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Court : Kolkata

Decided On : Dec-14-1984

Reported in : 1985(6)ECC93

Judge : Ajit Kumar Sengupta, J.

Appellant : Kailash Kumar Marodia

Respondent : Joint Chief Controller of Imports and Exports and ors.

Disposition : Application allowed

Judgement :

Ajit Kumar Sengupta, J.

1. The petitioner carries on business under the name and style of 'Steel and Allied Product Exporters' as sole proprietor thereof. The petitioner also carries on business of import and export of various iron and steel materials under the name and style of Steel and Allied Product Exporters. The petitioner, it is contended, is an actual user of various iron and Steel materials. On 21st November, 1983 the Chief Controller of Imports and Exports issued a Circular letter No. 31/83 dated November 21, 1983 regarding the application for supplementary licences of actual users (Industrial) during 1983-84 for import, inter alia, of seconds/second

grade/defective/cuttings circles of sheets, etc., being entry No. 1 in Appendix 6 of the Import and Export Policy, Volume I of 1983-84. The said circular is in the following terms:

According to Para 36 of the Import and Export Policy (Vol. I) for 1983-84 actual users (Industrial) can apply for the grant of supplementary licence for tinplate waste/waste and secondary grades of sheet referred to above, with necessary justification for import.

2. It has been provided in Para. 43(4) of the Handbook of Import-Export Procedures 1983-84 that the sponsoring authority, while recommending applications for supplementary licences, will also indicate in their recommendations, the reasons for which the import of the items recommended by them is essential and the requirements of the actual users concerned cannot be met from automatic licence or indigenous sources or other authorised channels of import.

3. It has been decided that in the case of tinplate waste/waste and secondary grades of sheets, etc., referred to above, while recommending a supplementary import licence, the sponsoring authority should also keep in view the actual consumption in quantity terms, of the item in question (imported material only) by the concerned industrial unit during the previous three years, i.e., 1980-82 and 1982-83. In their import recommendation also, the sponsoring authority should mention the actual consumption in the above three years, so that the decision on the import application may be taken keeping the same in view.

4. The licensing authorities, while forwarding the application to Hd. quarters office for consideration of the Supplementary Licensing Committee, should check up that the sponsoring authority has mentioned the consumption figures in the recommendation.

2. In terms of the said circular, the petitioner made an application in the prescribed form A before the Directorate General of Technical Development, Udyog Bhawan, New Delhi (hereinafter referred to as the sponsoring authority) on 9th December, 1983 for supplementary licence for the year 1983-84 under paragraph 35(1) of the

said Import and Export Policy, Volume-I for 1983-84 read with paragraph 43 of the Hand Book of Import and Export Procedures, 1983-84 in respect of item No. 1 of Appendix 6 of the said Import and Export Policy, 1983-84. Appendix 6 of the Import and Export Policy of 1983-84 contains the List of limited permissible items of raw materials (Iron and steel and ferro alloys). Item-1 of Appendix 6 read as follows:

Carbon steel items: 1. All seconds/second grades/defectives/cuttings/circlesof sheets/plates/coils/strips in any shape/section/form not elsewhere stated in coated/plated or uncoated conditionincluding tin/zinc/aluminium/aluminium alloy coated/plated and commodity marketed as tin-free steel in the descriptionsabove stated.

3. The said application was accompanied by a letter dated 9th December, 1988, wherein the petitioner stated that the petitioner did not apply for any automatic licence to the respondent No. 1 on the ground that the items mentioned in Appendix-7 of the said Import Policy were not suitable for the purposes of the petitioner and automatic licence could not be granted for item 1 of Appendix-6. It was further stated that the petitioner did not have any import licence in hand and in the absence of such import licence, the petitioner could not make any firm arrangement for regular availability of raw materials for smooth and uninterrupted running of the said factory. In the said letter the petitioner also stated that the material in question was not available from indigenous sources. The petitioner gave further information and details necessary for issuance of the supplementary licence in accordance with the said circular dated November 21, 1983.

4. The Directorate General of Technical Development, after several correspondence exchanged by and between the petitioner and the said sponsoring authority in this regard, by letter No. YO/5(70)/88/agricultural implements/1561 dated March 19, 1984 recommended the said' application of the petitioner for grant of the import licence for consideration of the Supplementary Licensing Committee of respondent No. 2.

