

Narendra Mafatlal Mehta Vs. Dy. Chief Controller of I and E

Narendra Mafatlal Mehta Vs. Dy. Chief Controller of I and E

SooperKanoon Citation : sooperkanoon.com/345821

Court : Mumbai

Decided On : Oct-11-1989

Reported in : 1990(46)ELT36(Bom); [1990]46ITR36(Bom)

Judge : V.S. Kotwal, J.

Acts : Central Excise Act

Appeal No. : Writ Petition No. 577 of 1983

Appellant : Narendra Mafatlal Mehta

Respondent : Dy. Chief Controller of I and E

Judgement :

1. A short but an interesting question has been posed in this Petition and the answer depends on the harmonious construction of the relevant provisions of the Import and Export Policy for the period April-1982 to March-1983 in the context of other aspects. The facts no doubt are very short but the expansion of the arguments in respect of this interpretation is comparatively lengthy. Nonetheless, in my opinion, even such a construction falls in a narrow field and the situation on the harmonious reading of all the provisions appears to be so clear as not to admit any confusion or scope for any other interpretation.

2. Only a few facts, therefore, would be necessary to understand the thrust of the controversy which ultimately formulate the question that has been posed. The

Petitioner is carrying on the business of importing rough diamonds and exporting out and polished diamonds in this metropolis. He is duly registered with the Directorate of Small Scale Industries and, according to him, he has lot of experience to his credit in this field. He has also now started manufacturing of engineering products which is in addition to his earlier vocation. The 1st Respondent is the Deputy Chief Controller of Imports and Exports while the 2nd Respondent is the Chief Controller of Imports and Exports and Exports and the 3rd being the Union of India and they have a statutory obligation in the matter of renewal of certificate which are initially granted for Export House under the Imports and Exports (Control) Act, 1947 read with Import Control Rules, 1955.

3. The petitioner has been holding a valid certificate for such an Export House since 1979 and which was to expire on 30-6-1982. It is for the purpose of renewal of such certificate that he applied to the said two Respondents on 26-5-1982 which was obviously under the Import and Export Policy for the year 1982-83 and that Policy is more germane to this proceeding. He was entitled to be placed in two categories, viz. the merchant exporter and the other one being the manufacturer exporter. He had annexed several documents and the details as required to his application for renewal. The 2nd Respondents, however, declined to grant the renewal by his order dated 13-8-1982 in which he had set out four reasons for the said conclusion. The first was that the Petitioner has not achieved 20% growth rate in the base period exports over the pre-base period exports as required by paragraph 180 (2) of the said Policy for the year 1982-83 (the Relevant Policy). It may be observed that the average for the base period comes to Rs. 25.59 lakhs while the average for the previous to the base period comes to Rs. 243.15 lakhs. The second ground was that the Directorate of Industries Certificate furnished by him was bearing the date as 7-5-1982 and since the application is filed on 26-5-1982, that Certificate cannot be considered as manufacturing S. S. I. Unit as per para 71 (b) of the Relevant Policy mainly because the permanent certificate was not granted before 1st April 1982 which is the only relevant date. The third ground was that the petitioner had exported auto accessories and silk fabrics in the year 1980-81 and 1981-82 but has not indicated whether these goods were manufactured by Small Scale Industries Unit or large scale manufacturers. The fourth deficiency was found that the petitioner had not furnished the export

statements for the pre-base period commencing from 1976 to 1979 duly certified by the Chartered Accountant. It is on account of these four composite grounds that the application dated 26-5-1982 for renewal of the Export House Certificate came to be rejected.

