Supreme Court of India
Steel Authority Of India Ltd vs Shri Ambica Mills Ltd. & Ors on 17 October, 1997
Author: K Venkataswami
Bench: M.M. Punchhi, K. Venkataswami

PETITIONER:
STEEL AUTHORITY OF INDIA LTD.

Vs.

RESPONDENT:
SHRI AMBICA MILLS LTD. & ORS.

DATE OF JUDGMENT: 17/10/1997

BENCH:
M.M. PUNCHHI, K. VENKATASWAMI

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T K. Venkataswami J.

This appeal by special leave is directed against the Division Becnh judgment of the Gujarat High Court dated 7.2.1985. Brief facts concerning the case are given below.

The first respondent-company is engaged in the manufacture of steel tubes through its Ambica Tubes Division. For the purpose of manufacture of steel tubes, hot rolled strips in coils are required as raw material. These not rolled strips were being supplied at the relevant time to the manufacturers of steel tubes like (Ambika Tubes (hereinafter referred to as the importer) through the appellant referred to as the importer) through the appellant subject to certain conditions. The manufacture who are given raw materials must posses the import licence and have to carry out certain export obligations. The obligations concerning this for the period in question, namely, April 1983 to March, 1984 were given in the import and export policy for that period. Previously a public notice in respect of scheme for supply of raw material by steel Authority of India Ltd. (hereinafter called the "SAIL") against advance import licence was issued on the Scheme published on 11.12.1982 would be continued. According to that. the importer becomes eligible for supply of goods on compliance of the conditions fixed in the scheme in particular, the conditions of producing advance licenses, duty exemption entitlement certificate, legal undertaking/execution of export bond and

furnishing of irrevocable letter of credit. The appellant as an indigenous supplier under the aforesaid announcement of the prices at which law the raw material will be supplied. That announcement was published in the Economic Times on 10.6.1983 under the caption "Scheme for Supply of certain Categories of Indigenously Produced Steel Materials at Competitive Prices against Valid Import Licences".

Pursuant to the abovesaid announcement. the importer submitted licenses requiring supply of about 3768 tonnes of not rolled strips in coils. It was found that the licence submitted by the importer (Ambica Tubes) did not mention that it was an advance import licence nor was it accompanied by Duty Exemption Entitlement Certificate and the bond. In addition to the submission of licences, the said Ambica Tubes however submitted Letter of Credit dated 19.8.1983 on the same data, namely, 20.8.1983. In the Letter of Credit also there were certain infirmities and when the same was pointed out, it was rectified and submitted before 25.8.1983.

On receipt of the licence and the Letter of Credit, the appellant by a telex message dated 23.8.1983 pointed out the defects in the licence/release order and also stated that in view of the defects, the appellant are not taking any action on the Letter of Credit for the present.

In reply to the telex message, Ambica Tubes sent a letter on the same date (23.8.1983) informing the appellant that the original release order in duplicate and the Duty Exemption Entitlement Certificate booklet had been submitted to the joint Controller at Ahmedabad and would be sent to the Bombay SAIL office on receipt of the same. The relevant documents after carrying out the corrections were factually furnished to the appellant by Ambica Tubes only on 26.8.1983. In the meanwhile the appellant enhanced/revised the price of their supplies (steel materials) from Rs.2460/- to 2750/- per M.T. on and from 25.8.1983. Since the relevant documents after carrying out the corrections with necessary enclosures were received by the appellant only on 26.8.1983. the importer (Ambica Tubes) was required to pay the price for the release of steel materials at the revised rate, namely, Rs. 2750/- per M.T.

Ambica Tubes made representation that they having submitted Letter of Credit and the necessary documents, though defective, well before 25.8.1983, the revised charges should not have been applied. The appellant gave a detailed reply to the representation of the importer. The importer moved the Gujarat High Court on 18.6.1984 for quashing the announcement made by SAIL revising the price and for directing that the supplies must have been made at the pre- revised price and for consequential refund of difference between the pre-revised and revised prices. The appellant resisted the writ petition by filing a detailed reply to the affidavit filed in support of the writ petition.

The High Court proceedings on a wrong premise, namely, that SAIL (appellant) was a department of Union of India but its administration is run separately in the interest of efficiency; held that the importer (Ambica Tubes) was not responsible for the defects pointed out in the license/release order and it was the office of Joint Chief controller order and it was the office of Joint Chief Controller of imports and Exports alone responsible for the defects for which the importer should not be punished. In other words. the High Court was of the view that the license though defective must be deemed to have been presented on 20.8.1983 long before the revised price was announced.

Therefore., the appellant was not entitled to charge for the supply of raw materials at the revised rate. The High Court also directed the refund of the difference between the pre- revised and the revised rates. The High Court further observed that the action of the appellant in not registering the petitioners' indent No. 7 of the 1986 dated 19.8.1983 latest on 24.8.1983 was an action bad at law, arbitrary an unreasonable'.