5. The said Supplementary Licensing Committee at its 19th Meeting held on March 30, 1984 considered the said application of the petitioner for grant of

supplementary licence during 1983-84 and the said recommendation of the Directorate General of Technical Development and agreed to issue the supplementary licence for import of (a) defective secondary grades G.P. sheets/coils 35 tons worth Rs. 3.225 lakhs and (b) defectives/secondary CRCA sheets/coils 71 tons worth 2.13 lakhs. The said decision of the Supplementary Licensing Committee is recorded in a letter dated April 7, 1984 issued by the Chief Controller of Imports and Exports to the Joint Controller of Imports and Exports.

6. In the said letter it was, inter alia, stated as follows:

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The Committee agreed to the issue of supplementary licence for the import of (a) defective/secondary grades G. P. sheets/coils 86 tonnes worth Rs. 3.225 lakhs (Rupees three lakhs, twenty two thousand and five hundred only) and (b) defective/secondary/CRCA sheets/coils (71 tonnes) worth Rs. 2.13 lakhs (Rupees two lakhs and thirteen thousand only).

7. Thereafter the Joint Chief Controller of Imports and Exports, by a letter dated 8th May, 1984, intimated the petitioner that since the defective/secondary grade G. P. sheets have been brought under canalisation list as per current (1984-85) Import and Export Policy, the case of the petitioner, although recommended by the Supplementary Licensing Committee, cannot be considered and therefore treated as rejected and the petitioner was further advised to apply afresh in terms of paragraph 73(2) of the Import Policy (1984-85).

8. In this application under Article 226 of the Constitution of India the petitioner has challenged the said decision of Respondent No. 1, the Joint Chief Controller of Imports and Exports, in not giving effect to the recommendation of the Supplementary Licensing Committee and approved by the Chief Controller of Imports and Exports. It is contended that respondent No. 1 being the authority subordinate to the Chief Controller of Imports and Exports has no competence, jurisdiction or authority of law to sit in judgment or appeal or revision or review over the recommendation, decision and direction of the Chief Controller of Imports and Exports and/or Supplementary Licensing Authority.

9. This application has been moved upon notice. It was agreed that this matter can be disposed of on the basis of the affidavits as a contested application. Affidavits have since been filed.

10. An affidavit-in-opposition has been filed by Mr. K.C. Das, the Deputy Chief Controller of Imports and Exports. It has been stated in the said affidavit-in-opposition that Head Quarters Supplementary Licensing Committee had considered the case of the petitioner in its 19th Meeting held on March 30, 1984 and the Committee agreed to issue supplementary licence for import of (i) defective/second grades of G. P. sheets/coils (86 tonnes) worth Rs. 3.225 lacs and (ii) defectives/secondary CRCA sheets/coils (71 tonnes) worth Rs. 2.13 lakhs and forwarded the decision of the said Supplementary Licensing Committee vide letter dated 7th April, 1984, which was received in the office of respondent No. 1 on 12th April, 1984 but the application was considered by respondent No. 1 on 30th April, 1984. Meanwhile, the Import Policy for the year 1984-85 was announced on April 12, 1984. The said items have been canalised to be imported through the Steel Authority of India Ltd. which are covered by Sl. No. 56 and 57 of Appendix-5, Part-A of the Policy Book. Because of the change in the Import Policy as regards the import of the said items, the Chief Controller of Imports and Exports, New Delhi has issued another licensing instruction under IPC Circular No. 8/84 dated 25th April, 1984 which was received by respondent No. 1 on 28th April, 1984 in respect of Supplementary Licence to be issued under IPC Circular No. 31/83 dated November 21, 1983. As per instructions of the said Circular No. 8/84, it was decided that the application pending in the Head Quarters as well as in the Regional Licensing Offices including those which were considered earlier by the Supplementary Licensing Committee at headquarters and import licences relating to it could not be issued before the announcement of the Import Policy of 1984-85, may be disposed of by rejection and the actual user concerned asked to apply a fresh in terms of the provisions contained in paragraph 73(2) of the Import Policy Book for 1984-85. It was further decided that application for 1983-84 as per the provision in paragraph 73(2) of the Policy Book may be granted upto 25% of the actual consumption of the imported material during 1983-84 duly certified by Chartered Accountant/Cost Accountant and it is not necessary in these cases to obtain revised recommendation of the sponsoring authority and/or consumption

statement duly certified by the sponsoring authorities concerned. The application of the writ petitioner could not be considered in view of the said revised instructions as per IPC Circular No. 8/84 dated 25th April, 1984 which was received on the date of consideration of the said application. The petitioner's application had accordingly been rejected with an instruction to apply afresh in terms of paragraph 73(2) of Import Policy for the period 1984-85.