4. The Petitioner then replied to this letter on 19-8-1982 clarifying the position and answering the queries as reflected in the earlier letter. Insofar as the first query about the 20% growth rate is concerned, it was indicated that question would not arise in the instant case since the application was as a manufacturer exporter and this was essentially placed on the assumption of the Petitioner that on such manufacturer exporter certificate the growth rate would be scaled down to 10% and not 20% as for the merchant Export House. It is accepted that this was a wrong assumption and, therefore, ultimately we come back to the necessity of 20% growth rate. The second ground was answered by suggesting that since the firm has already started manufacturing activity the Directorate of Industries, Gujarat State has granted the provisional certificate on 29-3-1982 though the permanent certificate was issued thereafter and granting of provisional certificate was good enough for the purpose of renewal. As regards the third query, it was submitted that during the period 1980- 81 there was only one export of auto accessories to Singapore and the details of f. o. b. manufactured by Small Scale Industry was given. During the next year there was also one consignment of auto accessories and silk fabrics and the Petitioner under this letter declared that the said two consignments of auto accessories and one of silk fabrics have been manufactured by SSI and they have not been allotted SSI registration number by the Directorate of Industries. He then gave in respect of the items the manufactures' names and addresses. As regards the fourth query, he made it clear that the statements of the export for the year 1976 to 1979 duly certified by the Chartered Accountant have already been submitted. However, as a precaution a fresh copy was enclosed for ready reference.

5. It was ultimately requested that in the light of this information that is being transmitted to that letter, the request for renewal should be granted because of queries posed in the earlier letter have been effectively answered. However, by letter dated 16/17-11-1982 the 2nd Respondent categorically informed the

Petitioner that the application and the petitioner's case was reconsidered on its own merits in the context of the contentions raised, but he could not persuade himself to revise the decision which was already taken on 13- 8-1982 and that decision, therefore, required to be confirmed. It is this order that is being placed under challenge in this Petition under Article 226 of the Constitution of India.

6. Shri Kamdar, the learned Counsel for the Petitioner, no doubt raised multifold contentions. According to him, insofar as the registration certificate is concerned it is duly complied with since the provisional certificate is prior to the application, whereas the permanent certificate was just a formality which also was admittedly issued in favour of the Petitioner. As regards the second point about the 20% average growth rate, he tried to put certain construction on the provisions of paragraph 180 (2) of the Relevant Policy and contended that prescription is also duly satisfied if the figures of the Petitioner's exports are taken into account for the base period. As regards the 3rd and the 4th query, the learned counsel submitted that those have been complied with.

7. As regards these last two queries are concerned, it has been accepted on behalf of the Respondents that those have been complied with and, therefore, those are not made grounds for denying the renewal. Thus, left in the field are only two ground Shri Master, the learned Counsel for the Respondents, contested the proposition of Shri Kamdar on both these grounds. According to him, the provisional certificate is inconsequential and would not validate the application which was prior to this permanent registration. As regards the interpretation of paragraph 180 (2) of the Relevant Policy, he contended that the logical interpretation would be that the average growth rate of the base period should be compared with the average growth rate of the pre-base period and if that is done then it is certainly less than 20% and, therefore, the Petitioner has forfeited his right to get renewal of the certificate by reason of the prescription under this Policy in paragraph 180 (2).

8. As regards the first point is concerned, it can be disposed of within no time as it furnished hardly any difficulty. The Export House Certificate was initially granted in the year 1979 and it was to lapse on 30-6-1982. An application for renewal was

