

Bombay High Court

Parmanand Industries vs Union Of India on 4 August, 1993

Equivalent citations: 1993 (68) ELT 726 Bom

Author: Pendse

Bench: A Shah, M Pendse

JUDGMENT Pendse, J.

1. The petitioners are a partnership firm and were exporters of cotton readymade garments. The exporters of cotton readymade garments were entitled to cash assistance under the Export Assistance Scheme which was applicable from April 1978 till withdrawal with effect from January 1, 1979. The petitioners made exports between January 1, 1979 to March 31, 1979 in respect of the contracts which were entered into prior to January 1, 1979. The petitioners applied for cash assistance in respect of the said goods but the claim was not entertained by the Indian Cotton Mills Federation. The petitioners thereupon filed writ petition No. 1858 of 1981 in this Court against the Union of India for a direction to make payment of cash assistance. This Court by judgment dated January 13, 1984 directed the Union of India to examine the contract set out in the writ petition and determine whether the contracts were entered into prior to January 1, 1979 even if the actual export was subsequent to that date. The Government of India preferred an appeal before the Division Bench of this Court but without any success.

2. The Government of India then nominated Joint Chief Controller of Import and Export to scrutinise the contracts entered into by the petitioners and recommend whether the contracts were concluded prior to January 1, 1979. The petitioners were called upon to furnish copies of applications, contracts, letters of credit and other relevant material. After scrutinizing the documents, the Joint Chief Controller informed the petitioners on August 6, 1984 that it is not possible to grant the claim as the original contracts duly signed by the buyer and the seller were not furnished.

The refusal of the Joint Chief Controller gave rise to the petitioners taking out Notice of motion on September 5, 1984 complaining that the Government of India had committed contempt by flouting the orders passed by this Court on January 13, 1984. The matter was adjourned from time to time and the Joint Chief Controller was directed to re- hear the petitioners and pass an appropriate speaking order. In pursuance of the direction, the Joint Chief Controller has passed the impugned order dated October 11, 1984. The claim made by the petitioner was turned down on the ground that the documents produced did not indicate that the contracts were concluded prior to January 1, 1979. The Joint Chief Controller felt that the original contract indicates that signature of the petitioner towards acceptance was appended only in the year 1984. The order of the Joint Chief Controller is under challenge.

3. Mr. Jhangiani, learned counsel appearing on behalf of the petitioners submitted that the order of the Joint Chief Controller is entirely perverse and unsustainable on undisputed facts. It is not in dispute that the petitioners had entered into agreement prior to January 1, 1979 and the buyer had opened letters of credit and the petitioners had applied to the authorities for grant of quota for export of garments. These facts are tell-tale circumstances to hold that the contracts were concluded

prior to January 1, 1979. The Joint Chief Controller proceeded to hold against the petitioners by observing that the photocopies of the original contract which was produced on July 17, 1984 indicates that the buyer had not appended his signature in rectangular box provided in the contract for that purpose, but on September 29, 1984 the petitioners produced the original contract and it was noticed that the signature was appended. The Joint Chief Controller observed that in the rectangular box for the buyer's signature the Manager of the petitioner firm had signed, Mr. Jhangiani submits and in our judgment with consideration merit, that there has been some confusion in putting the signature in the exact column provided in the contract, but that fact itself cannot lead to the conclusion that the contracts were concluded only in the year 1984. In our judgment, the order of the Joint Chief Controller is unsustainable on the facts and circumstances of the case and the petitioners are entitled to cash assistance, as the contracts were concluded prior to January 1, 1979.

4. Accordingly, petition succeeds and rule is made absolute in terms of prayer(s). The respondents are directed to ascertain the exact amount of compensatory assistance payable to the petitioners under the contracts and make the payment within a period of four weeks from today. The payment should be made along with interest at the rate of 15% per annum from the date when the cash assistance was due till the date of payment. The respondents shall also pay the costs of the petition.