Exportos India and anr. Vs. Union of India and ors.

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Court : Delhi

Decided On : Jan-18-1988

Reported in : 34(1988)DLT398

Judge : Yogeshwar Dayal, C.J. and; G.C. Jain, J.

Acts : Import and Export (Control) Act, 1947 - Sections 3

Appeal No. : Civil Writ Petition Appeal No. 3595 of 1987 and Civil Miscellaneous Appeal No. 5110 of 1987

Appellant : Exportos India and anr.

Respondent : Union of India and ors.

Advocate for Pet/Ap. : A.K. Sen,; L.M. Sanghvi,; K.C. Aggarwal,;

Judgement :

Yogeshwar Dayal, C.J.

(1) By this petition under Article 226 of the Constitution of India the petitioners seek a writ in the nature of certiorari quashing the public notice No. 29ETC(PN)/87 dated 15th October, 1987 (Annexure 7); circular No. OT/EEC-USA/POL/CIR/E[294l87 dated 30th October, 1987 (Annexure 8); circular No. OT/EECUSA/POL/CIR/E/314187 dated 19th November, 1987 (Annexure 9) and the communication dated 8th December, 1987 (Annexure 12) and seeking an

order directing the respondents to issue export certificates to the petitioners against the petitioners' commitments to export cotton yarn to Usa and restraining the respondents from preventing such exports. We had dismissed the petition on 14th January, 198S by a short order. Now we give reasons in support of that order.

(2) The dispute is about the petitioners' right to export cotton yarn to Usa against specific orders entered between the period 23-6-87 to 28-8-87.

(3) By virtue of the provisions contained in Section 3 of the Import and Export (Control) Act, 1947 Central Government is competent to prohibit, restrain, or otherwise control the export of goods by order published in official gazette. In exercise of these powers the Central Government made Export (Control) Order, 1977. Clause 3 of this order prohibits the export of goods by any person of the description specified in Schedule A except under and in accordance with the license granted by the Central Government or by an officer specified in Schedule 2. Sub-clause 2 of Clause 3 permits the export of goods specified in Schedule 2 on fulfillment of the terms and conditions specified therein. It is not disputed that prior to 9th February, 1983 the export of cotton yam was banned. This ban was lifted by Export (Control) Fourth Amendment Order, 1983. Item No. 51, which relates to cotton yam, reads as under :- SI. Item SI. No. as Conditions to be fulfillled/documents No. in Part 'B' to be produced of Schedule 1 2 3 4 51. Cotton Yarn of B-69 Against Certification made by the all types in all Cotton Textile Export Promotion counts as walls Council, Bombay in respect of tyre cord yarn contracts registered with them for counts up to 60s. For counts above 60s exports will be allowed freely in accordance with the Trade Notice issued by the Cotton Textiles Export Promotion Council, Bombay and Exporters will furnish statistics of exports to the Council within 7 days from the date of shipment. In respect of exports to Eec Member-States and Usa necessary announcement about export entitlement will be mace by the above Council.

(4) By Public Notice No. 19/87 dated 6th October, 1985 issued by the Chief Controller of Imports and Exports a scheme of exports, under OGL-3 of certain fabrics and/or made up items made from cotton, wool and man-made fibre to Lisa

and some other countries for the period 1-1-87 to 31-12-87, was announced. This scheme provides three systems of allocation of quantity for export, namely, 40 per cent of the annual value on the basis of past performance; 40 per cent on the basis of first come first served contract reservation and 20 per cent on tile basis of first come first served ready goods basis. After the commencement of the scheme cotton yam was exported to USA.

(5) On 15th October, 1987, the Chief Controller oi Imports and Exports vide public notice No. 29/87 announced scheme (Annexure 7) of export under OGL-3 of certain fabrics and/or made up items of cotton, wool, and man-made fibre to Usa, and certain other countries for the period 1-1-1988 to 31-12-1990. In terms of this scheme by circular dated 30th October, 1987 (Annexure 8) Cotton Textiles Export Promotion Council, respondent No. 3 issued a detailed procedure o' allocation of export entitlement for export of fabrics and made up of cotton etc. By circular dated November 19, 1987 (Annexure 9) the trade was informed that the Government had decided to allocate separate quantities for (a) Cotton yam (b) Cotton Fabrics (c) Mail-made fibre yarn and fabrics and (d) cotton and man-made fibres made-ups within the overall group Ii level for 1988. The Government decided to allocate export of 5 million sq. yards of cotton yarn. The trade was intimated about this decision by circular dated 2nd December, 1987 (Annexure 10).