made on 26-5-1982. However, it is not controverted that the provisional certificate has been issued in favour of the petitioner on 29-3-1982 while the permanent certificate has been granted on 7-5-1982. The contention raised by Shri Master is to the fact that as per paragraph 176 (b) of the Relevant Policy the certificate should have been issued prior to 1st April 1982, and since the permanent certificate in the instant case is subsequent thereto, i.e. on 7-5-1982 it will not validate the application and it would not wipe out the deficiency and the requirement of paragraph 176 (b) of the Relevant Policy. I am afraid that would be putting too narrow construction on such a situation. We have three comparable dated, the first is 29-3-1982 on which provisional certificate is granted, 7-5-1982 when the permanent certificate is granted while the application is admittedly on 26-5-1982 i.e. equally admittedly after even the permanent certificate is granted. However, this permanent certificate is not granted before 1st April 1982 which is the relevant date prescribed under paragraph 176 (b) and that is how the argument invalidate the application comes into play. It cannot be overlooked that what is required under the Relevant Policy was that there should be a certificate or that the industry should be registered. Now there is in contrast a deliberate change made by the legislature in the subsequent Policy commencing from 1985 onwards wherein an expressed change has been brought into play to suggest that for valid application for renewal there must be a permanent certificate of registration prior to 1st April. Thus, on a plain comparison of the two policies it would be manifest that under the Relevant Policy only the registration is necessary, though issuance of permanent certificate may not be a condition precedent, whereas in the subsequent Policy the existence of such a permanent certificate has been specifically made a condition precedent. As stated, in addition there has been a provisional certificate on 29-3-1982 which was certainly prior to 1st April 1982. The case is obviously governed by the relevant policy and, therefore, the issuance of permanent certificate may not be a condition to invalidate the renewal application provided of course the industry is registered prior to 1st April 1982. That has been done in the instant case in respect of which there is no controversy and consequently the first ground of attack must succeed invalidating the impugned order as recorded by the 2nd Respondent declining the renewal on the ground that no permanent certificate of registration has been granted prior to 1st

April 1982.

9. Then comes into the picture the more controversial ground about the interpretation of paragraph 180 (2) of the Relevant Policy. For that purpose, a few features would not be out of place to mention at this stage itself. The Policy utilises the term 'base period' and that base period has been defined specifically under para 175 as comprising of 3 years, viz. 1979-80, 1980-81 and 1981-82. Therefore, the concept and the span of based period comprising of three years has been fixed under the Policy itself between 1979 and 1982. This would follow that the terminology used in the policy 'pre-base period' would also comprise of three years and logically those three years would proceed the base period and by simple calculation the pre-base period would be comprising of three years, viz. 1976-77, 1977-78 and 1978-79. Those two spans of period are thus fixed under the Policy itself. Then is the relevant provision contained in paragraph 176 which relates application for renewal. The first para is carved out in sub-clause (a) which is not very relevant in the instant case. However, sub- clause (b) is the most relevant portion which reads as :-

'The prescribed minimum set down above shall be only Rs. 25 lakhs and Rs. 2 crores respectively in the case of a small scale unit registered with the concerned State Director of Industries before 1-4-1982 or a consortium of small scale unit'.

It would thus be apparent that the minimum has been prescribed as Rs. 25 lakhs which would be the criterion in the instant case because it pertains to a small scale unit registered with the concerned State Director of Industries, whereas the second clause of Rs. 2 crores has no relevance in the controversy because admittedly the petitioner's case is not attracted to that clause. The net result, therefore, would be, insofar as the Petitioner is concerned, that the prescribed minimum as set out in sub-clause (a) would be Rs. 25 lakhs as the annual average value of f. o. b. exports in the prescribed base period, i.e. the combined review of sub-clauses (a) and (b), since sub-clause (a) prescribes more quantum of annual average f. o. b. value of exports while sub-clause (b) scales it down to Rs. 25 lakhs in respect of an industry like the one that is being conducted by the Petitioners. Therefore, in effect, the Petitioner will have to show that the annual

average f. o. b. value of exports during this base period is not less than Rs. 25 lakhs. The minimum thus has been fixed below which the Petitioners cannot go in order to be entitled to the renewal of the certificate and in fact even for getting the fresh certificate for an Export House. This position is inescapable and is conceded on behalf of the Respondents.

10. Then comes in the picture the most controversial paragraph 180 which relates to the applicable for renewal of the Export House Certificate. It is divided into three sub-paragraph though we are mainly concerned with sub-para (2). However, sub-para (1) contemplates that person holding Export House Certificate which is valid upto 30th June, 1982 or upto 30th June, 1981 or even upto 30th June 1980 can apply for renewal to the Chief Controller of Imports and Export on or before 31st July 1982 if they satisfy the conditions laid down in the Policy. Sub-clause (2) of this para is the most germane and relevant and, therefore, it would be worthwhile to reproduce the same.

