

Mithuna Industries by Its Partner Vs. the Deputy Chief Controller of Imports and Exports and anr.

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Court : Chennai

Decided On : Oct-10-1973

Reported in : (1974)2MLJ53

Appellant : Mithuna Industries by Its Partner

Respondent : The Deputy Chief Controller of Imports and Exports and anr.

Advocate for Pet/Ap. : Mr. Venugopal

Judgement :

ORDER

M. M. Ismail, J.

1. The petitioner in these two writ petitions is one and the same and it is a partnership firm. One Messrs. Delta Enterprises, Kakinada, a registered merchant-exporter, who was exporting stainless steel goods, applied for a replenishment licence release order under the registered Exporter's Policy for the quarter July-September, 1971 against their exports of stainless steel utensils for an F.O.B. value of Rs. 2,58,500-30. It is necessary at this stage to explain the scheme under which this application was made. In order to offer incentives to exporters, the Government of India promulgated a scheme by way of granting import licences for raw materials for the manufacture of the goods to be exported, at a particular

percentage of the value of the export. It is on the basis of this alone, that an application was made by Messrs. Delta Enterprises, Kakinada. It is also necessary to explain the difference between an import licence and a release order. As an incentive, an exporter is given an import licence to import goods into this country. However, in the case of certain goods, whose import is made by canalising through a particular agency like the Minerals and Metals Trading Corporation of India or the State Trading Corporation of India, instead of granting an import licence, the scheme provided for the grant of a release order or an order of allotment so that the exporter in question can get the quantities of the imported goods from the canalised agencies, namely, the Minerals and Metals Trading Corporation of India or the State Trading Corporation of India as the case may be. As far as stainless steel sheets are concerned, the canalised importing agency is the Minerals and Metals Trading Corporation of India, the second respondent in both the writ petitions. It is not in controversy that the scheme promulgated by the Government in this behalf also provided for an exporter, who is entitled to a replenishment licence, to nominate another in his place, subject to certain conditions, enabling the said nominees to receive the licence or the release order, as the case may be. It is the common case of the parties that in the present case Messrs. Delta Enterprises, Kakinada, the exporters, filed the application for a release order nominating the petitioner herein as their nominee. That application was in two parts, one part to be completed by the exporter himself and the other part to be completed by the nominee. Again, it is admitted that such an application completed in both parts by Messrs. Delta Enterprises, Kakinada, as well as the petitioner, was filed in the present case. Pursuant to this application, a release order was actually issued by the first respondent herein. The said release order bears the No. P/L/R/720648/W/33-34 and it is, dated 14th February, 1972. This order states that the petitioner could approach the Minerals and Metals Trading Corporation for obtaining the allotment of the goods mentioned therein, namely:

S. No.

Description of goods.

Quantity, Limit, if any.

c.i.f. value in figures and words.

Rs.

Stainless steel sheets of 0.914mm. to 0.457 mm. both inclusive.

22305.71 kg

Rs. 1,88,405

(Rupees one lakh eighty eight thousand four hundred and five only).

It contains certain other conditions also, one of them being that the release order should be produced in original to the Minerals and Metals Trading Corporation of India Limited, Madras. It also mentions that the release order will be valid for six months from the date of issue. This release order was sent to the petitioner under a covering letter, dated 16th February, 1972. On receipt of the release order, the petitioner wrote to the Minerals and Metals Trading Corporation Limited, Madras, on 15 th March, 1972 requesting delivery of the goods immediately on priority basis. Not having received any reply, the petitioner wrote a reminder on 5th June, 1972. To that also the petitioner did not receive any reply from the second respondent herein. However, the petitioner received a communication, dated 27th July, 1972 from the office of the first respondent herein, signed by the Controller of Imports and Exports. This communication drew the attention of the petitioner to the issue of the release order for stainless steel sheets and stated:

The exporters M/s. Delta Enterprises, Kakinada, while claiming export benefits did not produce attested copies of shipping bills but instead submitted certified copies only. These shipping bills do not indicate whether the exported products were made out of sheet or scrap. Items exported include karandi, tumblers, etc., which are generally made from scrap by castings. Further, registration certificate produced by you did not say that you were actually engaged in the manufacture of stainless steel utensils etc. In these circumstances, the issue of the Release Order No. P/L/R/720648, dated 14th February, 1972 is viewed as not in order.

You are therefore requested to return the Release Order No. P/L/R/720648, dated 14th February, 1972 without entering into any commitment.