We are not concerned with the other relief granted against Union of India in this appeal.

Though the main relief in the writ petition was the challenge to the right of SAIL to fix the price from time to time, the High Court left open that issue without deciding the same. The entire reasoning of the High Court is found in paragraph 16 of its judgment which reads as follows:-

> "16. We have analysed the facts above very clearly and held that the petitioners had done whatever was required to be done by them. They had procured the release order in time. On had of the Government acting in the Joint Controller's office committed some blunders because of the lackadaisical fashion in which the things are handled there. It forgot to mention about the Duty Exemption Entitlement Certificate. It forgot to mention that it is an advance release order, though the covering letter did mention it. The petitioners no doubt got these things rectified, but because no doubt the communication difficulties, there was a delay of a day or two. How can that fortuitous circumstance be exploited by SAIL by seeking a pound of flesh? They should have seen reason and should not have chastised this petitioner-company for the Faults of the employees of the very Union of India, their masters. Such amendments required to be made later on because of the negligence and carelessness of the employees of the Union of India are to be legitimately treated as having been effected retroactively. This is the only reasonable and rational way of looking at the things. Negligence of one branch of the Union of India cannot be capitalized by another branch is per arbitrary, capricious and whimsical. Such an illegal action is taken by the Ahmedabad office or Bombay office. Another reasonable office of this very SAIL say at Madras or Bangalore would not do such things would be favorably treated. In this sense of the term, it could be said that possibly inconsistent stand, and therefore, discriminatroy stand, can be there in the action of the respondent no.
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> 1. On this short ground, the petition of the petitioners can be allowed, because we hold that this executive power has been exercised by the SAIL absolutely unreasonably and justification for them to sit tight on that date 24.8.1983 and all that was required to be done was done by these petitioners. If such things are allowed to go, it would set a very bad example in the working of rule of law in practical and final analysis. It is because of this necessity of striking out the action of the public authority, namely, the SAIL, that we are inclined to entertain this petition and decide it and if for that purpose we have to strike a departure from the normal rule of the not entertaining even money claims, we would very willingly do so, so that such actions would not be repeated in future. We, however, add that here essentially the challenge was to the right of fixation of price at any capricious time and that was the subject

> matter of the petition, but we are not required to go into it and, therefore, we do not go into it. Otherwise, much could be said in favour of the petitioners when they contend that the prices are required to be fixed quarterly. The term quarterly' would mean every three months and the SAIL has fixed the price on 11.12.82, 14.3.93, 7.6.83, 25.3.83 and had we been required to decide this question, we would have in all probability interpreted clause 6 read with clause 10 to mean that the prices are to the fixed for the period of three months and they are to remain operative for theat period, but we are not to opinion on that point because the ultimate relief of the petitioners can be granted without deciding the point."

Aggrieved by the judgment of High Court, the present appeal is filed by the SAIL.

Mr. Dhruv Mehta, learned counsel appearing for the appellants submitted that the High Court erred in assuming that the appellant was a department of the Union of India forgetting totally that it is a company incorporated under the Companies Act and it is a separate entity, notwithstanding the fact that the company is entirely owned by the Government of India. It will not be a wing/department of the Government. In support of his contention, he placed reliance on the judgment of this Court in Dr. S.L. Agarwal vs. The General Manager, Hindustan Steel Ltd. (AIR 1970 SC 1150), Western Coalfields Ltd. vs. Special Area Development Authority, Korba & Anr. (AIR 1982 SC 697). He also submitted the power of SAIL to revise the pricelist from time to time the relief given by the High Court would amount to refund of money by exercising the jurisdiction under Article 226 which is against the ruling for this Court in Suganmal vs. State of Madhya Pradesh & Ors. (AIR 1965 SC 1740). He also submitted that the importer being a party to the contract and having paid the price as revised and taken delivery of the goods cannot now turn around and challenge the action of the SAIL by invoking the writ jurisdiction under Article 226 of the Constitution of India. In support of this submission, he placed reliance on a judgment of this Court in Har Shankar & Ors. The Dy. Excise & Taxation Commissioner & Ors. (1975 (1) SCC 737).

He also placed reliance on other judgment of this Court in M/s. Radhakrishna Agarwal & Ors. vs. State of Bihar & Ors. (AIR 1977 SC 1946), State of Orissa & Ors. vs. Narain Prasad & Ors. (1996 (5) SCC 740) and Assistant Excise Commissioner & Ors. vs. Issac Peter & Ors. (1994 (4) SCC

104).