Such application will be considered in those cases where there has been an annual average growth of at least 20% in the prescribed base period or in the immediately preceding year, as compared to the preceding three years provided there is no 'Nil' export in any of the three years of the base period. This growth rate may be reduced to 10% in cases where the annual f. o. b. value of exports during the base period was at least Rs. 10 crores in the case of large scale Export House and Rs. 1 crore in the case of small scale Export House. For the purpose of computation of the growth rate, absolute figures of eligible exports will be taken into consideration in the base and the pre-base periods.

11. It is now contended on behalf of the Respondents by Shri Master that the construction of this provision should lead to the result as suggested by him of the 'coma' at a particular time of punctuation. The sum and substances of his argument qua such an interpretation is that two alternatives are provided for to find out the 20% annual average growth. The first alternative relates to the base period itself, viz. between 1979 to 1982. According to him, initially find out the annual average growth for this base period of 3 years inter se and arrive at a particular figure answering such annual average growth which may be styled for the sake of

argument as 'A' then correspondingly undergo a similar exercise and find out the average annual growth of the pre-base period, i.e. 3 years prior to 1979 and arrive at a proper figure which may be styled as 'B'. After arriving at these two figures for these two spans of period of 3 years each, the base period commencing between 1979-82 and pre-base period being between 1976-79, compare the figures arrived at 'A' and 'B' find out if there is 20% growth rate between these two figures, i.e. in other words, find out if the figure arrived at 'A' qua the base period is the 20% annual growth rate compared to figure 'B' arrived at for the pre-base period. If this 20% ratio is satisfied then the eligibility is also satisfied. If it falls below the 20% then the eligibility is wiped out. The alternative mode as prescribed under this paragraph, according to Shri Master, has also a similar process. He concedes that it is stipulated in this paragraphs that the terminology, viz. the preceding year would be equivalent only to the immediate next preceding year to the termination of the base period. In other words, the learned counsel concedes that this proceeding one year would be the year 1981-82 because that is the last year of the base period. This position is acceptable to the Respondents. However, according to Shri Master, find out the figures for this period of 1981-82 which can be termed as 'X', then we have already found out the average growth rate for the pre-base period in the earlier calculation which was styled as 'B'. In the second alternative have a comparison of 'X' with 'B' and find out whether 'X' has 20% growth rate in an accelerated form than 'B'. If it is so, then eligibility is permissible, if not then it is not permissible. In effect, therefore, the learned counsel submits that in both the alternatives the basis is the comparison with the average growth in the pre-base period commencing from 1976 and ending with 1979. According to him, the prescription in this paragraph about the comparison with the pre-base period would embrace within its fold both the alternatives.

12. His submission is strongly contested by Shri Kamdar, the learned Counsel for the Petitioner. According to him, it contains basic fallacy which fallacy can be exposed even by referring to in built pointers in this paragraph as also in the Policy in general. His interpretation is to the effect that first of all in the first alternative one need not go to the pre-base period at all. The exercise would be restricted to the said three years of base period and to find out whether inter se in these 3 years there has been 20% annual growth rate. In other words, if figures are

