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Court : Andhra Pradesh

Decided On : Mar-16-1995

Reported in : AIR1996AP162; 1995(2)ALT299a; 1996(81)ELT34(AP)

Judge : B. Subhasan Reddy, J.

Acts : Constitution of India - Articles 12, 19(1) and 14; Imports and Exports (Control) Act, 1947 - Sections 3

Appeal No. : Writ Petition Nos. 11848 and 11849

Appellant : M/S. I.T.C. Ltd.

Respondent : Deputy Chief Controller of Imports and Exports and Others

Advocate for Def. : Mr. N.V. Rangantham, Adv.

Advocate for Pet/Ap. : Mr. P. Chidambaram, Senior Adv. and ;Mr. C.R. Sridharan, Adv.

Judgement :
ORDER

1. These two writ petitions filed by the same petitioner, i.e.. I.T.C. (Indian Tobacco Company) relate to the import and export policy of the Government.

2. The petitioner is engaged in the manufacture and export of unmanufactured tobacco. For the purpose of export of unmanufactured tobacco, the foreign importers who import tobacco require the tobacco to be packed in corrugated fibre board boxes. As such, the petitioner had to import the same enabling him to export the tobacco mentioned above. By virtue of the import and _ .export policy for the period -- April, 1990 to March 1993 which contained in Volume 1 of Policy Book, if any material is imported for the purpose of manufacture and export after adding value, no duty is charged on import of such product. However, for this purpose, the importer would have to apply for an advance licence which would also mention the resultant produce in Part E of Duty Exemption Entitlement Certificate Book (DEEC Book). The advance licence would also mention the export obligation in terms of FOB value of the export and condition sheet attached to licence mentions the export obligation in terms of quantity of unmanufactured tobacco.

3. Chapter XIX of the Policy Book deals with the duty exemption scheme. The object of the scheme is to make available 'to the registered exporters the necessary inputs needed for export production at international prices without payment of customs duty so as to take exports competitive in international market. Under paragraph 231 of the Scheme, an advance licence can be granted to registered exporters for import of duty-exempted materials in terms of the relevant customs notification for manufacture and export of resultant products or to replenish the materials which have gone into the production of the resultant produce already exported in anticipation of the grant of advance icence. Paragraph 239 requires an importer to execute a bond/legal undertaking which reads;

'Before clearance of the 1 st consignment of the import, the licence holder shall execute a bond with requisite value of bank guarantee or legal undertaking as per the procedure laid down in Chapter XIX of the Hand Book.'

After the impoter has completed the export of the value added product, he will be entitled to apply for a REP licence. A REP licence would be equal to 10% of the value addition (raised to 30% after 2-7-1991) achieved from GIF value of all imported inputs under the scheme to the net FOB value of exports. After

completion of the export, the licensing authority would be required to redeem the bond/legal undertaking and at that time, he shall issue entitlement certificate to the licenceholder indicating the REP entitlement. The entitlement certificate so issued will be valid for a period of 3 months from the date of the issue and the licence holder must prefer his application for the REP licence on the basis of the entitlement certificate number during this, period only. Once an exporter obtains REP licence, the said litence is freely transferable in the market for premium. The Government of India itself has offered to buy-back the REP licence at a premium of 20% as a measure of incentive, provided such an application by the REP licenceholder is made in the prescribed format to the Joint Director General of Foreign Trade.

4. Condition 5 of export obligation reads'in the event of the firm's failure to fulfil the export obligation within the prescribed time limit as stipulated above, the bond backed by bank guarantee/legal undertaking will be endorsed and the shortfall in the export obligation shall be adjusted against the firm's failure, A. U./ REP entitlements. 'The licence holder shall also pay the customs authorities, the duty on the proportionate quantity of the material corresponding to the products not exported. The above action will be without prejudice to any other action that may be taken against the licence holder under the provisions of the Import Trade Control Regulations.

5. As the transaction in W.P. No. 11849 of 1993 is first in order and the later one is in W.P. No. 11848 of 1993, the same are dealt with in the said sequence.

