

H.V. Jain Vs. the Joint Chief Controller of Imports and Exports

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Court : Chennai

Decided On : Nov-20-1958

Reported in : (1959)2MLJ204

Appellant : H.V. Jain

Respondent : The Joint Chief Controller of Imports and Exports

Judgement :

ORDER

Balakrishna Ayyar, J.

1. M.S. Sha Bhagajee Sonmull, Madras, was a firm of 'established importers' within the meaning of Rule 12 of the Import Trade Control Policy Rules issued by the Union Government. The firm had four partners. In 1956 the members of the firm resolved to dissolve the partnership and by an agreement executed on 26th November, 1956, the quota rights which the firm had for importing various articles were divided in equal shares among all the four ex-partners. The Import Control Rules require that information relating to any change in the constitution of a firm or its dissolution should be reported to the Chief Controller of Imports, New Delhi. Immediately after the dissolution of the firm intimation of the fact was given to the Chief Controller of Imports by a letter, dated 30th November, 1956. By an order, dated 9th April, 1957, the Chief Controller approved the transfer of the quota rights which the firm had held to its quondam partners. But he made it clear that the

order would take effect only 'in future'. The result of it was that the petitioner was given a quota only for January to June, 1957, and his application for quota for July to December, 1956, for various articles was rejected.

2. The case of the petitioner is that he is entitled to a quota with effect from the date on which the transfer was effected and not merely with effect from the date on which the transfer was recognised by the Chief Controller of Imports.

3. W.P. No. 107 of 1958 has been filed for the issue of a writ of mandamus or other appropriate direction to the Joint Chief Controller of Imports and Exports, Madras, to issue import licences to the petitioner with effect from the date of the dissolution of the partnership. In the petition this date is given as 21st November, 1956, but, during the arguments I was told that it is an error for 26th November, 1956

4. In respect of one article, viz., coffee machines, quota was refused on the further ground 'that the item is currently banned.'

5. Writ Petition No. 216 of 1958 has been filed for issue of writ of mandamus or other appropriate direction to the Joint Chief Controller of Imports and Exports, Madras, to grant quota for this article to the petitioner.

6. The Joint Chief Controller of Imports and Exports filed a joint affidavit in both these writ petitions. Therein he stated that a licence is necessarily personal and that when it is granted to a firm of partners, none of the partners can on dissolution of the partnership claim that he is an established importer in his own right. When an application is received for recognition of the transfer the Chief Controller examines the agreements and hears the objections, if any, received in response to advertisements issued and then he

divides the quota rights of the firm and sanctions appropriate shares to such persons as appear to be entitled on the material before him. It is only then that the separating partner becomes eligible for licences and an established importer in his own right.

Thus on the dissolution of a firm, none of the quondam partners was eligible for a licence in his own right as an established importer unless and until the Chief Controller of Imports and Exports was satisfied that he should be made eligible by issuing a quota certificate to him.

As regards the coffee machines which were referred to as an item currently banned, the counter explained,

The fact that the item in question in W.P. No. 216 of 1958, namely, 'coffee machines' was banned was merely brought to the notice of the petitioner and was not the ground for rejection of the application.

7. If the case of the respondent had been for instance that for some reason or other the situation of the Government in relation to foreign exchange was such that they could not possibly issue the quota for the period, July to December, 1956, the matter would have stood on an entirely different footing. Similarly also if the case of the respondent had been that import of the articles had been prohibited. The Respondent, however, does not rest his case on either of these grounds or any other similar ground. His case is that the petitioner would become entitled to his quota only after the transfer or division has been recognised by the Chief Controller of Imports.. I have now to consider how far this contention is right.

8. The Export and Import Control Act gives no guidance on the point. The rules that apply to a case like the present are found on page 20 of the Import Trade Control Policy Book issued by the Government of India for July-December, 1956.. I quote the relevant passages:

I.'When a change occurs in the constitution or the name of a firm if the business changes hands, the reconstituted firm will not be entitled to the quotas of the original firm until the transfer of the quota rights in their favour has been approved by the Chief Controller of Imports and Exports or other licensing authority in cases covered by Clause (c) below. The following are the general principles followed in regard to such cases:

II. (a) Transfer of quota rights.-(i) Where the business of a firm is transferred together with all its assets, liabilities and goodwill to another firm so as to constitute it its successor in all respects, the transferee firm shall get the quota rights of the transferred firm.

III. (ii) Where a firm is dissolved or wound up or ceases to carry on business without making provision for transfer of its business, assets, liabilities and goodwill, no one will be entitled to the quota rights admissible to that firm.

IV. (b) Division of quota rights.-Where a firm is dissolved, and the partners agree to divide its business, assets and liabilities and its goodwill is taken over by one of the partners or none of them is allowed to use it, the partners shall get their respective share in the quota rights according to the provision of the agreement.

9. The learned Government Pleader seemed very strongly to think that the first of the four passages I have quoted above is authority for the position that where a firm has been dissolved and the quota rights of the firm divided among the quondam partners the rights of the individual partners would take effect only from the date on which the transfer is recognised by the Chief Controller of Imports and Exports. But, if one reads the passage carefully it will be noticed that it has no application to a case like the present. What it says is that

that re-constituted firm will not be entitled to the quotas of the original firm until the transfer of the quota rights in their favour has been approved.