compared for the exports for the years 1979-80, 1980-81 and 1981-82 and if there is an average increase in the growth rate by 20% between these 3 years themselves then the first condition is satisfied and there is no necessity to go to the pre-base period for any comparison as such. In other words, the first alternative is complete by itself. If, however, in a contingency where such 20% growth rate is not possible to be found out as in a case that can be contemplated, then the second alternative will come into effect, but in that process also, according to him, the comparison with the entire base period is not contemplated. What he suggests is that in this alternate mode it is taken into account the figure that is reflected in the proceeding year, viz. 1981-82 which, as stated, is accepted by the Respondents. Thereafter one need not go to entire pre-base period of 3 years, but add one year from the pre-base period, i.e. the last out of the said 3 years from the earlier and join that last year with the two remaining years from the base period and thereby arrive at an average growth which can be styled as 'C'. The figure for 1981-82 is already there which can be styled as 'X'. Compare 'X' with 'C' and if you find that 'X' reflects 20% growth then the alternative is satisfied. In other words, according to him, the first two years of the pre-base period would not be relevant, but only the third year which by addition to the remaining two years of the base period would furnish the comparison to find out the growth rate for this previous year, viz. 1981-82. The learned counsel submits that the 'coma' as inserted at that point of time, really speaking, would be redundant and if the interpretation suggested by Shri Master, the learned Counsel, is accepted it would result in irrational consequence. Having regard to the object behind this Policy and the various paragraphs in this Policy, I have no reservation in upholding the validity of the construction that is sought to be put by Shri Kamdar, the learned Counsel for the Petitioner. For that purpose, even at the cost of repetition, on the analysis of paragraph 180 (2) the crucial words would be 'where there has been an annual average growth of at least 20% in the prescribed base period', and this clause read in proper context would strongly indicate that what is prescribed under this clause is that there should be comparison inter se between the base period itself or otherwise to say that there should be annual average growth of at least 20% 'in the prescribed base period' would not have been inserted. The interpretation sought to be placed by Shri Master, the learned Counsel would

suggest that it is not confined to find out whether there is 20% average growth rate 'in the prescribed base period' at all. What it tends to do is to find out only the annual average growth of the figures of the 3 years in the two spans, viz. base period and pre-base period and compare these two figures and thereafter to find out whether there is 20% annual growth rate. In that process reference 20% annual rate of growth 'in the prescribed base period' finds no place at all. On the contrary, insertion of this clause in the very first part is a very telling circumstance indicating that in the first mould there should be a comparison of the figures inter se in the prescribed base period itself. In other words, for the 3 years 1979-80, 1980-81 and 1981-82 find out whether there is annual growth rate with 20% increase. If there is annual growth rate increase then the first part fully satisfied and in which case it is not necessary to go to the comparison part with reference to the pre- base period. In that behalf, it is worth noting that foot-note (2) of paragraph 176 of the Relevant Policy has some relevance and which reads as :-

'For the purpose of granting eligibility certificates or their renewal, the minimum export performance shall be taken as the annual average of the three years of the base periods or the exports in the immediately preceding year, provided the applicant does not have 'nil' exports in any of the prescribed three years of the base period.'

Even a cursory reading of this footnote makes it quite clear reinforcing the contention that is put by Shri Kamdar on sub-clause (2) of paragraph 180. This embraces both the situation viz. regarding the issuance of the certificate at the inception itself or for the renewal of the certificate also and what is expected is that there should be minimum export performance that is to be taken into account in respect of annual average growth of the 3 years of the base period or the exports in the immediately preceding year. Thus, on the contrary, it negatives the contention raised by Shri Master about any comparison with reference to the pre-base period. What is expected is only about the annual average of the 3 years of the base period and that is precisely what is contemplated by sub-clause (2) of paragraph 180 as rightly submitted by Shri Kamdar.

13. The same situation would arise insofar as the alternative mode is concerned, as rightly submitted by Shri Kamdar, where the comparison process is non-existent at all. According to him, if it is not possible in a given case to find out the 20% increase in the growth rate inter se in the prescribed base period, then you take the figure of the last preceding year, viz. 1981-82, keep it aside for the time being then take the figures as mentioned in the two remaining years of the base period, viz. 1979-80 and 1980-81, add one year from the preceding 3 years span which is called as the pre-base period and that one year would be the last out of the 3 years. In effect, therefore, the 3 years would be comprising of the years 1978-79, 1979-80 and 1980-81, find out the average growth rate of this span and compare this with the figure exclusively available from the year 1981-82 which is the last preceding year and on comparison with this if we find that there is a 20% average growth in the year 1981-82 then the alternative is satisfied and along with it eligibility is also satisfied. In that process, it is not necessary to compare the figure of 1981-82 with the average of 3 years of pre-base period, i.e. 1976-77, 1977-78 and 1978-79. This again is in consonance with footnote (2) of paragraph 176 which speaks of three years. Consequently, therefore, this interpretation is also harmonious having regard to the scope and extent of field available under paragraphs 176 and 180 (2). What is relevant is that in both the paragraphs the minimum of Rs. 25 lakhs is retained or at least implied because that is what is prescribed in paragraph 176 (b). This answers the query made by Shri Master that in a given case supposing the figure of 1981-82 is compared with the three years, viz. 1978-79, 1979-80 and 1980-81 and if suppose even if the growth rate is more than 20% but if compared to the earlier period it is much less, then is he entitled to the renewal of the Export House Certificate even if there is a complete decline or fall in a drastic manner. This contingency has taken note and care of by retaining the minimum prescribed of Rs. 25 lakhs as per paragraphs 176 (b). Therefore, even if there is a fall or decline in the export, still the minimum of Rs. 25 lakhs has got to be preserved and if that minimum is preserved, then either of the two modes as prescribed under 180 (2) would come into effect. In this interpretation, in my opinion, the introduction sought to be made by said comma, would really not so effective but may be even redundant and in any event that will have to be tagged with the second mode relating to the preceding year, viz. 1981-82 and what is of