Admittedly, to this communication, the petitioner did not submit any reply. Subsequently the petitioner issued a notice through Counsel to the second respondent on 16th September, 1972 calling upon the second respondent to deliver the allotted goods within 15 days of receipt of the notice. The second respondent by reply dated 19th September, 1972, stated that it was examining the matter and would write in due course. This was followed up by another letter, dated 29th September, 1972 stating that the matter was still under correspondence with the licensing authority. The petitioner thereafter sent a telegram and a letter to the second respondent in November, 1972, but did not receive any reply by the time the writ petitions were filed. While so, a notice dated, 1st December, 1972 was received by the petitioner from the first respondent herein. This notice called upon the petitioner to show cause why the release order referred to already should not be cancelled under Clause 9 (a) of the Imports (Control) Order, 1955, and gave 15 days' time for showing cause and also fixed 3.00 P.M. on 16th December, 1972, for any personal hearing, if the petitioner so desired. In addition to repeating what the Controller of Imports and Exports had stated by his communication, dated 27th July, 1972, this notice put forward two other grounds for showing that the release order was not in order. One was that information had been received that the exporters Messrs. Delta Enterprises, Kakinada, had highly inflated the weight of the goods exported in the export invoices to obtain the incentive import licence under the REP Scheme for higher value than what they would have been normally entitled to. The second was, that the Central Bank of India Limited, Kakinada, had confirmed that payments against the exports made by the exporters M/s. Delta Enterprises, Kakinada, had not been realised. It is after the receipt of this notice that these two petitions were filed by the petitioner herein.

3. In W.P. No. 3394 of 1972, the petitioner has prayed for a writ of prohibition prohibiting the first respondent therein from taking any action or proceeding pursuant to his show-cause notice, dated 1st December, 1972. In W.P. No. 3379 of 1972, the petitioner has prayed for a writ of mandamus or any other appropriate

writ, order, or direction directing the second respondent therein to deliver a quantity of 22305.71 Kgs. of stainless steel sheets of 0.914 mm. to 0.457 mm., both inclusive, allotted to the petitioner under the release order, dated 14th February, 1972 at the price prevailing in March-April, 1972.

4. The petitioner in the affidavits filed in support of the respective writ petitions has contended that the first respondent had no jurisdiction to cancel the release order already granted to the petitioner, that the various grounds in support of the proposed action mentioned in the notice were not really true and that as a matter of fact, the first respondent was estopped from proceeding to take the action in question, namely, cancelling the release order already issued to the petitioner. With regard to W.P. No, 3379 of 1972, the case of the petitioner is that after it received the release order, it immediately approached the second respondent for delivery of the quantity of stainless steel sheets covered by the release order, that even though the second respondent had delivered stainless steel sheets to other persons to whom similar release orders had been issued, it had not delivered the quantity of stainless steel to the petitioner herein and that the second respondent is bound to honour the release order and deliver the stainless steel sheets in question.

5. An elaborate counter-affidavit has been filed by the first respondent in W.P. No. 3394 of 1972. This counter-affidavit in detail sets out the scheme under which the application was made and the release order was granted and contends that Messrs. Delta Enterprises, Kakinada, were not really bona fide exporters, that as a matter of fact such an exporter did not really exist, that consequently the entire export was a fictitious one, that the amounts for which goods were exported had not been repatriated into this country, as required by the rules within a period of six months, that therefore the release order being in the nature of an incentive to earn foreign exchange and no foreign exchange having been earned in the present case, the release order was not Valid in law and that therefore the first respondent was justified in proposing to take action to cancel the said release order. Out of the several grounds mentioned in the communication, dated 27th July, 1972 as well as the notice, dated 1st December, 1972, the first respondent in the counter-affidavit confined himself only to two grounds, namely, (1) the failure on the part of the

exporters, Messrs. Delta Enterprises, Kakinada, to repatriate the amount covered by the export into India; and (2) the inflation of the Value of the export alleged against the exporters, namely, Messrs. Delta Enterprises, Kakinada. Having regard to the rival contentions put forward by the parties in the present case and having regard to the nature of the relief prayed for in W.P. No. 3394 of 1972, the question for consideration is, whether the first respondent had jurisdiction to cancel the release order already issued by him to the petitioner herein pursuant to the power claimed by him under Clause 9 of the Imports (Control) Order, 1955.

