writ petition before this Court should, by themselves, persuade us to decline to interfere.

10. In *Durga Prashad v. Chief Controller, I & E* ((1969) 1 SCC 185 : (1969) 2 SCR 861) this Court observed : (SCC p. 188, para 6)

It is well known that the exchange position of this country and the policy of the government regarding international trade varies from year to year and it would be rather odd for this Court to direct that an import licence be granted in the year 1968 in respect of alleged default committed by the government in 1959 or 1962. In these matters it is essential that persons who are aggrieved by orders of the government should approach the High Court after exhausting the remedies provided by law, rule or order with utmost expedition.

11. It is stated in the two communications rejecting the claim of the petitioners that petitioners are entitled to an appeal as laid down in the appeal procedures in the policy. If any such right of appeal is available, this order rejecting the writ petition shall not prejudice petitioners' case in any such

appeal.

12. We, accordingly, decline to interfere and reject this writ petition.

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