Supreme Court of India
Union Of India (Uoi) And Anr. vs Shree Ganesh Steel Rolling Mills ... on 17 April, 1996
Equivalent citations: 1996 IVAD SC 259, 1996 (84) ELT 3 SC, JT 1996 (5) SC 670, 1996 (4) SCALE 6, (1996) 8 SCC 347, 1996 Supp 1 SCR 486
Bench: B J Reddy, S S Ahmad
ORDER

1. Heard the counsel for the parties.

2. Leave granted.

3. This appeal is preferred against an interlocutory order dated 30th May, 1994 made by the Delhi High Court in Civil Writ Petition No. 2112 of 1994. By means of the impugned order the High Court has stayed the operation of Clause (iii) of para 2 of the Circular dated 19.4.94.

4. Tata Iron and Steel Company Limited was granted an advance duty free licence on the basis of its application. The grant was made on 28.4.93. Tata Iron and Steel Company complied with all the conditions attached to the said licence and thereafter applied for endorsement of transferability. On 6.9.93 the Director General of Foreign Trade made the endorsement of transferability. On 17.12.93 Tata Iron & Steel Company transferred the licence in favour of M/s. Ferro Alloys Limited. M/s. Ferro Alloys Limited in turn transferred it to M/s. Mohan Ferro Alloys Private Limited, from whom the respondent herein (Shree Ganesh Steel Rolling Mills Limited) purchased it on 11.2.94. The respondents imported goods on the basis of the said licence. At that stage an objection was raised by the customs authorities that inasmuch as the import was made beyond six months from 6.9.93 (date of endorsement of transferability), the import is invalid; accordingly they refused to clear the goods. At that stage, the respondent approached the Delhi High Court by way of a writ petition wherein they obtained the impugned interim orders.

5. Mr. A. Subba Rao, learned Counsel for the appellants assailed the impugned order on more than one ground. He submitted that Clause (v) of para 127 of Hand Book of Procedure 1992-97 issued by the D.G.F.T. provided (at the relevant time that "Duty free licences on the date of transfer shall be valid for the balance period of their validity or six months, whichever is more, provided no revalidation has been availed." Since there was a doubt with respect to the meaning of the expression 'date of transfer', it was clarified by the Directorate through a circular dated 19.4.94 that "the automatic extension and validity shall be available with reference to the date on which transferability is endorsed by the endorsing authority" (vide Clause (iii). The said circular was issued purportedly in exercise of the power conferred upon the D.G.F.T. by Clause 20 of the Export and Import Policy issued by the Central Government which says that "if any question or doubt arises in respect of the interpretation of any provision contained in this policy, the said question or doubt shall be referred to the Chief Controller of Imports and Exports and his decision shall be final". (The Chief Controller of Imports and Exports has since been designated as the Director General of Foreign Trade). Counsel further submitted that the procedure governing the import and export is issued by the Director General of Foreign Trade under para 16 of the aforesaid Policy and, therefore, it was open to the Director General to clarify the procedure or to amend it, as may be called for. Mr.

Subba Rao also contended that the High Court was in error in granting interim orders staying Clause (iii) of the aforesaid circular and that too unconditionally.

6. We are unable to agree with the learned Counsel for the appellants on his first and main submission.

7. Para 16 of the Export and Import Policy reads:

The Chief Controller of Imports and Exports may, in any case or class of cases, specify the procedure to be followed by an exporter or importer or by any licensing, competent or other authority for the purpose of implementing the provisions of the Act, the Rules and Orders made thereunder and this Policy. Such procedures shall be included in the Handbook of Procedures and published by means of a Public Notice. Such procedures may, in like manner, be amended from time.

8. A reading of para 16 shows that D.G.F.T. is no doubt empowered to specify the procedure to be followed in the matter of import and export but this has to be done by means of a Public Notice. It further says that the said procedure can also be amended in like manner i.e. by means of a Public Notice. Now it is not disputed that the clarification dated April 19, 1994 was not by means of a Public Notice. It, therefore, cannot be read as an amendment of the procedure. The question then is whether it can be sustained with reference to the power of clarification conferred upon D.G.F.T. by para 20 of the policy. In our opinion, the power of clarification under para 20 of the policy cannot go to the extent of amending the policy-but that is precisely what the Directorate has sought to do by way of circular dated April 19,1994. In the place of the words 'date of transfer' in Para 127(v) he purported to introduce the words "date of endorsement". We are of the opinion that this change could not have been brought about in the name of clarification. It could have been done only by way of an amendment. It in fact was done by a public notice on 28.7.94. In this case, however, the import took place before 28.7.94. In view of the said factual position, we need not go into the question whether the said amended procedure can be applied in the case of an import made on or after 28th July 1994, though on the foot of a licence issued earlier thereto. It is equally unnecessary for us in this case to go into the question whether the six months' period should be calculated from the date of first transfer or from the date of last transfer inasmuch as, in this case even if the period of six months' is calculated from the date of first transfer, the import took place within the period of six months therefrom.

9. We are however inclined to agree with the grievance of the counsel for the appellant that granting of an unconditional stay may very often tend to cause prejudice to the other side. It is always advisable that while making interim orders, the Court should provide for necessary safeguards for Revenue in the eventuality of failure of the petitioner or appellant. At the interim stage, it may not be possible to say with any definiteness that writ petition or appeal is bound to succeed. The possibility of the writ petition or appeal being dismissed cannot be ruled out at that stage. Therefore, it is always advisable that sufficient safeguards are provided in favour of a Revenue while making such interim orders.

10. The appeal is dismissed. No costs.

11. Since this order practically disposes of the Writ Petition No. 2112 of 1994, the writ petition is withdrawn to this Court from the High Court, with the consent of the counsel for both the parties and allowed in the above terms i.e., Rule is made absolute in the above terms. No costs.