relevance is that insofar as this mode is concern, the clause is 'as compared to the preceding 3 years' which itself indicates that the only requirement is the composition of 3 years preceding year 1981-82 which would, therefore, be the starting point being 1978-79 which again would not be necessarily the entire span of 3 years from the pre-base period. The user of the words 'preceding 3 years' serves again a pointer in favour of the interpretation, i.e. sought to be put by Shri Kamdar which would be available to the alternative mode when the figure of 1981-82 is to be compared not with the figures for the 3 years from 1976 to 1979, but only with the figures from 1979 to 1981. There is yet another in built pointer in support of this contention inasmuch as in sub-clause (2) itself it is indicate that such a comparison which is available in the record mode is available only if 'there is no nil export in any of the 3 years of the base period'. This, in my opinion, really tilt the balance in favour of the interpretation because if there is some export in the two years out of the base period excluding the last preceding year, viz. 1981-82, then for the purpose of comparison one has to stretch and get in into its fold only one year from the earlier batch, viz. 1978-79 and that is how it completes the span of 3 years which is necessary for comparison. The existence of some export during the period 1979-80 and 1980-81 assumes importance in this context.

14. In my opinion, therefore, having regard to the provisions contained in paragraph 176 (a) and (b) along with the footnote (2), the provisions of paragraph 180 (2) can be harmoniously construed on the basis as suggested by Shri Kamdar, the learned Counsel for the petitioner.

15. The learned counsel further rightly submitted that if any other interpretation is accepted as suggested by Shri Master, it would entail in irrational result and some of which have been catalogued by him, each one of which cannot be said to be irrelevant. Thus, for instance in this process as suggested by Shri Master the alternative was not necessary at all because for the alternative the same calculations would apply and that alternative would be in conflict with the footnote of paragraph 176. According to him, preceding year would also be redundant because an average has to be taken of both the pre-base period and the base period as suggested by Shri Master, then in that event the figures of the immediately preceding year will taking out the annual average growth and in that

event the words 'immediately preceding year' would lose all their efficacy. He also submitted that in sub-clause (2) of paragraph 180 the concept of pre- base period is blissfully absent and which can be replaced and substituted by three years and this cannot be redundant replacement.

