

Star Diamond Co. India vs Union Of India & Ors on 12 September, 1986

Equivalent citations: 1987 AIR 179, 1986 SCR (3) 781, AIR 1987 SUPREME COURT 179, 1987 ALL CJ 50, 1987 CRILR(SC MAH GUJ) 50, (1992) 61 ELT 170, 1986 SCC(CRI) 431, (1986) JT 413 (SC), (1986) 10 ECC 403, (1986) 2 CURCC 925, (1986) 9 ECR 7, (1986) 3 SCJ 578, 1986 (4) SCC 246, (1986) 3 SUPREME 469

Author: Sabyasachi Mukharji

Bench: Sabyasachi Mukharji, R.S. Pathak

PETITIONER:
STAR DIAMOND CO. INDIA

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT 12/09/1986

BENCH:
MUKHARJI, SABYASACHI (J)
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MUKHARJI, SABYASACHI (J)
PATHAK, R.S.

CITATION:
1987 AIR 179 1986 SCR (3) 781
1986 SCC (4) 246 JT 1986 413
1986 SCALE (2) 406
CITATOR INFO :
F 1987 SC 1794 (14,15,23)
RF 1992 SC 248 (44)

ACT:
Import Policy 1985-88: Holders of Additional Licences for 1978-79 - Whether entitled to import both 'canalised' and 'non-canalised' items-Effect and interpretation of Courts order.
Constitution of India, Article 141; Court's decision laying down position in law binding on all.
Administrative law.
Administrative instructions-Whether create estoppel against subsequent directions.

HEADNOTE:

This Court by its order dated 18th April 1985 in Union of India v. Rajnikant Bros. (Civil Appeal No. 1423 of 1984) directed that save and except items which were specifically banned under the prevalent Import Policy at the time of import, parties would be entitled to import all other items whether 'canalised' or 'uncanalised' and in accordance with the relevant rules. The effect of this direction came to be considered in Raj Prakash Chemicals Ltd. v. Union of India, [1986] 2 SCC 297, and M/s. Indo Afghan Chamber of Commerce & Ors. v. Union of India, (AIR 1986 SC 1567). The effect has also been explained in Union of India v. M/s. Godrej Soaps Pvt. Ltd., (S.L.P.No. 8144 of 1986).

The applicant was neither a party nor was served with any notice of the aforesaid proceedings. The respondents having not permitted clearance of its goods in view of the decisions in Prakash's case and Indo Afghan Chamber of Commerce's case the applicant filed petitions contending that it was not bound by the directions contained therein.

Disposing of the petitions, the Court,

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HELD: Decisions of this Court laying down the position in law, are laws binding on all. [782 G]

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Whether importation of canalised items would be covered by the order was not adverted to in the first order dated 18th April, 1985. Use of the expression "Whether canalised or not" was intended to convey that both canalised and non-canalised items would be covered within the ambit of the order. [783 G]

The position has been clarified by the respondent's letter dated June 18, 1986. The Government of India's letter dated April 23, 1986 which is not in consonance with the subsequent direction, would not in any way affect the position or create any estoppel. Nor can such a letter be used as an argument that that was the Government's understanding of the matter. [783 H: 784 A-B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Misc. Petitions Nos. 20021-22 of 1986.

in Civil Appeal No. 2924 of 1984.

From the Judgment and order dated 22.7.1983 of the Delhi High Court in W.P. No. 963 of 1982.

S.N. Kacker, P.M. Amin, Atul, B. Munim and Ashok Grover for the Applicant.

A.K. Ganguli, Miss Sushma Relan and Miss A. Subhashini for the Respondents.

The Judgment of the Court was delivered by SBYASACHI MUKHARJI, J. These two Civil Misc. Petitions are by Star Diamond Company India. The applicant has referred to the judgments of this Court in Raj Prakash's case [1986] 2 SCC 297 dated 5th March, 1986 and Indo Afghan Chamber of Commerce's case AIR 1986 SC 1567 dated 15th May, 1986. The applicant states that the applicant was neither a party nor was served with any notice of the said proceedings resulting in the said two decisions. According to the applicant, it was not bound by the directions therein. We are unable to accept the said contentions. Such decisions of Court laying down the position in law are laws binding on all.

In the order of this Court dated 18th April, 1985, the question of entitlement under certain circumstances came up for consideration. The Government had wrongfully refused to allow Export House Certificates to those who had not diversified their exports. It was held by this Court following the decisions of several High Courts that this was wrong. This Court in the order dated 18th April, 1985 in Civil Appeal No. 1423 of 1984, (a) confirmed the orders of the High Court, quashed the impugned orders of the Government and directed the Government to issue necessary Export House Certificates for the year 1978-79; (b) It was further directed that Export House Certificates should be granted within three months from this date. (c) Save and except items which are 'specifically banned under the prevalent import policy at the time of import', the parties- the merchants would be entitled to import all other items whether canalised or uncanalised, and in accordance with the relevant rules. Both canalised and uncanalised items could be imported in accordance with the relevant rules except those which were specifically banned under the prevalent import policy at the time of import. The effect of this direction came to be considered in Raj Prakash Chemicals Ltd. v. Union of India (supra). We have this date explained the effect of the same in Union of India v. M/s Godrej Soaps Pvt. Ltd & Anr., (Civil Appeal No. 3418/86 arising out of SLP (Civil) No. 8144 of 1986). This question further came up for examination in the case of M/s Indo Afghan Chamber of Commerce & Ors. v. Union of India, (Writ Petition No. 199 of 1986) (supra). This day we have also in the judgment in M/s Godrej Soap's case explained the true purport of the said decision.

The respondents have not permitted, according to the applicant clearance of the goods in view of the said two decisions referred to hereinbefore.

The case of the applicant is that it is not bound as the applicant was neither a party to any of the aforesaid proceedings nor any notice was given. We are unable to accept this position. For what we held in the said two decisions, we crave leave to refer to the said two decisions. We reiterate as we have mentioned in M/s Godrej Soaps' case whether importation of canalised items would be covered by the order was not adverted to in the first order dated 18th April, 1985. Use of the expression "whether canalised or not" was intended to convey that both canalised and non-canalised items would be covered within the ambit of the order.

The position has been clarified by the letter dated 18th June, 1986 written by the respondent which appears at page 132 of the Paper Book. It has been mentioned that the holders of additional licence issued for 1978-79 would be entitled to import only those goods which are included in Appendix 6

Part 11 of AM 85-88. The fact that the Additional Secretary to the Government of India, Ministry of Finance (Department of Revenue) on 23rd April, 1986 wrote a letter which is not in consonance with the subsequent direction would not in any way affect the position or create any estoppel. Nor can such a letter be used as an argument that that was the government's understanding of the matter. That is irrelevant.

In the premises the interim order prayed for in these applications is refused.

The applications are thus disposed of. There will be no order as to costs.

P.S.S.