

Testeels Ltd.

Vs

Union of India and Others

Civil Appeal No. 3482 of 1987

(G. L. Oza, K. N. Saikia JJ)

06.02.1989

JUDGMENT

K. N. SAIKIA, J. –

1. This appeal by special leave is from the judgment of the High Court of Gujarat in Special Civil Application No. 1294 of 1977 under Article 226 of the Constitution of India.
2. The Government of India, Ministry of Foreign Trade announced through public notice No. 196-ITC (PN)/69 dated December 8, 1969 a scheme for registration of contracts involving deliveries extending over a period of not less than 12 months for cash assistance, hereinafter referred to as 'the scheme'. The government decided to extend the scope of the scheme as was announced by letter No. 12 (22/67-EAC) dated February 4, 1970, hereinafter referred to as 'the 1970 scheme', stating inter alia, in paragraph 3 that the registered exporter of export products under a contract involving deliveries extending over a period of not less than 12 months, registered by the banks in terms of paragraph 3 of the public notice dated December 8, 1969 will be eligible for claiming cash assistance at the same percentage as was prevailing on the date of the firm contract so registered provided that the bank attested invoice which is normally produced for the purpose of claiming cash assistance, bears a further attestation from the negotiating bank to the effect that exports effected in this invoice is against a contract registered with them giving the registration number and date. If during the currency of the registered contract the rate of cash assistance is reduced by government, the higher rate of cash assistance existing on the date of the firm contract would be admissible on exports under the said contract. If, on the other hand there is an increase in the rate of cash assistance percentage during the currency of the registered contract, exports made during the contract would not normally be eligible for the benefit of the increased rate; in special cases where the operation of this rule is likely to affect an exporter adversely, government would be prepared to consider the matter on merits. It was also stated in paragraph 5 that the registered exporter would be entitled to claim cash assistance as and when the exports are made against the registered contracts and the application would be submitted to the disbursing authority in accordance with the policy and procedure announced from time to time by that Ministry. By letter No. 12(4)72-EAC dated April 20, 1972 on the subject of Amendment No. 53 the cash assistance scheme on export of engineering goods was notified to the effect that an additional cash assistant of 5 per cent of the f.o.b. value will be allowed on all exports made to North American and South American countries and to New Zealand and these facilities of normal cash assistance and additional cash assistance will be allowed on exports effected during the period from April 1, 1972 to September 30, 1972, the later date being included. By letter No. 12(13)/73-EAC dated June 16, 1973 referring to Amendment No. 59 it was announced that cash assistance on transmission towers will be made admissible on exports thereof made during the period from October 1, 1972 up to and including March 31, 1973 at the rate of 25

per cent of the f.o.b. value.

3. The appellant is a company registered or deemed to be registered under the Companies Act, 1956 for exporting Line Towers Galvanised; Mild Steel Towers, hereinafter called 'Transmission Towers' (Item No. A. 27.1) by entering into contracts with the National Electricity Board of the State of Malaysia, a public utility service of Malaysian Government, briefly called 'the NEB' which had invited a global tender in October 1971 for design, fabrication and supply of Transmission Towers, and the appellant's tender submitted on January 29, 1972 was accepted by them, and pursuant thereto a contract was entered into on May 17, 1972. The said contract was duly registered with the Central Bank of India, Lal Darwaza, Ahmedabad on May 30, 1972 and was allotted registration No. 50/1. Subsequently, the NEB having needed more Transmission Towers more contracts were entered into and the same were registered as follows :

#-----	Sl.	Date of offer	Date of															
acceptance	Date of registration	No. of the offer	of the contract with the bank-----															
-----	1	2	3	4-----														
-----	1.	January 29, 1972	May 17, 1972	May 30, 1972	2-A.	January 29, 1972	June 20, 1972	June 26, 1972	2-B.	August 31, 1972	October 27, 1972	November 13, 1972	3.	April 28, 1973	June 5, 1973	June 15, 1973	(Telex May 31, 1973)	-----###

In respect of the exports made pursuant to two of the aforesaid contracts, namely Nos. 1 and 2-A, the respondents paid to the appellant a cash assistance of Rs. 3,48,555 but refused to pay the claimed amount of Rs. 4,10,784.93 in respect of the exports made pursuant to the other two contracts and instead demanded refund of aforesaid Rs. 3,48,555 already received by the appellant. By letter dated March 10, 1975 to the appellant the Controller of Imports and Exports informed that the exports made during the extended delivery period of the contract were not covered under the provisions of paras 56-64 of Part B of Import Trade Control Policy Volume II, April 1972-March 1973 and as such no cash assistance could be granted on exports made after March 1974.

