

Collector of Customs, Calcutta

Vs

M. Shashikant & Co.

Civil Appeal No. 5148 (NM) of 1990

(S. Ranganathan, Kuldip Singh, N.M. Kasliwal JJ)

08.01.1992.

Judgement

KULDIP SINGH, J.:-

1. The respondent, Shashikant & Company, had applied for the grant of Export House Certificate under the Import Policy 1978-79. The Certificate was denied on the ground that the respondent had not diversified its exports. Against the said order the writ petition filed by the respondent was allowed by the Bombay High Court and the respondent was held entitled to the Export House Certificate. Special leave petition filed by the Union of India against the said order was heard along with a bunch of similar petitions under the title Union of India v. Rajnikant Brothers. The petitions were dismissed on April 18, 1985 by an order in the following terms (1986 Supp SCC 692) :

"We have heard counsel for the parties and have gone through the judgments of the High Courts of Bombay and Delhi. We are unable to find, in the facts and circumstances of the case, any requirement of diversification of exports as a condition for the grant of Export House Certificates in the Import Policy for the year 1978-79. While confirming the High Court's Judgment quashing the order impugned in the Writ Petitions in the High Court we direct the appellants to issue the necessary Export House Certificates for the year 1978-79. The Export House Certificates shall be granted within 3 months from this date. Save and except items which are specifically banned under the prevalent import policy at the time of import, the respondents shall be entitled to import all other items whether canalised or otherwise in accordance with the relevant rules. The appeals are disposed of accordingly with no order as to costs."

2. Pursuant to the above quoted directions of this Court the respondent was granted an additional licence dated September 4, 1985 for the import of Palm acid oil which was a canalised item under the Import Policy 1985-88. The respondent entered into a contract dated May 5, 1986 with a Singapore firm for supply of 4000 M. T. of Palm acid oil. The invoice in respect of the said contract was dated September 1, 1986 and the respondent filed the Bill of Entry on September 11, 1986.

3. The Collector, Customs, Calcutta by his order dated October 31, 1986, confiscated the goods on the ground that the import of Palm Acid Oil - a canalised item - was unauthorised. The respondent was, however, given the option to get the goods released on payment of a fine of Rs. 58,00,000/- in lieu of confiscation.

4. The appeal filed by the respondent before the Customs, Excise & Gold (Control) Appellate

Tribunal (hereinafter called 'the Tribunal') was allowed and the order of Collector confiscating the goods was set aside. The Tribunal directed the refund of the redemption fee to the respondent.

5. The Tribunal decided in favour of the respondent broadly on three grounds. It came to the conclusion that till September 12, 1986, when this Court delivered judgment in *Union of India v. M/s. Godrej Soaps Ltd.*, (1986) 3 SCR 771 : (AIR 1987 SC 175), the Customs authorities were interpreting the order of this Court dated April 18, 1985 (Rajnikant case) (1986 Supp SCC 692) to mean that the additional licence holders were permitted to import even the canalised items. Secondly the import by the respondent was bona fide because of the following factors :

(a) On April 3, 1986 in a meeting attended by Mr. Swaminathan, Member, Central Board of Excise and Customs, Mr. R. M. Singh, Principal Collector of Customs and the representatives of the Federation of Indian Export Organisation, it was decided that the import of items, which were under Open General Licence during 1978-79 and were categorised as canalised under the Import Policy 1985-88, would be allowed to the, additional licence holders.

(b) The Government of India in its letter dated April 23, 1986 stated that the Chief Controller, Imports/Exports, in consultation with the Additional Solicitor General, has permitted the additional licence holders to import canalised items against their licences.

(c) The Collector in his letter dated May 14, 1986 observed that clearance of canalised items against the additional licences was being unconditionally allowed.

6. The Tribunal, therefore, found that the respondent, having acted on the representation of the Departmental authorities, was justified in importing the canalised item Thirdly the Tribunal relied on the judgment of this Court in *B. Vijay Kumar v. Collector of Customs*, Civil Appeals Nos. 4445 & 4446 of 1988 decided on December 16, 1988 and granted relief to the respondent in similar terms.