11. Mr. Taher Ali, the learned Advocate for the respondents, has submitted that the petitioner should have made an application in terms of paragraph 73(2) of the Import Policy for the year 1984-85 for consideration of issue of licence for the items applied for and the petitioner would be entitled for the said quantity and value as have been approved by the Supplementary Licensing Committee and there would not be any change in their entitlement. He submits that the petitioner would be entitled to get the same benefit which was sanctioned by the Supplementary Licensing Committee if the petitioner applies in terms of paragraph 73(2) of the Import Policy for the year 1984-85.

12. Mr. Murarka, learned Advocate appearing for the petitioner, has submitted that the Joint Chief Controller of Imports and Exports has no jurisdiction to refuse the grant of any licence in view of the provisions contained in Rule 6(1)(c) of the Imports (Control) Order, 1955. He has submitted that the entitlement of the petitioner is under the Import Policy of 1983-84 and if the petitioner now applies in terms of paragraph 73(2) of the current Import Policy for 1984-85, then the authorities concerned will treat the entitlement as against the Import Policy for 1984-85. Thus, the petitioner would be deprived of the benefit which the petitioner was and is entitled to under the Import and Export Policy for 1983-84.

13. Mr. Murarka, learned Advocate of the petitioner, has drawn my attention to a decision of the Madras High Court in the case of Sha Maggajee Saremal & Bros. v. Joint Chief Controller of Imports and Exports reported in : AIR1966 Mad309 in support of his contention that an application for a particular period must be considered only in the light of the policy relevant to that period and that if an application for licence is kept pending such licence cannot be refused on the basis of later policy which might have changed the position with regard to the licence for

the import of the item applied for. He has also relied on another decision in the case of General Films Distributors Ltd. v. Union of India reported in : 1984(17)ELT68(Bom) . It was held that Rule 6(1)(c) of the Imports (Control) Order is not mandatory but merely directory. Therefore, it was futile for the Department to urge that inspite of contract they are entitled to refuse the import licence uuder Rule 6(1)(c).

14. I have considered the rival submissions. The application of the petitioner for grant of supplementary licence was under the Policy of 1983-84. The said application was duly processed by the sponsoring authority. The Supplementary Licensing Committee considered the recommendation of the sponsoring authority. The decision was taken on 30th March, 1984. The said decision was communicated, by the Chief Controller of Imports and Exports to the Joint Chief Controller of Imports and Exports by a letter dated 7th April, 1984.

15. The contention of Mr. Taher Ali, learned Advocate for the respondents, is that on 12th April, 1984 the current policy (1984-85 policy) was announced and the item was placed in the canalised list and as such no licence can be issued for such item. This contention in my judgment cannot be accepted. The Supplementary Licensing Committee considered the application under 1983-84 policy. They agreed to the issue of the supplementary licence under the said policy. The said decision was taken on 30th March, 1984, that is to say, during the currency of the 1983-84 policy. Had the Supplementary Licensing Committee decided that the licence would be governed by the policy which would be coming into force in course of next few days, that is to say, 1st April, 1984 or soon thereafter, in that event they would have specified that such licence would be issued in terms of the 1984-85 policy. From the letter of the Chief Controller of Imports and Exports dated 7th April, 1984 it would be evident that the supplementary licence was granted for imports of banned items during 1983-84 period. The licence when issued would specify that the licence would be governed by the 1983-84 policy although it might be issued during the currency of the 1984-85 policy.

16. In my view, the Madras High Court has correctly pointed out in the decision referred to by the learned Counsel, for the petitioner that the application for import licence for a particular period must be considered only in the light of the policy relevant to that period and cannot be refused on the basis of the later policy which might have changed the position with regard to the licence for the import of the item applied for. The said decision supports the contention raised by the petitioner.