(6) M/S. Exports India, petitioner No. 1 is carrying on the business of export and import. During the course of this business it is stated to have entered into firm contracts with foreign buyers of Usa for supply of cotton yarn. These contracts were entered into between 23rd June, 1987 and 28th August, 1987. On receipt of circular dated 2nd December, 1987 the petitioners sent a letter dated 7th December, 1987 to respondent No. 3 giving details of the said contracts and requested for allotment of special quota to honour the said firm contracts. It was also complained in this letter that there was no justification of allocation of only 5 million sq. yards of cotton yarn for export to USA. Respondent No. 3 by its letter dated 8th December, 1987 requested the petitioners to apply for quota either under contract reservation or under ready goods, as per circular dated 2nd December. 1987.

(7) Feeling aggrieved the petitioners have filed the present petition. It was resisted by the respondents.

(8) Learned counsel for the petitioners contended that the scheme issued by the Chief Controller of Exports and Imports public notice dated October 15, 1987 (Annexure 7) and the impugned circulars (Annexures 8 and 9) issued by the Cotton Textile Export Promotion Council were void having been issued without any authority of law and could not be acted upon. We find no substance in this contention. Para 5(6) of the Hand Book of Imports and Exports Procedure for 1985-March, 1988 empowers the Chief Controller of Exports and Imports to evolve any special procedure for the issuance of import-export licenses with respect to any licensing period or commodity or any category of importers/exporters by issuing a public notice. The Chief Controller of Imports and Exports was, thereforee, competent to issue the impugned public notice (Annexure 7). The Exports (Control) Fourth Amendment Order, 1983, in respect of entry No. 51 relating to cotton yarn, provides in column 4 that 'in respect of exports to Eec Member-States and Usa necessary announcement about export entitlement will be made by the above Council.' It is thus deaf that the Cotton Textile Export Promotion Council, Bombay, respondent No. 3, was empowered by the said order, which has the statutory force, to issue the impugned circulars.

(9) The next challenge was to the decision to allocate only 5 million sq. yards of cotton yarn for export to USA. It has not been disputed that certain countries including Usa do not permit unlimited imports to their countries. For this reason the Government of India enters into bilateral agreements with those countries. Prior to 1-1-87 there was no ceiling for export of cotton yam to USA. However, under the bilateral agreement dated 6th February, 1987 between the Government of India and the Government of Usa the export of cotton yarn was also placed under quota. Out of the total quota meant for various items the Central Government allocated 5 million sq. yards for cotton yarn. We have seen the original file. The decision has the approval of the Minister. It was a decision by the Central Government and not of the Cotton Textile Export Promotion Council, respondent No. 3.

(10) Mr. Richard D'Souza, Secretary of respondent No. 3, in para 12 of his affidavit states : 'I submit that in determining categorisation for cotton fabrics and made-up items,the Respondents have proceeded totally in public interest and having regard to all factors, including the basic factor that the quota has to be so distributed in order to earn maximum foreign exchange for the country. The export of cotton yam are not as remunerative as the export of other cotton fabrics and made-ups and it is for this reason the quantity allotted to the yarn is less than the quantity allocated in respect of the cotton fabrics and made-ups. I respectfully submit that there is nothing arbitrary in this and the allocation is totally in public interest.' On careful examination of all the facts and circumstances of the case we are satisfied that this allocation cannot be termed unreasonable or arbitrary.

(11) In the writ petition the petitioners also sought assistance from para 378 of the Hand Book of Import-Export Procedure 1985-88. It provides for honouring the pre-banned commitments. This para, however, does not apply to this case. It applies to cases where mid-term ban on export is imposed. It would not apply to a case where the export is not allowed by the importing country or in other words where export would involve a breach of bilateral agreement with the importing countries.

(12) It may be pointed out that the contracts entered into by the petitioners were subject to quota restraints.

(13) For these reasons the writ petition had no merit and was liable to be dismissed.