

Punjab-Haryana High Court

Malwa Cotton Spinning Mills Ltd. vs Joint D.G.F.T. on 20 January, 2003

Equivalent citations: 2003 (87) ECC 583, 2003 (153) ELT 525 P H

Author: N Sodhi

Bench: N Sodhi, M Kumar

JUDGMENT N.K. Sodhi, J.

1. Petitioner before us is an exporter of different kinds of yarns including cotton nylon yarn. The Joint Director General of Foreign Trade, Ludhiana issued an Annual Advance Licence dated 5-10-1999 to the petitioner on the basis of which it could export material worth Rs. 3,90,74,750/- (F.O.B. value) and was entitled to import inputs worth Rs. 2,93,79,510/-. The material could be imported and exported in accordance with the input-output norms as fixed by the Department. The imports against such a licence are exempt from payment of additional customs duty, special additional duty, anti dumping duty, safeguard duty, if any, in addition to Basic Customs duty and surcharge thereon. The aforesaid licence could be obtained only in respect of those items for which standard input-output norms have been declared and in case such norms are not declared the exporter has to approach the Director General of Foreign Trade, New Delhi for getting those norms declared. The petitioner wanted to export cotton nylon blended yarn (75% cotton - 25% nylon) and approached the Special Advance Licensing Committee in the office of the Director General of Foreign Trade, Ministry of Commerce, New Delhi with an application dated 3-8-1998 for fixing standard input-output norms for this variety of cotton. The application was filed along with the requisite documents and on receipt thereof the Joint Director General of Foreign Trade, New Delhi as per communication dated 28-9-1998 informed the petitioner as under :

"With reference to your application No. Nil dated 3-8-98 on the subject mentioned above, I am directed to inform you that your request has been considered by SALC in its 20/99 meeting held on 24-9-98. The Committee observed that this item is covered under Sr. No. J-50 of SIONs for textiles and, therefore, it was decided to maintain status quo".

2. Petitioner utilising the Annual Advance Licence held by it and after the receipt of the aforesaid communication from the Department imported 9045 Kg. of nylon fibre on 9-3-2000 and some quantity of raw cotton on 10-4-2000. It also exported different kinds of yarns including 100 per cent cotton yarn, cotton/nylon yarn (85/15) and cotton/nylon yarn (75/25) during the period from December, 1999 to May, 2000. After importing the raw material and exporting different kinds of yarns, the petitioner applied to respondent No. 1 for redemption of obligation of the Annual Advance Licence. It may be mentioned that redemption of obligation is a kind of a certificate issued by the Department certifying that the licensee had fulfilled its obligations in terms of the licence. Respondent No. 1 has refused to issue the redemption certificate on the basis of a letter dated 19-10-2001 addressed to him by the Joint Director General of Foreign Trade, New Delhi whereby the Department has now taken the view that entry at serial No. J50 in the Standard Input-Output Norms (SION) does not cover cotton nylon blended yarn. Respondent No. 1 then communicated this decision to the petitioner and also called upon it to pay duty on the material imported along with interest thereon. It is this decision of the Department which is now under challenge in this petition filed under Article 226 of the Constitution. The deficiency letter dated 6-3-2002 issued by

respondent No. 1 requiring the petitioner to deposit customs duty and interest on the imported material and remove the deficiencies in its Annual Advance Licence has also been impugned in this writ petition.

3. In response to the notice of motion, the respondents have filed their reply. It is pleaded that in case the petitioner had any grievance with the Department it should have approached the Grievance Committee constituted in the office of the Director General of Foreign Trade, New Delhi and that the present writ petition is not the appropriate remedy. It is also pleaded that the export product at serial No. J50 of the Textiles Product Group as contained in the Standard Input Output Norms is clear and that no product containing material other than man made can be covered under this serial number. It is admitted that the petitioner before importing and exporting the products had obtained the Annual Advance Licence but according to the respondents, it (petitioner) did not inform the Department that they are going to make export of cotton nylon blended yarn and, therefore, while issuing the Annual Advance Licence the respondents were not aware as to what material the petitioner was going to export and import, it is further stated that it was only at the time of filing of export documents by the petitioner that the respondents came to know of the wrong classifications. It was then, according to the respondents, that the matter was reconsidered and confusion removed.

4. We have heard the learned counsel for the parties and are of the view that the writ petition deserves to succeed. It is not correct on the part of the respondents to state that the petitioner did not disclose in its application the items which it intended to export. In the application dated 3-8-1998 (An-nexure P-1 with the writ petition) which the petitioner had filed for the fixation of Standard Input Output Norms it was clearly stated that the petitioner wanted such norms to be fixed for cotton nylon blended yarn (75% cotton--25% nylon) and it was on the basis of this application that* the Department informed the petitioner that the product was covered by item at serial No. J-50 of SIONs for textiles. In this view of the matter, there is no substance in the stand taken by the respondents. Since the petitioner had been informed that the product that it intended to export stood covered by SIONs for textiles it imported the raw material with a view to export yarn. It is not in dispute that the petitioner has complied with its obligations under the licence. The respondents are, therefore, bound to issue the redemption certificate applied for by the petitioner and are estopped from taking the stand that the item is not covered by SIONs. Their action in not issuing the redemption certificate cannot, therefore, be sustained. In the light of the view that we have taken, we do not think it necessary to go into the question as to whether the product exported by the petitioner was covered by item at serial No. J-50 of SIONs.

5. In the result, the writ petition is allowed and the respondents are directed to issue the redemption certificate asked for by the petitioner. In the circumstances, there is no order as to costs.