10. This makes it clear that this rule applies only when a new or reconstituted firm takes the place of the old one and that it has no application where a firm is dissolved. In order that this rule may apply one of three conditions must be first satisfied. There must be a change in the constitution of the firm, or there must be a change in the name of the firm or the business must have changed hands. It may properly be said that the third condition has been satisfied in the present case. But that alone is not sufficient. The rule further requires that there should be a reconstituted firm. That condition has not been satisfied in the present case.

11. The learned Government Pleader then contended that when a firm is dissolved and the quota rights of the firm are divided among the partners, the quondam partners are not as of right entitled to a quota. He sought support for this argument in the third of the passages I have quoted above. This is how he invited me to construe the passage. Where a firm is dissolved no one will be entitled to the quota rights admissible to that firm; when a firm is wound up no one will be entitled to the quota rights admissible to that firm ; when a firm ceases to carry on business without making provision for transfer of its business, assets, liabilities and goodwill, no one will be entitled to the quota rights admissible to that firm. In other words, he invited me to read the passage as though the stipulation contained in the expression 'without making provision for transfer of its business, assets, liabilities and goodwill' applied only to 'ceases to carry on business.' I do not think that is the correct way of reading the passage. The stipulation applies to all the three contingencies mentioned earlier in that passage, viz., the dissolution of the firm, the winding up of the firm and the cessation of business by the firm. When we read the fourth passage I have quoted above it will be appreciated that there is no room at all for any argument of the kind advanced by the learned Government Pleader, because it makes specific provision for the division of quota rights when a firm is dissolved.

12. In order to satisfy the requirements of the fourth passage it is enough if the following conditions are satisfied:

- (1) The firm must be dissolved.
- (2) The partners must be agreed to divide its business, assets and liabilities.
- (3) Its goodwill must be taken over by one of the partners, or none of them should be allowed to use it.
- (4) The agreement must contain some provision relating to the quota. When that happens the passage says, the partners shall get their respective share in the quota rights according to the provisions of the agreement.

The word 'agreement' occurring in this passage can relate only to the word 'agree' referred to earlier in that passage. This means that in a case like the present, if the agreement of division contains specific provision in that regard, the partners would be entitled to the quota rights in accordance with the terms of the agreement. I can see no justification whatever for the argument of the learned Government Pleader that in a case of this kind the right of the partners is postponed till such time as the Chief Controller of Imports and Exports recognises the transfer. In cases where it is intended that the transfer should take effect only when it is recognised by the Chief Controller, express provision has been made as where a new firm or reconstituted firm takes the place of the old. It seems to me that the absence of such a provision in relation to a situation arising out of the dissolution of a firm and the division of the quota rights of the firm is destructive of the argument of the learned Government Pleader.

13. The learned Government Pleader referred to the decisions in *Desai Goundar & Co. v. Dy. Controller of Imports* : [1955]28ITR553(Mad) , and *Srinivas v. Director of Controlled Commodities* : AIR1953 Mad775 . Neither of them has any application to the facts of this case. All that was decided in the former case was, that the regulation that an applicant for a licence to import goods under the Import Trade Control Regulation should produce an income-tax verification certificate, is not an unreasonable restriction on a person's fundamental right to carry on business because no one has a fundamental right to obtain a quota under a licence. That decision, therefore, relates to a case where a quota had not yet been granted. The second decision relates to a case where a quota had lapsed and the person who previously held the quota applied for the grant of a fresh quota. In effect, therefore, that case too related to a stage prior to that in which a quota had been obtained'.

14. The decision most in point is that of Rajagopalan, J., in Writ Petition No. 569 of 1955. The facts there were as follows : One Janardhan Rao was the sole proprietor of a concern called Rao and Company. He was recognised as an 'established shipper' entitled to quotas for export of groundnut oil. Janardhan Rao was adjudged an insolvent. Rao and Company, one of his assets, was sold as a going concern by the Official Assignee, and one Venkataramiah Chetty purchased

it at a sale held on 26th November, 1954. The Official Assignee executed a registered sale deed on 3rd December, 1954. Thereafter Venkataramiah Chetty became the sole proprietor of Rao and Company, and, therefore, entitled to the quota rights held by Rao and Company. The departmental authorities recognised the transfer in favour of Venkataramiah Chetty with effect from 4th February, 1955, and, while agreeing to grant him a quota with effect from that date refused to give a quota with effect from the date on which he succeeded to the assets of Rao and Company. Venkataramiah Chetty then came to this Court with a writ petition and it was held that he was entitled to the quota with effect from the date on which the rights of Rao and Company devolved on him. The passage in the Rules governing the case in Writ Petition No. 569 of 1955 was, I was told, identical in terms with the second of the passages I have quoted above from page 20 of the Import Trade Control Policy Book.

15. Apart from the decision in Writ Petition No. 569 of 1955, on the language relating to the division of quota rights set out in the last of the four passages I have quoted earlier the petitioner is entitled to succeed. The Department was clearly making a mistake when it read the rules in the way it has done. The rule nisi is made absolute. The petitioner will be entitled to his costs in W.P. No. 107 of 1958. No costs in W.P. No. 216 of 1958. Advocate's fee Rs. 250.

16. This petition having been set down this day for being mentioned in the presence of the aforesaid Advocates the Court made the following Order:

17. Mentioned to-day. The learned Government Pleader explained that the import of coffee machines which form the subject-matter of W.P. No. 216 of 1958 is now prohibited. In view of that W.P. No. 216 of 1958 will stand dismissed. No costs in that.