17. Rule 6(1)(c) of the Imports (Control) Order, 1955 reads as follows:--

6 Refusal of licence.--(1) The Central Government or the Chief Controller of Imports and Exports may refuse to grant a licence or direct any other licensing authority not to grant a licence:--

* * * (c) if it has been decided to canalise imports and distribution thereof through special or specialised agencies or channels;

* * *(2) The refusal of a licence under Sub-clause (1) shall be without prejudice to any other action that may be taken in respect of an application by a licensing authority under the relevant import policy and procedure in force.

18. Under Rule 6(1)(c) of the Imports (Control) Order, 1955 power to refuse any licence for reasons mentioned therein has been granted to the Central Government or the Chief Controller of Imports and Exports. The said power, therefore, for the reasons stated in Rule 6(1)(c) of the Imports (Control) Order, 1955 could be exercised only by either the Central Government or the Chief Controller of Imports and Exports, namely, respondent No. 2 herein. The said power has not been granted to or delegated to respondent No. 1, the Joint Chief Controller. In the premises, respondent No. 1 has no competence, jurisdiction or authority to exercise any power under Rule 6(1)(c) of the Imports (Control) Order, 1955 and refuse the grant of the said licence to the petitioner for the alleged reasons contained in the letter dated 8th May, 1984 that the item in question has been brought under canalisation under the current 1984-85 Import Policy.

19. In any event, the said direction under Rule 6(1)(c) of the Imports (Control) Order, 1955 is however merely directory and discretionary and does not totally

prohibit the grant of import licence. In other words, the said rule is not mandatory. I respectfully agree with the view taken by the Bombay High Court. In the aforesaid decision, it is laid down that Rule 6(1)(c) of the Imports (Control) Order, 1955 is not mandatory but merely directory. There is, therefore, no impediment in granting supplementry licence even though it has been decided to canalise the import and distribution through special or specialised agency or channels. Thus the view taken by the Joint Chief Controller of Imports and Exports that because the item has been canalised in the 1984-85 policy, the item cannot be allowed to be imported under any supplementary licence does not also hold good.

20. According to the respondents, the letter dated 7th April, 1984 issued by respondent No. 2 directing respondent No. 1 to issue a supplementary licence to the petitioner was received in the office of respondent No. 1 on 12th April, 1984. No reason has been given as to why before the receipt of circular dated 25th April, 1984 issued by the Joint Chief Controller of Imports and Exports no action was taken by respondent No. 1. It is not in dispute that under similar circumstances respondent No. 1 issued licences to several other applicants in respect of the identical goods under the Import Policy for 1983-84. More than one licence had been issued by respondent No. 1 after April 12, 1984 but before receipt of the circular dated 25th April, 1984. Respondent No. 1 received the necessary instructions for issuance of licence on 12th April, 1984. But the matter was not taken up until 30th April, 1984. On 2nd May the petitioner's application for licence was rejected. There was no ground for refusing licence to the petitioner and to deprive the petitioner of a valuable right which has already accrued to the petitioner under the Import Policy of 1983-84. Paragraph 250 of the Import and Export Policy for 1981-85 provides as follows:

250. Applications from actual users for the grant of supplementary licences which have not been disposed of as on 1-4-1984 will be decided by the licensing authorities without making a back reference to the sponsoring authorities concerned.

21. Paragraph 250 contains transitional arrangements. It is evident that the applications which have not been disposed of on 1st April, 1984 would have to be

disposed of or decided on the basis of the current Import and Export Policy. But the applications which were received and disposed of prior to 1st April, 1984 would not be covered by the provisions of the current policy.

22. Mr. Taher Ali has submitted that the respondents are prepared to issue licence to the petitioner if the application is made in terms of paragraph 73(2) of the current policy.

23. Paragraph 73(2) is in the following terms:

In the case of items canalised for import in this policy, but which were not canlised in the earlier policy, the eligible actual users may be allowed to make direct imports to the extent of 25% of the c.i.f. value of their actual consumption of that item (imported material only) during the year 1983-84. Actual users who wish to avail of this facility should make their import applications to the licensing authorities concerned along with the required statement of consumption duly certified by a Charatered Accountant or Cost Accountant or Company Secretary or sponsoring authority. Such applications should be made so as to reach the licensing authorities concerned not later than 15th May, 1984. Such actual users should register only their balance requirements with the canalising agency concerned.