6. Mr. K. K. Venugopal, learned Counsel for the petitioner, put forward, two contentions before me in support of W.P. No. 3394 of 1972. The first contention is that-even assuming that every one of the allegations made by the first respondent is true, still the first respondent had no jurisdiction to cancel the release order already issued to the petitioner, because Clause 9 of the Imports (Control) Order, 1955 deals with cancellation of only an import licence and does not deal with cancellation of a release order like the present one. The second argument is that even assuming that the first respondent had power or authority under Clause 9 to cancel the release order and further assuming that all the allegations made by the first respondent in the notice, dated 1st December, 1972 are true, still the first respondent will have no authority to cancel the release order, because he is estopped from doing so by virtue of his holding out earlier that Messrs. Delta Enterprises had made the export in question and therefore were entitled to the release order in question and that relying upon that representation made by the first respondent, the petitioner herein had parted with a sum of Rs. 2,02,981-96 in favour of Messrs. Delta Enterprise, by way of premium. I shall now consider the validity of these submissions.

7. Let me take the first submission immediately. It is necessary in this context to refer to the provisions contained in the Imports and Exports (Control) Act, 1947, as well as the Imports (Control) Order, 1955. Section 3 (1) of the Imports and Exports (Control) Act, 1947, provides that 'the Central Government may, by order published in the Official Gazette, make provisions for prohibiting, restricting, or otherwise controlling in all cases or in specified classes of cases, and subject to such exceptions if any as may be made by or under the order:

(a) the import, export, carriage coastwise or shipment as ships stores of goods of any specified description;

(b) the bringing into any port or place in India of goods of any specified description intended to be taken out of India without being removed from the ship or conveyance in which they are being carried.

Sub-section (2) of Section 3 provides that all goods to which any order under subsection (1) applies shall be deemed to be goods of which the import or export has been prohibited under Section 11 of the Customs Act, 1962, and all the provisions of that Act shall have effect accordingly. Sub-section (3) of Section 3 contemplates that notwithstanding anything contained in the Customs Act, the Central Government may, by order published in the Official Gazette, prohibit, restrict or impose conditions on the clearance, whether for home consumption or for shipment abroad of any goods or class of goods imported into India.

8. Pursuant to the powers conferred on the Government by Section 3 of the Act, the Central Government, had promulgated the Imports (Control) Order, 1955. Clause 2 of this Order defines certain expressions used in the Order and one such expression is, ' application for licence ' which has been defined as including any application made under the Import Trade Control Regulations. The expression, 'licence' itself has been defined as to include a customs clearance permit issued under the said Order. Clause 3 of this Order states that save as otherwise provided in the Order, no person shall import any goods of the description specified in Schedule I, except under, and in accordance, with a licence or a customs clearance permit granted by the Central Government or by any officer specified in Schedule II. Clause 4 deals with fees on application for licences. Clause 5 deals with conditions of licences. Clause 6 deals with refusal of licence. Clause 7 deals with amendment of licence. Clause 8 is important and it states:

The Central Government or the Chief Controller of Imports and Exports may debar a licensee or importer or any other person from receiving licences or allotment of imported goods through the State Trading Corporation of India, the Minerals and Metals Trading Corporation of India, or any other similar agency, and direct, without prejudice to any other action that may be taken against him in this behalf,

that no licence or allotment of imported goods shall be granted to him for a specified period under this Order.

9. It is not necessary for the purpose of this case to refer to the various contingencies enumerated in Clause 8 in which the power can be exercised. Clause 8-A provides:

The Central Government or the Chief Controller of Imports and Exports may suspend the grant of licences or allotments of imported goods through the State Trading Corporation of India, the Minerals and Metals Trading Corporation of India, or any other similar agency, to a licensee of importer or any other person, pending investigation into one or more of the allegations mentioned in Clause 8, without prejudice to any other action that may be taken against him in this behalf:

Provided that grant of a licence or allotment of imported goods shall not ordinarily be suspended under this clause for a period exceeding twelve months:

Provided further that on the withdrawal of such suspension, a licence or allotment of imported goods may be granted to him for the period of suspension subject to such conditions, restrictions, or limitations as may be decided by the authority aforesaid, keeping in view the foreign exchange position, indigenous production and other relevant factors.