7. This appeal before us is by the Union of India through Collector, Customs, Calcutta against the judgment of the Tribunal.

8. We have heard Mr. A. Subba Rao, learned counsel for the appellant and Mr. Anil Divan, Senior Advocate on behalf of the respondent. This Court in its order dated April 18, 1985 (Rajnikant case) (1986 Supp SCC 692) categorically stated that "save and except items which are specifically banned under the prevalent import policy at the time of import, the respondents shall be entitled to import all other items whether canalised or otherwise in accordance with the relevant rules." There is no ambiguity in the order which makes it clear that the additional licence holders would not be entitled to import the items which are specifically banned under the import policy 1985-88. No other interpretation is possible. Some of the Departmental officers were not justified in taking the view that the order permitted the import of canalised items. In any case this Court in *Raj Prakash Chemicals v. Union of India*, (1986) 1 SCR 448 : (AIR 1986 SC 1021) decided on March 5, 1986 authoritatively interpreted the order dated April 18, 1985 (Rajnikant case) as under (at p. 1032 of AIR) :

"the Additional Licences to be issued to diamond exporters entitled them to import items permissible to Export Houses under such Licence under the Import Policy

1978-79 excluding those items which fell within Appendices 3 and 4 of the Import Policy 1978-79 and also excluding items which fell in Appendix 3 and Appendix 2 Part A of the Import Policy 1984-85. Upon what we have said earlier, that is the meaning which we think must also be given to the terms of the order dated April 18, 1985 of this Court. Where the Import Policy prevailing at the time of import is the Import Policy 1985-88, the items excluded are those enumerated in the corresponding Appendix 3 and Appendix 2 Part A of that Import Policy. That conclusion follows irresistibly on the analysis attempted by us and in the context in which the order was made."

9. This Court thus clarified that only such items could be imported under the additional licence as were permitted under the import policy 1978-79 and also at the time of import, which in the present case was the import policy 1985-88. Admittedly, the item imported by the respondent was a banned item under the import policy 1985-88. The import was, thus, on the face of it unauthorised. This Court in Raj Prakash's case (AIR 1986 SC 1021), however, granted relief in the following terms, to those importers who had opened irrevocable Letters of Credit before October 18, 1985 (at p. 1035 of AIR) :

"We think it appropriate that those diamond exporters who were granted Additional Licences under the Import Policy 1978-79 and had opened and established irrevocable Letters of Credit before October 18, 1985 should be permitted, notwithstanding the construction we have placed on the order dated April 18 1985 of this Court, to clear the goods imported, or to be imported, by them pursuant to such irrevocable Letters of Credit. In other words, all imports effected pursuant to such Letters of Credit should be deemed to have been legally and properly made, and should entail no adverse consequences what soever... At the same time we make it clear that diamond exporters who pursuant to the issue of Additional Licences under the Import Policy 1978-79 have opened and established irrevocable Letters of Credit on or after October 18, 1985 will not be entitled to the benefit of this order."

10. The respondent in this case entered into contract with the foreign exporter on May 5, 1986 much after October 18, 1985 and as such is not entitled to relief under the above judgment.

11. The order dated April 18, 1985 (Rajnikant case) (1986 Supp SCC 692) and also the judgment dated March 3. 1986 in Raj Prakash's case (AIR 1986 SC 1021) were considered by this Court in Indo-Afghan Chambers of Commerce v. Union of India (1986) 3 SCR 88 : (AIR 1986 SC 1567). Pathak, J. (as he then was) speaking for the Court summed-up the legal position as under (Paras 4 and 12 of AIR) :