On facts, Shri Dhruv Mehta, learned counsel for appellant submitted that on the admitted position that the documents, namely, licence/release order after rectification having been furnished only on 25.8.1983, the importer cannot claim the application of pre-revised price on the ground that the mistake, if at all, was on the part of the office of the joint Chief Controller of Imports and Exports and, therefore, it should not be penalised. According to the learned counsel, the conditions of Scheme published enable the appellant to insist upon all the documents to be furnished before release of the raw material. The SAIL w as not concerned with the party responsible for the defect in the document. Therefore, the High Court was not justified in making certain observations against the appellant. According to Mr. Dhruv Mehta, the appeal should be allowed.

Mr. Parekh, learned counsel appearing for the first respondent, placing reliance on para 2.3 of the Scheme announced on 10.6.1983 submitted that the Letter of Credit having been furnished after `rectifying the defects before 25.8.1983, the importer is entitled to get the supplies at the pre-revised rate notwithstanding the defects in the licence/release order as the importer was not responsible for the defects. He also submitted that the High Court was well within its jurisdiction in entertaining the writ petition and granting the relief. According to the learned counsel, the judgment under appeal does not call for any interference by this Court.

Before considering the rival submission, it is necessary to set out the relevant Paragraph in the Scheme announced on 10.6.1983.

> "2.2 When a valid and eligible import license is surrendered by an import Licence holder to the concerned office of SAIL for supply of materials under this Scheme, the approximate quantity of the material which can be supplied against the import licence will first be determined keeping in view
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> (a) the utilised value available on the licence, (b) the price of the concerned item as Scheme, Thereafter, the Import Licence holder will be requested by the concerned office of SAIL to make appropriate financial arrangements taking into account, besides (a) and (b) mentioned above, the approximate amount of duties/taxes/levies, etc. chargeable on such supplies. The actual supply will be restricted to the quantity which can be supplied against the surrendered import licence provided the amount for which financial arrangements are made permits the same."
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> Para 2.3 reads as follows:- "2.3 The price as announced for supply of materials under this Scheme shall be subjects to periodic revisions. The prices chargeable shall be the prices ruling on the date of delivery which shall be the date of the Railway Receipt in the case of direct dispatches by rail and, the date of the Delivery Challan of SAIL's stockyard in the case or ex- yard delivery, except in the following cases where in the chargeable prices shall be the prices ruling on the date on which acceptable and operative financial arrangements are made in favour of SAIL by import licence holders eligible to get supplies under this scheme.
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> a) Where the financial arrangements made in favour of SAIL is such that it enable SAIL to effect dispatches on a continuing basis without any restrictions about delivery schedule; this will also include an irrevocable confirmed automatic revolving Letter of Credit (L/C) without recourse to the drawer which would enable SAIL to effect dispatches on a continuing basis without quantitative or other restrictions.
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> b) Where the financial arrangement made in favour of SAIL is such that despatches have to be completed within a period of 3 months from the date on which the financial arrangement became operative but is for a quantity less than the tonnage covered by the import licence, the despatches shall be restricted to the quantity covered by the financial arrangement.

> c) In all cases, the interpretation and decisions of SAIL as to the acceptability, adequacy, effectiveness and operativeness of the financial arrangement made by eligible import licence holders in favour of SAIL for supply of material under this Scheme shall be final and binding."

Coming to the merits of the case, we accept the contention of the learned for the appellant that the High Court went wrong in holding that SAIL was a department of the Union of India. In Agarwal's case (supra), a Constitution Bench of this Court while considering a similar question held as follows:-

> "We must, therefore, hold that the corporation which is Hindustan Steel Limited in this case is not a department of the Government nor are the servants of its holding posts under the State. It has its independent existence and by law relating to Corporations, it is distinct even from its members."

In Western Coalfields case (supra), this Court held as follows:-

> "It is contended by the Attorney General that since the appellant- companies are wholly owned by the Government of India, the lands and buildings owned by the companies cannot be subjected to property tax. The short answer to this contention is that even though the entire share capital of the appellant-Government has been subscribed by the Government of India, it cannot be predicted the Government of India. The companies which are incorporated under the Companies which are incorporated under the Companies Act have a corporate personality of their own, distinct from that of Government of India. The lands and buildings are vested in and owned by the companies, the Government of India only owns share capital."

In the view of the above decisions of this Court, we have no hesitation to hold that the High Court erred in thinking that SAIL was a department of the Union of India and most of the reasons given in the judgment are based on this wrong premise.

The importer in this case, it is an admitted fact, is a register exporter of steel pipes entitled to priority allotment of steel either through imports or from indigenous plants like the appellant. The allotment of steel was four manufacture of steel pipes for export against Advance Licence granted to the importer from time to tome. During the relevant period, hot rolled strips in coils manufactured by plants under SAIL were available in sufficient quantity and hence the direct imports of the raw material were banned and the manufacturers were required to obtain the supplies of the raw materials from the appellant against the import licences with them and/or release orders issued by the licensing authority, namely the Chief Controller of Imports and Exports.