Clause 8-B confers power on the Government to keep in abeyance application for licences or allotments of imported goods. Clause 8-C deals with publicity of action taken under Clause 8 or 8-A. Clause 9 is the most important clause as far as the present case is concerned and the same is as follows:

The Central Government or the Chief Controller of Imports and Exports or any other officer authorised in this behalf may cancel any licence granted under this Order or otherwise render it ineffective:

(a) if the licence has been granted through inadvertence or mistake or has been obtained by fraud or misrepresentation;

(b) if the licence has been granted contrary to rules or the provisions of this Order;

- (e) if the licensee has committed a breach of any of the conditions of a licence;
- (c) if the Central Government or such officer is satisfied that the licence will not serve the purpose for which it has been granted;
- (d) if the licensee has committed a breach of any law relating to customs or the rules and regulations relating to the import or export of goods or of any law relating to the regulations of foreign exchange.

The argument of Mr. Venugopal, learned Counsel for the petitioner, based on these statutory provisions, is this. Clause 9, when it deals with cancellation of a licence, refers to import licence contemplated by the Imports and Exports Control Act, 1947, and does not take in a release order which is really an allotment as in the present case. As a matter of fact, the argument of the learned Counsel that the release order is only an allotment as contemplated by clauses 8, 8-A, 8-B is made clear by the release order itself which states:

With reference to your application, letter No. dated 7th December, 1971 on the above subject, I write to say that you may approach the Minerals and Metals Trading Corporation for obtaining the allotment of the goods mentioned below.

Consequently, the release order in the present case is nothing but an order of allotment referred to and dealt with in clauses 8, 8-A and 8-B. The contention of Mr. Venugopal is that the Imports (Control) Order, 1955, makes a clear distinction between an import licence and an order of allotment, namely, the release order and Clause 9 applies only to a licence and not to a release order and therefore the first respondent herein had no jurisdiction to cancel the release order issued to the petitioner under Clause 9, as he purports to have done, and consequently he must be prohibited from doing so by the issue of a writ of prohibition. In my opinion, this argument of the learned Counsel for the petitioner is well-founded. I am clearly of the opinion that the various clauses of the Imports (Control) Order, 1955, maintain a clear distinction between an order of allotment and an import licence and Clause 9 deals only with an import licence. The distinction is obvious from another point of view also. An import licence authorises a licensee to bring into India goods from abroad for the first time. On the other hand, an order of allotment or a release

order enables the person in whose favour such an order has been issued to obtain goods already imported into India by a canalised or cent, alised agency like the Minerals and Metals Trading Corporation or the State Trading Corporation as the case may be. Therefore, merely as a construction of the language of the various clauses of the Imports (Control) Order, 1955, I have no hesitation in coming to the conclusion that Clause 9 under which alone the first respondent has purported to act has no application to the release order in question.

10. It is relevant in this context to refer to a specific statement made by the first respondent in paragraph 35 (c) of the counter-affidavit filed by him. In this paragraph he has categorically stated that he, the first respondent, is not contemplating any departmental action against the petitioner under clauses 8, 8-A and 8-B and that the show-cause notice was issued under Clause 9 of Imports (Control) Order, dated 7th December, 1955 as amended, for cancellation of the release order issued to the petitioner herein. Since a writ of prohibition is concerned only with the jurisdiction of the authority concerned, even though the first respondent did not have any jurisdiction to cancel the release order under Clause 9, I asked the learned Counsel appearing for the first respondent to show whether any other provision of the Imports (Control) Order, 1955 or any other provision contained in the Import Trade Control Hand Book of Rules and Procedure or any scheme promulgated by the Government of India enables the first respondent to cancel the release order in the present case. The learned Counsel frankly conceded that apart from Clause 9 of the Imports (Control) Order, 1955, he was not relying on any other provision, either statutory or otherwise, for seeking to have the release order cancelled. The only argument that was put forward on behalf of the first respondent which was stated in the counter-affidavit and repeated before me is this. Paragraph 41 of Section 1, Part B of the Import Trade Control Policy Volume II for 1971-72, provides that 'where a registered exporter or his nominee is eligible for a licence under the Import Policy for Registered Exporters, for an item, the import of which is canalised through a public sector agency in terms of the current import policy, the licensing authority will issue 'REP release order ' in respect of such an item, instead of issuing REP licence. The 'REP release order' will make it possible for the registered exporter or his nominee, as the case may be, to obtain his requirements according to the