24. On a reading of paragraph 73(2) it appears that eligible actual users may be allowed to make direct import to the extent of 25% of the c.i.f. value of their actual consumption of that item during the year 1983-84. This is an independent right granted to an importer under 1984-85 policy. Paragraph 73(2) has no relevance so far as the entitlement of an importer under the 1983-84 policy is concerned. That apart, the authorities concerned intimated the petitioner only on 8th May, 1984 that the licence would not be granted and asked the petitioner to make fresh application. The last date expired on 15th May, 1984. Thus, there is no scope at the present moment for making a fresh application to the authorities concerned for a licence in terms of paragraph 73(2). Even otherwise issuance of such licence under the current policy (1984-85) has no bearing on the licence, if any, issued under the policy of 1983-84. The respondents cannot deny the petitioner's right which accrued to the petitioner under the policy of 1983-84. Delay in issuing the

licence has not been explained. As indicated earlier, the respondents have issued licences under the 1983-84 policy even after 12th April, 1984 when the current policy was announced. The instructions from the Joint Chief Controller not to issue the licence came only after 30th April, 1984. This inordinate delay in not processing the application for licence of the petitioner as recommended by the sponsoring committee is not explained. Whether or not a person is entitled to a licence under the old policy which was recommended by the competent authority cannot depend on the receipt of circular directing the rejection of the application already recommended. As a matter of fact, licence was issued under the 1983-84 policy till such time the circular dated 25th April, 1984 did not reach the authorities concerned. Thus the right of the importer is made to depend on the whims and convenience of the licensing authority. Where the application was processed before 30th April, 1984 the licence was issued although the new policy was announced on 12th April, 1984. Because the application of the petitioner was not processed prior to 30th April, 1984 the petitioner was denied the right of having a licence as recommended by the competent authority. This would amount to discrimination. It would also go to show that there is no prohibition in issuing a licence recommended under the 1983-84 policy. A right already accrued cannot be taken away because of the lapse of the authority in not complying with the direction of a superior authority who recommended the issuance of licence. If the contention of the respondents is correct that because of the canalisation of the item under 1984-85 policy no licence can be issued under the 1983-84 policy, in that event the respondents could not have issued any licence after 1st April, 1984.

25. One other aspect of the matter requires consideration. In this case the Chief Controller of Imports and Exports is the higher authority who has taken the decision considering the pros and cons of the matter on the basis of the recommendation made by the sponsoring licensing authority. This sponsoring licensing authority was constituted under the Government Notification. They considered the application of the petitioner and thereafter recommended the matter to the Supplementary Licensing Committee of the headquarters under the Chief Controller of Imports and Exports. The Supplementary Licensing Committee agreed that a licence should be issued under the 1983-84 policy to the petitioner. The decision was communicated on behalf of the Chief Controller to the Joint

Chief Controller on 7th April, 1984. After a lapse of one month the Joint Chief Controller of Imports and Exports at Calcutta rejects the said application. The circular dated 25th April, 1984 was also issued by the Joint Chief Controller at Delhi. This in my view is highly irregular and contrary to all established norms and procedures. The Joint Chief Controller is the subordinate authority who cannot deal with the application. The application of the petitioner had already been considered by the appropriate authority and the appropriate authority upon consideration of all the relevant facts took a decision to grant the licence. The Joint Chief Controller of Imports and Exports was only directed to issue the licence. He could not sit in appeal over the decision of the authority to which he is subordinate. According to him, such licence could not be issued. He could have brought it to the attention of Chief Controller of Imports and Exports but the Joint Chief Controller of Imports and Exports was not clothed with the jurisdiction to question the decision of the Chief Controller of Imports and Exports or the Supplementary Licensing Committee. The case which was dealt with under the Government Notification by the Supplementary Licensing Committee cannot be reviewed or rejected by the subordinate licensing authority. The subordinate licensing authority ought to have complied with the direction contained in the letter dated 7th April, 1984.

26. For the reasons aforesaid, this application succeeds. Respondent No. 1, the Joint Chief Controller is directed to grant licence in accordance with the direction of the Supplementary Licensing Committee for the items in question under the Import Policy of 1983-84 as per letter dated 7th April, 1984 within a week from the date of communication of this order.

27. Let a plain copy of this order duly countersigned by the Assistant Registrar (Court) be given to the learned Advocate for the petitioner.

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