6. W.P. No. 11849 of 1993:

The application for advance licence was made on 27-S-1990. The same was granted on 7-9-1990. Legal undertaking was furnished on 25-10-1990 to comply with the conditions of licence. The entitlement was to import 20160 corrugated fibre board boxes. GIF value was Rs. 54,00,000/-. Quantity lo be exported was 40,32.000 kgs of unmanufactured tobacco. FOB value was Rs.8,06,40,000/-. But, what was achieved by the petitioner was Rupees 30,40,13,000/-. In terms of quantity, the petitioner had exported 38,6I',489 kgs of unmanufactured tobacco. However, the shortfall in terms of quantity of export of unmanufactured tobacco

was 2.3%. It is not disputed that in the above quantity even though there was a short fall of 2.3% in the export of unmanufactured tobacco, the same was packed in all the 20160 numbers of corrugated fibre board boxes and that the same were exported. Application was filed for redempiion of legal undertaking on 28-11-1991 and the no objection certificate issued by the customs authorities was submitted on 20-2-1992, The legal undertaking was redeemed on 11-6-1992. The petitioner then made an application on 20-7-1992 to the 1st respondent for entitlement certificate under special REP facility contained in paragraph 244 of the Policy Book. But, the impugned order waspassed on 9-2-1993 stating 'with reference to the above, you are hereby informed that your request for special REP entitlement certificate cannot be considered.'

7. W.P. No. 11848 of 1993:

Application for advance licence was made on 23-1 -1991. Advance licence was granted on 27-2-1991. Legal undertaking to comply the conditions of licence was furnished on 28-3-1991. Even though licence was issued for importing 35,280 numbers of corrugated fibre board boxes, the petitioner had availed of import facility to the extent of 34,011 numbers of corrugated fibre board boxes. Export obligation in terms of rupees was 14,11,20,000, but the value achieved by the petitioner was Rs. 52,13,79,622/-. The export obligation in terms of quantity was 68,02,200 kgs of unmanufactured tobacco while the petitioner had actually exported 65,69,490 kgs of unmanufactured tobacco. The short fall in the export, in terms of quantity, was 2.3%. Nevertheless, the petitioner had packed the said quantity of 65,69,490 kgs of unmanufactured tobacco in all the 34011 corrugated fibre board boxes and exported the same. In the instant case, the legal undertaking was not redeemed. Petitioner's application dated 13-8-1992 made to the 1st respondent for issuance of entitlement certificate under special REP facility was rejected by order dated 3-2-1993 stating 'with reference to the above, you are hereby informed that your request for special REP certificate cannot be considered,'

8. Mr. P. Chidambaram, the learned senior counsel appearing on behalf of the petitioner, contends that in both the cases there is a flagrant infraction of principles

of natural justice, in that, before passing the impugned orders, no notice was issued to the petitioner and the petitioner was not heard and that had the notice been issued, the petitioner would have explained the situation.

9. Mr. N. V. Ranganatham, appearing for the Central Government, submits that there is no violation of principles of natural justice and that a licence was issued exempting the customs duty imposing a conditionand the moment the condition is not satisfied and is breached, automatically, it disables the petitioner from getting REP entitlement certificate and that audi alteram partem rule is inapplicable. He also raised another contention with regard to non-maintainability of the writ petitions on the ground of availability of effective alternative remedy in the form of appeal to the 2nd respondent.

10. In so far as the alternative remedy argument is concerned, 1 cannot accede to the same for the reason that having regard to the pecuniary value of the transaction, necessarily the 1st respondent had fo forward the application for entitlement certificate under special REP facility to the 2nd respondent and it was at the behest of the 2nd respondent, the 1st respondent had passed the impugned orders and it is futile to contend that there was an effective alternative remedy available to the petitioner. Hence, I reject this contention advanced on behalf of the respondents.

11. With regard to audi alteram partem rule, now it is too well established a law that whenever any order or action of the Government or authority, which is a State under Article 12 of the Constitution of India, results in civil consequences, not only audi alteram partem rule is applicable, but also the order which is passed should contain reasons. Undoubtedly, in these two cases, the impugned orders passed result in civil consequences as the plea of the petitioner for issuance of REP entitlement certificate enabling it to realise about Rs. 3.00 crores in both the cases is negatived and as such it has resulted in civil consequences and the 1st respondent was obligated to issue notice to the petitioner, hear and dispose of the matter by reasoned order. In normal course, I would have set aside both the orders of the 1st respondent, which are impugned in these writ petitions, but for the reason that I am proceeding further to deal with the merits of the case as it

requires legal interpretation of the scheme as the respondents are understanding the said scheme in a different manner than pleaded by the petitioner. It would then be for a constitutional Court like this, to embark upon the said legal interpretation having regard to thecontradictory stands taken by the petitioner on one side and the respondents on the other.