16. In this view of the matter, I have no reservation to uphold the contention raised by Shri Kamdar while considering the provisions of sub-clause (2) of paragraph 180 of the Relevant Policy. In the instant case, the discussion regarding the alternative would be academic because the facts and figures very clearly lay down that the Petitioner's case is fully covered and protected by the very first clause, viz. that the comparison inter se of the base period of the 3 years would itself abundantly make it clear that the annual growth rate is on the acceleration being 20%. These figures are mentioned in the Petition and which are acceptable to the Respondents. Thus, for the year 1979-80 the f. o. b. value of exports is Rs. 86,604.76, for 1980-81 it is Rs. 25,12,911.80 and for 1981-82 is Rs. 46,76,388.24. On simple arithmetic calculation it leaves no doubt that inter se comparison between these 3 years it completely satisfies the requirement of the first clause of sub-clause (2) of Paragraph 180 that the annual average growth of at least 20% in the prescribed base period does exist in the instant case. If that be so, then the Petitioner is definitely entitled to the renewal of the Export House Certificate. Incidentally, Shri Kamdar is also justified in submitting that the fallacy is also reflected inasmuch as if the interpretation sought to be made by Shri Master is accepted, then the Petitioner may not be entitled to have even a fresh certificate issued in his favour even though in that event the minimum of Rs. 25 lakhs is satisfied and long with that the average annual growth of 20% inter se in the base period is also satisfied. Consequently therefore if fresh or initial certificate cannot be granted, then really speaking the renewal also should not be made available. This obviously cannot be. The converse, however is relevant inasmuch as even if he is entitled to get a certificate at the inception, then on the same basis being Rs. 25 lakhs in the minimum and 20% growth rate in the increase, the renewal also must follow. This is in tune with the footnote (2) of paragraph 176 which covers both the case of granting of initial certificate as also renewal of certificate. This, therefore, is an additional ground in upholding that contention.

17. In this view of the matter, the 2nd Respondent was thoroughly unjustified in denying renewal of the Export House Certificate in favour of the Petitioner. As stated, out of the four deficiencies as suggested by the 2nd Respondent, two have been admittedly satisfied. The first regarding the registration is really non-existing for the reasons already assigned while the only deficiency about the 20% growth rate increase has also been satisfied on the discussion already made. Thus, all the queries are squarely answered and are satisfied and thus there remains no deficiency whatsoever in the Application dated 26-5-1982 for the whole underlined idea of granting of the certificate or its renewal appears to be that there should not be any decline as such in a drastic form, but is expected of an Export House Certificate holder to satisfy the authority that during the span of 3 years of the base of the base period there is consistent growth rate in the exports and there is no drastic down fall. If there is growth rate which satisfies 20%, then notwithstanding that it may be lesser in comparison to the pre-base period then that would be inconsequential because in the span of 3 years there is consistent growth in the export business and, therefore, the renewal of certificate should not be denied. That appears to be main policy as envisaged by the Act as also the Relevant Policy. The Petitioner satisfies that policy also. Looked at from any angle, therefore, the petitioner deserves to get renewed his Export House Certificate. Consequently, the petition must succeed.

18. An objection was sought to be raised by Shri Master about the maintainability of this petition which objection, in my opinion, is utterly futile. It was submitted that the appeal is maintainable and no appeal has been filed by the Petitioner. However, paragraph 198 of the Relevant Policy make the situation quite clear which provides that if a person is dissatisfied with the order rejecting the application for renewal then he has to apply for review of that order within 45 days. In the instant case, after getting the first order in August- 1982, the Petitioner did make a representation to the authority obviously for the review of the order and the authority declined to review the order but by the subsequent one confirmed the previous order and, therefore, prescription under paragraph 198 is satisfied, and therefore it can be challenged under Article 226 of the Constitution of India. What is of more relevant is that this it ipso facto eliminates any remedy of appeal, but prescribes the only remedy for review and that remedy has been pursued by the

Petitioner and only after it was exhausted that this petition is filed and thus it is maintainable. There is thus no substance in the contention.

19. Rule made absolute in terms of prayer (a).

20. The impugned order recorded by the 2nd Respondent dated 13-8-1982 rejecting the renewal application and confirming this order of rejection by a separate order dated 16/17-11-1982 are both set aside. The application dated 26-5-1982 given by the Petitioner shall be deemed to have been granted and the 2nd Respondent shall renew the Export House Certificate in favour of the Petitioner in accordance with the law and in particular in accordance with paragraph 180 (2) of the Relevant Policy, preferably within two weeks.

21. At this juncture, Shri Master, the learned Counsel for the Respondents, asks for stay of execution of this order. Execution is stayed for a period of two weeks.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com