4. The Deputy Chief Controller of Imports and Exports rejecting the appellant's appeal vide his letter dated June 30, 1976 informed the appellant that the benefit of registration on export in execution of the supplementary contract was additional quantity at increased rates and could not be allowed under government policy. The appellant's second appeal was also rejected by the Chief Controller of Imports and Exports vide his letter dated January 8, 1977 stating that after execution of the supplementary order there was increase in quantity of goods to be supplied as well as price as on the date of execution of the supplementary order, and the import policy did not provide for protection of benefits under the scheme for registration of contracts on the cases where there was increase in the value of contract. The appellant's review petition was also rejected by letter dated July 19, 1977 stating that as per provision of the policy contained in the relevant Policy Book, if there was an increase in the value of contract on account of price escalation clause or renegotiation on the ground of increase in prices of raw materials, protection to registered contract was not available.

5. The appellant thereafter moved an application under Article 226 of the Constitution of India in the Gujarat High Court which partly allowed the petition restraining the respondents from enforcing the demand for the refund of the amount already paid by way of cash assistance and rejecting the appellant's claim insofar as the contracts entered into in the context of the offers made subsequent to April 1972 because the cash assistance declared as on April 1, 1972 and thereafter was in terms

made available up to a specific date. The exports under the two concerned contracts namely Nos. 2-B and 3 were admittedly made after July 1974, though in case of contract No. 2-B the date of offer was August 31, 1972 and the date of acceptance was October 27, 1972 and the date of registration November 13, 1972, and in the case of contract No. 3 date of offer was April 28, 1973 and date of acceptance was June 5, 1973 and date of registration was June 15, 1973.

6. Learned counsel for the appellant, Mr. S. K. Dholakia, first, submits, that the appellants are entitled to cash assistance in respect of these two contracts also inasmuch as the scheme of registration of contracts for cash assistance dated December 8, 1969 as also that of February 4, 1970 were not time-bound and did not prescribe any period for export to be eligible under the scheme; that it was only the subsequent scheme that prescribed a period; and that the appellant exported Transmission Towers pursuant to the contracts entered into during the earlier period but due to increased demand subsequent supplementary contracts had to be entered into, and for price escalation and other difficulties actual exports were delayed. He relies on Section 1, Part B of Import Control Policy Volume II April 1972-March 1973, "Import Policy for Registered Exporters, Registration of Export Contracts," contained in paragraphs 56-64 thereof. Secondly, the learned counsel submits that cash assistance scheme of 1969 as well as that of February 1970 were based on the government's policy of long term assistance to exporters and it was with that end in view that the scheme of registration of contracts with the banks was introduced. Relying on paragraph 3 of the 1970 scheme, he emphasises that it was the date of the firm contract which was to be reckoned and not the date of export of the products. Relying on paragraph 6 of the scheme he submits that it envisaged contracts involving deliveries extending over a period of not less than 12 months and contracts for export were to be registered by the banks in the manner prescribed. As regards the government's policy of assisting the exports for the purpose of augmenting foreign exchange earnings of the country he submits that the deprivation of cash assistance to the exporter who registered their contracts would defeat the very purpose of the scheme.

7. Mr. C. V. Subba Rao learned counsel for the respondents demurs submitting that it could not be said that once the contracts were registered cash assistance would be available irrespective of the date of the exports.

8. We are inclined to agree with this submission. Paragraph 10 of the scheme dated February 4, 1970 reads :

Cash assistance is sometimes announced up to a specified date. Exports effected after the specified date even though the contract has been got registered in terms of the provision of this letter will not be eligible for cash assistance.

This paragraph made it quite clear that exports effected after the specified date would not be eligible for cash assistance. Consistently with this paragraph in the subsequent schemes the periods were prescribed. The amended scheme dated April 20, 1972 prescribed the period from April 1, 1972 to September 30, 1972 and the amended scheme dated June 16, 1973 applicable to this case, prescribed the period from October 1, 1972 up to and including March 31, 1973. In other words, exports of Transmission Towers made after the prescribed period would not be eligible to assistance under the prevalent scheme. The word 'amendment' would imply that the scheme of 1969 stood amended. If that be so, there could arise no question of granting such assistance to different exports under the original scheme and the prevalent amended scheme at the same time.

9. In reply Mr. Dholakia submits that at different stages the respondents gave different reasons for

refusing to pay cash assistance to the appellants. However, in view of the unequivocal language of paragraph 10 of the 1970 scheme and clear prescription of the different periods during the subsequent amended schemes and the admitted facts that the export in respect of these two contracts were made only after July 1974, we see no reason to allow the appellant's claim. Whether the government's policy was conducive to maximisation of exports and foreign exchange earning is entirely a different matter.

10. In the result we find no merits in this appeal and it is accordingly rejected, leaving the parties to bear their own costs.

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