12. The DEEC book was attached to each of the licences. Part C of Part I of this'book sets out the list of materials, namely, the corrugated fibre board boxes in knocked down condition and Part E and Pail II of Export describes the resultant produce as unmanufactured tobacco packed in imported cartons. In W.P. No. 11848/93, it was mentioned as corrugated fibre board boxes of 35,280 Nos. (@ 200 kgs per box +/- 5%). Likewise in W.P. No. 11849/93, it was mentioned as corrugated fibre board boxes of 20160 Nos. (@ 200 kgs. per box +/-5%).

13. If the shortfall in the export of unmanufactured tobacco is computed in terms of quantity, it is less by 2.3% in both the cases and as such, the said shortfall is within the permissible limits of the variation of+/- 5%. But the stand of the Central Government basing on (he above statement made in DEEC book is that computation for consideration of variation in terms of quantity of unmanufactured tobacco cannot be reckoned taking the whole of the quantity exported as one unit and that the said variation has to he considered having regard to the quantity of unmanufactured tobacco packed in each of the corrugated fibre board boxes taking each of such corrugated fibre board boxes as separate units and as such, one of the conditions of licence relating to the quantity packed in each of the corrugated fibre board boxes was violated resulting in disentitlement of REP certificate to the petitioner and that the challenge to the impugned orders is untenable.

14. Mr. P. Chidambaram, the learned counsel submits that the legal undertaking was obtained for ensuring the performance of the conditions of licence and the very fact that the said legal undertaking was redeemed in W.P. No. 11849/93 pre-supposes the compliance of the conditions attached to the licence and ipso facto, the petitioncr was entitled for REP certificate and non-grant of the same is quite arbitrary and illegal. In so far as W.P. No. 11848/93 is concerned, it is the

contention of Mr. P. Chidambaram that evenif the variation in the quantity of export is reckoned on the basis of the quantity packed in each of the 34,011 Nos. of corrugated fibre board boxes, it was less than 200 kgs i.e. beyond the permissible variation limits of 5% minus in so far as only 13,944 corrugated fibre board boxes, white in the balance of 20,067 boxes, it was in excess of 200 kgs but within the permissible limits of 5% plus and that it was highly unreasonable and arbitrary on the part of the respondents in rejecting REP entitlement certificate in toto and that at (he most REP entitlement certificate may not be issued proportionate to the extent of 13,944 corrugated fibre board boxes, but entitling the petitioner to the balance on 20,067 of such boxes. Mr. P. Chidambaram, the learned counsel for the petitioner, cites of a precedent as respondents themselves had earlier passed one such order in favour of the petitioner on 1-7-1988. Of course, this argument, Mr. Chidambaram, the learned counsel submits, is only an alternative argument. But, his main argument is that the Quantity of export should be reckoned taking the whole of the exported quantity as one unit and not boxwise. The alternative argument may be relevant and can be considered only if the main argument is not accepted. As I am agreeing with the main argument, for the reasons mentioned infra, adverting to this alternative argument is not necessary.

15. The object of the Scheme is to make available to the registered exporters the necessary inputs needed for export production at international prices without payment of customs duty so as to make the exports competitive in the international market. The licence issued under this Scheme will be subject to actual user conditions. The said licences issued will have both quantity and value as limiting factors for import. There are several categories of licences under the scheme and advance licence is one of the same. Advance licences are issued to registered exporters for import of duty exempt materials in terms of relevant department of revenue, customs notification for manufac-(ure and export of the resultant products.