"only such items could be imported by diamond exporters under the Additional Licences granted to them as could have been imported under the Import Policy 1978-79, the period during which the diamond exporters had applied for Export House Certificates and had been wrongfully refused, and were also importable under the Import Policy prevailing at the time of import, which in the present case is the Import Policy 1985-88. These were the items which had not been "specifically banned" under the prevalent Import Policy. The items had to pass through two tests. They should have been importable under the Import Policy 1978-79. They should also have been importable under the Import Policy 1985-88 in terms of the order dated April 18, 1985..... In our opinion the respondents diamond exporters are

not entitled to import dry fruits under the Import Policy 1985-88 under the Additional Licences possessed by them. They are also not entitled to the benefit extended by the judgment of this Court dated March 5, 1986 to those diamond exporters who had imported items under irrevocable Letters of Credit opened and established before October 18, 1985. It appears from the record before us that the respondents diamond exporters opened and established the irrevocable Letters of Credit after that date."

12. In *Union of India v. M/s. Godrej Soaps Pvt. Ltd.*, (1986) 3 SCR 771 : (AIR 1987 SC 175) decided on September 12, 1986 this Court finally considered the judgments in *Raj Prakash* (AIR 1986 SC 1021) and *Afghan Chambers* cases (AIR 1986 SC 1567) and approved the ratio therein in the following words (Paras 14 and 16 of AIR)

"In respect of Palm Kernel Fatty Acid which is a canalised item listed as item 9(v) in Appendix V Part B of the Import Policy 1985-88, there is no provision in that Policy which vermits the import of such item by an Export house holding an Additional Licence. Therefore, the claim of the diamond exporters. or, as in this case a purchaser from the diamond exporter, must fail because it is not open to import by the diamond exporter under any provision of the Import Policy 1985-88In this case no injustice would be done by this order. The goods were purchased by the present petitioners only on 27th June, 1986 after they were aware of the judgment of this Court in *Raj Prakash's* case (AIR 1986 SC 1021) (*supra*) as well as *Indo-Afghan Chambers of Commerce's* case (AIR 1986 SC 1567) (*supra*). No question of any restitution of rights arises."

13. There was no ambiguity in the order dated April 18, 1985 (*Rajnikant's* case) (1986 Supp SCC 692). Assuming it needed clarification, the same was done by this Court on March 5, 1986 in *Raj Prakash's* case (AIR 1986 SC 1021). The respondent entered into contract for the import of the item on May 5, 1986 much after the judgment in *Raj Prakash's* case. We are of the view that the Tribunal fell into grave error in accepting the plea of bona fide raised by the respondent and setting aside the order of the Collector. The opinions expressed by the officers in interdepartmental communications is of no consequence. In the face of clear and unambiguous judgments of this Court it was not open for the departmental authorities to entertain a contrary opinion.

14. It is no doubt correct that the facts in *B. Vijay Kumar's* case relied upon by the Tribunal are somewhat similar to the facts in this case. This Court decided *Vijay Kumar's* case on the special facts and circumstances of the said case. This Court while deciding *Vijay Kumar's* case observed as under :

"We do not consider it necessary to deal with these submissions in detail as we are of the opinion that in view of the special facts and circumstances of the case specially having regard to the findings of the Tribunal that the appellants imported the canalised items of goods bona fide under the additional import licence granted to them in pursuance of the express conditions contained in the orders of this Court, which finding has not been challenged before us rather the Additional Solicitor General has fairly conceded the correctness of the findings of the Tribunal relating to the bona fide of the appellants in importing the disputed goods, we are of the view that the Collector and the Tribunal both were not justified in confiscating the goods or in imposing redemption fine..... We would like to emphasise that since we

have decided the matter in view of the special facts and circumstances available in these cases this order will not be treated as a precedent."

15. Even otherwise, in view of the judgments of this court discussed above, we hold that B. Vijay Kumar's case does not lay down correct law.

16. We, therefore, allow the appeal with costs, set aside the judgment of the Tribunal and restore the order of the Collector, Customs, Calcutta confiscating the goods and giving an option to the respondent to get the goods released on payment of fine of Rs. 58,00,000/- (fifty eight lacs). We quantify the costs as Rs. 11,000 / -.

Appeal allowed.

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