release order from the canalising agency at the international price plus reasonable incidental charges:' Based on this provision, the contention as put forward in paragraph 23 of the counter-affidavit is that though Clause 9 of the Imports (Control) Order, 1955 speaks of cancellation of licence, it includes in its purview the release order also inasmuch as release orders are permits issued only in lieu of licences in respect of items canalised through the public sector agencies like the State Trading Corporation of India Limited, Minerals and Metals Trading Corporation of India Limited, etc., in terms of paragraph 97 of Import Trade Control Hand Book of Rules and Procedure 1971 and also in terms of paragraph 41, Part B, Section 1 of Import Trade Control Policy Book for April, 1971; March, 1972 Volume II. It is further contended in this paragraph that ' it is relevant to emphasise that against such release orders only imported raw materials are supplied. In other words the foreign exchange expenditure is the same both in respect of licences and Release Orders. Since Release Orders are only substitutes for Import licences for supply of imported raw materials, Clause 9 of the Imports (Control) Order could be invoked for cancellation of such Release Orders.' The same contention is reiterated in paragraph 33 of the counter-affidavit wherein it is contended:

It is clear therefore that a release Order is nothing but a substitute for the licence for obtaining imported raw materials. In other words both licence and Release Order are permits; while licence permits direct imports by the parties concerned, Release Order is a permit for obtaining the imported raw materials indigenously through the selected public sector Agencies like the State Trading Corporation of India Limited, Minerals and Metals Trading Corporation of India Limited, etc. In accordance with the accepted policy of the Government to increasingly canalise the import trade, certain raw materials are imported by the public sector Agencies selected for this purpose. These imported raw materials are distributed within the country to the persons holding valid Release Orders by the Public Sector Agencies who are granted the necessary foreign exchange by the Government for import of such raw materials. Hence as already averred in paragraph 11, the foreign exchange expenditure is the same whether the parties are granted the licence to import raw materials directly or given the Release Order to procure raw materials from the Public Sector Agencies who import them.

It is unnecessary to refer to paragraph 34 of the counter-affidavit which also merely repeats the above contention. I am clearly of the opinion that this contention of the first respondent is unsustainable in view of the clear and continuous distinction that has been maintained by the Imports (Control) Order, 1955 between a licence and an order of allotment, which is the same as the release order in the present case, under the various provisions of the Order. Consequently, I hold that the first respondent has no jurisdiction to cancel the release order issued to the petitioner in exercise of the powers conferred on him by Clause 9 of the Imports (Control) Order, 1955.

11. As far as the second submission of the learned Counsel for the petitioner is concerned, as I have already pointed out, it proceeds on the basis that even assuming that the first respondent had jurisdiction to cancel the release order under Clause 9 of the Imports (Control) Order, 1955 and further assuming that every one of the allegations made by the first respondent in the notice, dated 1st December, 1972 is true, still the first respondent cannot cancel the release order, as he is estopped from doing so. I am unable to accept this contention of the learned Counsel. I have already extracted the provisions of Clause 9 of the Imports (Control) Order, 1955. One of the grounds on which a licence could be cancelled under the clause is that the licence had been granted through inadvertence or mistake. Once the authority has got a right to cancel a licence on the ground that it had been granted through inadvertence or mistake, it is certainly not open to a person like the petitioner to contend that the authority cannot exercise that power, because the said authority itself had earlier proceeded on the basis that the exporter was validly entitled to the release order and that consequently the nominee himself was entitled to such a release order. The very provision for cancellation of a licence granted through inadvertence or mistake bars any such contention in this behalf. So long as that provision is a statutory one, it is not open to a person like the petitioner to put forward the contention based upon estoppel, because there cannot be estoppel against law. Hence, I am unable to sustain the second contention of the learned Counsel for the petitioner.

12. It has been repeatedly pointed out in the counter-affidavit by the first respondent herein that the nation has lost valuable foreign exchange, because

Messrs Delta Enterprises, Kakinada, had not repatriated the amount for which goods were exported and that consequantly to compel the Government to sustain the release order already issued in favour of the petitioner would lead to national loss in the form of foreign exchange. If any such thing has happened, the first respondent alone has to thank himself for the same. It is contended again and again in the counter-affidavit that Messrs. Delta Enterprises had not repatriated foreign exchange to the extent of seven lakhs of rupees in this case and that the nation has lost foreign exchange to that extent, and that at the same time, the first respondent had been compelled to give release order to the petitioner herein. It is mentioned that under the relevant regulations, an exporter is bound to repatriate foreign exchange covering the value of the export within a period of six months from the date of the export and that the exporter in the present case has not done so. In the present case, as admitted by the first respondent himself in paragraph 24 of the counter-affidavit, the exports relevant for the release order in question were covered by MAC 772286, MAC 772278 MAC 772279 and MAC 772287 involving foreign exchange to the extent of Rs. 2,62,867.86. It is represented that these exports took place in July, 1971. The release order in question was issued on 14th February, 1972. That means, by the time the release order was issued, the period of six months prescribed for repatriation of the foreign exchange had expired. Notwithstanding this, if the first respondent had chosen to issue the release order without verifying whether the foreign exchange had been repatriated or not, it is certainly not open to him now to contend that it will be a ground for him to cancel the release order issued to the petitioner herein. Again in paragraph 33 of the counter-affidavit, the first respondent states:

In this connection it is respectfully submitted that the exporter Messrs. Delta Enterprises, Kakinada, has always been in the habit of nominating some third parties for receiving the benefit of replenishment licences against his own exports. And it is understood from the Reserve Bank of India that in all these cases, the export proceeds (foreign exchange earnings) amounting to nearly 7 lakhs are outstanding. In other words, while the exporter managed to get the licence/Release Orders transferred to his nominee, he has failed to repatriate the corresponding foreign exchange to the tune of 7 lakhs against the relevant exports. It is therefore evident that in each and every case he has deliberately

nominated third parties for obtaining replenishment licences with the intention of defrauding the Government of the valuable foreign exchange and escaping his own responsibility in the matter.

With the knowledge that the exporter in the present case, namely, Messrs. Delta Enterprises, Kakinada, was always in the habit of nominating some third parties for receiving the benefit of replenishment licences, if the first respondent had chosen to grant a release order to the petitioner, namely, the nominee of Messrs. Delta Enterprises, Kakinada, certainly it is not open to him now to bemoan the consequence and contend that the petitioner will have to lose the release order for the fault committed by the first respondent himself. It is very unfortunate and extremely regrettable that in this particular case not only the country has lost, valuable foreign exchange to the extent of rupees, sevenlakhs, but the petitioner herein is also enabled to get huge quantity of imported materials, thereby the country losing at both the ends. But that is certainly attributable only to the policy that had been pursued and followed by the first respondent and his superiors without taking adequate precaution for the purpose of assuming that the foreign exchange referable to the export had actually been repatriated into the country and that thereby the incentive import licence really worked as an incentive to export and earn valuable foreign exchange and not worked to the detriment of the country.

13. In any event the considerations referred to above which are matters of policy for the Government to decide, do not have any bearing on the present question, namely, whether the first respondent has jurisdiction or not to cancel the release order granted to the petitioner herein under Clause 9 of the Imports (Control) Order, 1955. I have already held that the first respondent has no such jurisdiction.

14. The learned Counsel for the first respondent sought to contend before me that the release order issued to the petitioner herein was valid only for a period of six months, that since the period of six months had already expired, it does not continue to be valid and that therefore no purpose would be served by issuing a writ of prohibition. I am unable to accept this contention. I have already referred to the fact that after the receipt of the release order in February, 1972, the petitioner

wrote to the second respondent on 15th March, 1972 and 5 th June, 1972 calling upon the second respondent to deliver the stainless steel sheets. It is only the second respondent who did not deliver the same on instructions from the first respondent herein. Therefore, it is not open to respondents 1 and 2 herein to take advantage of their own wrong and to contend that the release order has ceased to be valid and therefore no writ of prohibition can be issued.

15. The result is, W.P. No. 3394 of 1972 is allowed and a writ of prohibition as played for will issue. There will be no order as to costs. W.P. No. 3379 of 1972.-- As I have pointed out already, this writ petition prays for the issue of a writ of mandamus to the second respondent herein However, the learned Counsel for the petitioner and the learned Counsel for the second respondent had agreed among themselves that in the event of the writ of prohibition being issued against the first respondent in W.P. No. 3394 of 1972 and the release order, dated 14th February, 1972 being held valid, the second respondent herein has no objection to sell that quantity of stainless steel sheets to which the petitioner would have been entitled if delivery had been effected in March, 1972, by a sale note to be issued now at the price fixed for the quarter October-December, 1973 and that the sale note will be issued and delivery will be effected within two weeks from the date of the judgment. In view of this agreement between the parties and in view of the fact that I have issued a w it of prohibition in W.P. No. 3394 of 1972 and rejected the contention of the first respondent that the release order has -ceased to be valid, the learned Counsel for the petitioner, does not press the relief for the issue of a writ of mandamus. Accordingly W.P. No. 3379 of 1972 is dismissed on that basis. There will be no order as to costs.