Various categories of licences are granted for the purpose of imports to the manufacturers. One such licence was Advance Licence. Paragraph 149 of the import policy provided for grant of Advance Licence/imprest licences and the relevant part of paragraph 149 reads `the term Advance Licence refers to c ases where the import is allowed under the Duty Exemption Scheme whereas the term

imprest licence will be used where the import is allowed outside the Duty Exemption Scheme. The Advance Licences, it is stated, which include release orders are intended to supply import input or inputs in short supply for export production. It is also stated that the licensing authority issuing the Advance Licences will simultaneously issue the collected Duty Exemption Entitlement Certificate. The Policy does not provide for issuance of Advance Licence without duty exemption.' Bearing the above-said facts in mind, let us now consider the issue raised before us.

Admittedly when the importer wanted to register the indent for supply of hot rolled strips in coils, the licences / Release Orders produced lacked in material particulars and relevant enclosures. In other words, the licence did not mention that it was an Advance Licence and no Duty Exemption Entitlement Certificate was enclosed and legal undertaking/exemption of export bone was also not enclosed. It was on this admitted position, the appellant declined to register the indent of the importer. No doubt, the mistake was committed by the licensing authority. Does that mean that the appellant can ignore the lacuna in the documents and register the indent placed by the importer contravention of the requirements of the Scheme? The High Court held that the licensing authority and the appellant being two different wings/departments of Union of India, the appellant on receipt of rectified documents on 26.8.1983 must register the indent as if it was presented on 20.8.1983. We are afraid, we cannot accept the above reasoning of the High Court as we have pointed out that the basic error committed by the High Court was in assuming that the appellant was a Department of Union of India. We have already noticed that there are number of judgments of the Court taking the view that a company though fully owned by Union of India when incorporated takes its own entity/identify and cannot be considered as department of the Union of India. Further, it is seen from the records that the importer in this case is not a new entrant to plead ignorance though that may not be an excuse. He has presented applications for registration before and after the application in question and, therefore, it must be taken that the importer new fully well about the requirements for registering the indent. It is also relevant to note that the appellant on receipts of the application for registration expressly in writing replies not only pointing out the defects but also stated that they are not taking any action on the Letter of Credit enclosed along with the licence. it is also an admitted fact that the indent was registered only on 26.8.1983 when all the relevant documents after curing the defects was presented on that date. Under these circumstances and in the light of the Scheme published by the appellant, we hold that the import (Ambica Tubes) cannot claim as of right its order must be deemed to have been registered for supply of raw materials on 20.8.1983 when the documents with all defects were presented.

We cannot agree with the contention of Mr. Parekh that mere presentation of an irrevocable Letter of Credit covering the value of requirement of raw materials is sufficient for registering the indent. We have already set out para 2.3 Paragraph 2.3 of the paid for the indent. Mr. Parekh placed reliance on the last part of Paragraph 2.3 to contend that the date of presentation of irrevocable Letter of Credit will be relevant for fixing the price. We have seen that it says price changeable shall be the price ruling on the date on which acceptable and operative, financial arrangements are made in favour of SAIL by import licence holder eligible to get supplies under this Scheme. Mr. Parekh wants us to ignore the portion underlined above. Mere production of Letter of Credits will not be sufficient to determined the price ruling on the date. It must be given by an import licence holder eligible to get the supplies under the Scheme. In this case, we have sen that the importer will not fall

under the category of `import licence holder eligible to get supplies under the Scheme' as on the date when the Letter of Credit was presented, the licence / release order was defective. Therefore, we cannot agree with Mr. parekh that the importer having produced the Letter of Credit well before 25.8.1983, the price payable for the supplies must be pre-revised one.

In view of our above conclusion, it is not necessary for us to consider and decide the other points raised by learned counsel for the appellant.

We have seen that the High Court has not decided but left open the question relating to the right of the appellant to fix the price from the time to time even though that was the main issue raised in the writ petition before the High Court. As we are not in agreement with the view expressed by the High Court on other issues, it is now necessary for the High Court to consider the issue relating to the right of the appellant to fix the price from time to time.

It is open to the appellant to raise the question of unjust enrichment when the matter is taken up by the High Court pursuant to this remit order. The parties car place before the High Court necessary material in support of their respective contention on the issue of unjust enrichment.

Before parting with the case, we would like to observe that the observations of the High Court in the judgment condemning the appellant for not registering the order placed by the importer on the data when the relevant documents were presented with defects were totally uncalled for and, therefore, we expunge all those observations from the judgment.

In the result, the appeal is allowed and the judgment of the High Court is set aside and the matter is remitted to the High Court to decide the right of the appellant to fix the price from time to time and also the question of unjust enrichment. No costs.