16. While construing the present scheme,a clause in the scheme or a condition of-a licence, cannot be read in isolation without reference to the other relevant clauses and conditions. The entire scheme and the conditions of licence, as a whole, have to be read and have to be analysed as such, so that the construction

to he given to the scheme, as a whole, should produce the desired effects. A bare interpretation of the words 'devoid of concept of purpose' wiil reduce the beneficient legislation to futility. To be literal in meaning is to see the form and miss the substance. As such, literal and mechanical construction may have to be disregarded, if it conflicts with teal substance of the scheme. Words should be given an interpretation which they can reasonably bear to effectuate the purpose or object. The correct inter-pretion is the one that harmonises with the policy and object of the scheme. The Courts should adopt a trend away from the purely literal and towards the purposive construction. When the purpose or object of a scheme is clear, it should not be defeated only by mechanical construction, even if there is some inaptness in language. A statute or a scheme is best interpreted when we know why it was enacted or framed and the dominant purpose thereof. The dominant purpose was to give incentive to the exporters to make the Indian exports competitive in international markets. It is not the words employed in a condition attached to the licence 'at the rate of 200 kgs. per box+/-5%' which are to be taken literally in mechanical sense. Having regard to the object and intendment of the scheme, it has to be understood that in each of the boxes, the approximate quantity should be 200 kgs., that no imported Corrugated Fibre Board Boxes should be retained by the importer and that alt such boxes should be filled with unmanufactured tobacco and should be exported. In substance, it has to be understood only in such manner and not otherwise. Overall, what is to be seen is that no importer should be allowed to take undue advantage of the exemption or misuse or abuse the same and insofar as this scheme is concerned, that is fully achieved if caution is taken (a) that all Corrugated Fibre Board Boxes are filled with unmanufactured tobacco regardless ofvariable quantities therein; (b) that the export obligation in terms of quantity of unmanufactured tobacco should be achieved reckoning the entire of such quantity and not boxes and see as to whether on the whole whether the same is within the permissible quantity of +/-5%; and (c) that the export obligation in terms of FOB value of the exports is met. In both these cases, the above objects of the policy, which I have analysed and enumerated above are satisfied as admittedly not a single corrugated fibre board box out of the imported stock was retained by the petitioner, that all the imported corrugated fibre board boxes were filled up with unmanufactured tobacco, some

weighing around 190 kgs and some others weighing nearer to 200 kgs and the rest weighing little more than 200 kgs having regard to the moisture and other aspects, and the variation on the whole, is only 2.3% less, which is within the permissible limits and what is more, the FOB value of the export in terms of money has been achieved nearly four times than fixed, which would certainly go in favour of the petitioner, if a meaningful interpretation is given to the instant policy/scheme. If a narrow and pedantic interpretation, as placed by the respondents, is allowed, the very policy/ scheme becomes unworkable and discouraging and leads to absurdity. Further, it is ununderstandable as to what is the nexus of fixing the quantity to be packed and reckoning the same boxwise. The object being to achieve the FOB value of the export in terms of money as also quantity of the product (with permissible variations) by using all the imported items which were exempted from customs duty, for achieving the above object the nexus is to see whether the above object has been achieved and not to see as to whether boxwise also the variation in quantity is within the permissible limits. Such a pedantic construction is impermissible and in fact such an imposition of condition of boxwise variation is superfluous and there is no intelligible differentia, which if permitted, would only result in infraction of the fundamental right guaranteed not only under Article 14 of the Constitution of India, but also Article 19(1)(g) thereof.

17. In view of what is stated supra, I hold that the petitioner did not violate any of the conditions of licence in both the cases and was entitled for issuance of Special REP entitlement certificate as sought for, by setting aside the orders passed by the 1st respondent dated 3-2-1993 and 9-2-1993, respectively, which are impugned in these writ petitions.

18. In the result, I allow both the writ petitions making the rule absolute by granting the following reliefs:

1. The legal undertaking furnished by the petitioner on 28-3-1991 pursuant to the advance licence granted on 27-2-1991, stands redeemed.

2. The applications made by the petitioner on 13-8-1992 and 20-7-1992 to the 1 respondent for special REP entitlement certificates pertaining to the advance licences granted on27-2-1991 and 7-9-1990 respectively, stand allowed and

consequently, the 1st respondent is directed to issue special REP entitlement certificate to the petitioner pursuant to the said applications; and

3. The petitioner shall be entitled for payment of premium amounts pursuant to the applications made by it on 30-7-1993 in terms of Circular No. 11/93, dated 5-5-1993.

19. There will be no order as to costs.

20. Petition allowed.

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