Supreme Court of India
S.B.International Limited Etc vs Asstt. Director Of General Of F.T. ... on 24 January, 1996
Equivalent citations: 1996 SCC (2) 439, JT 1996 (1) 588
Author: B Jeevan Reddy
Bench: Jeevan Reddy, B.P. (J)

PETITIONER:
S.B.INTERNATIONAL LIMITED ETC.

Vs.

RESPONDENT:
ASSTT. DIRECTOR OF GENERAL OF F.T. & ORS.ETC.

DATE OF JUDGMENT: 24/01/1996

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
KIRPAL B.N. (J)

CITATION:
1996 SCC (2) 439 JT 1996 (1) 588
1996 SCALE (1)576

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T B.P.JEEVAN REDDY, J.

Leave granted.

With a view to encourage exports, the Government of India issued the "Export and Import Policy (Ist April, 1992 and 31st March, 1997)" introducing inter alia a scheme called "Duty Exemption Scheme" contained in Chapter-VII. Under this scheme, imports of duty free raw materials, components, intermediates, consumables, parts, spares including mandatory spares and packing materials required for the purpose of export production could be permitted "subject to the fulfillment of a time bound export obligation and value addition as may be specified". Advance licences could be based on either value or quantity: it was for the exporter to apply either for a value based advance licence or a quantity-based advance licences [vide Clauses 47 and 48]. Clause 49 in Chapter-III sets out the particulars to be mentioned in the advance licence. One of the particulars to

be mentioned is "(d) the value addition in accordance with the standard Input-Output norms published by means of a public Notice or, in respect of items for which such norms have not been published, value addition as may be specified by the competent authority." Clause 52 expressly provides that "the Chief Controller of Imports and Exports may, on the recommendation of the Advance Licensing Committee (ALC) modify the norms or prescribe additional norms." Clause 59 prescribes the eligibility for applying for an advance licence. It says, "any merchant exporter or manufacturer exporter who holds an Importer-Exporter Code number, a specific export order/letter of credit and is in a position to realise the export proceeds in his own name may apply for duty free licences." Clause 60 prescribes that "value addition norms, as specified by means of a Public Notice issued in this behalf, shall apply to duty free licences". Clause 63 provides that a licence issued under the said scheme shall specify the export obligation which has to be fulfilled within the period specified therein. Clause 66 provides that "Exports/supplies made from the date of receipt of an application under this scheme by the licensing authority may be accepted towards discharge of export obligation...". (Clause 66 has been amended later in 1993 and 1994. We are, however, concerned with the unamended Clause 66.) On 31st March, 1992, a public notice was issued, as contemplated by Clauses 49(d) and 60 specifying the value addition at 1000 percent in the case of "frozen marine products packed in polythene bags". On September 25, 1992, a change was effected in the value addition norm- instead of 1000 percent, it became 1900 percent.

The appellant (we shall be referring to S.B. International Limited as the appellant and the Assistant Director General of Foreign Trade and Union of India as respondents) is engaged in the export of marine products. It entered into six contracts with certain foreign buyers to supply marine products. These contracts were entered into on 27th May, 4th June, 10th June, 22nd June, 26th June and 27th June, 1992. In respect of these export commitments, the appellant made five applications for advance licences, i.e., on 29th May, 18th June, 24th June, 24th June and 15th September, 1992. [The last mentioned application, we are told, was in respect of Contracts 5 and 6 mentioned above. We are also told that the value of the last two contracts is very substantial as compared to the value of the first four contracts.] The appellant says that by September 25, 1992, the export obligation concerned in the first three applications was fully discharged whereas in respect of the fourth application, it was fulfilled to the extent of 81% and in the case of the last mentioned application, it was fulfilled to the extent of 21%. The advance licences were not issued by September 25, 1992. On that date, a change was effected, as aforesaid, in the value addition norms, enhancing the value addition norm to 1900 percent from 1000 percent. Licences were issued according to this enhanced value addition norm in February, 1993. The appellant protested against application of revised/enhanced value addition norm on the ground that since it had applied for advance licences prior to September 25, 1992, the change brought about on and with effect from the said date has no application and that its applications ought to be governed by the value addition norm in force prior to September 25, 1992. Finding no response from the authorities, it approached the Calcutta High Court by way of a writ petition.

A learned Single Judge allowed the writ petition [Matter No.3152 of 1993] upholding the contention of the appellant. The respondents preferred a Letters Patent Appeal against the decision of the learned Single Judge. The Division Bench dismissed the appeal but with a small alteration in the relief granted. The Division Bench held that the appellant shall be entitled to advance licences

according to pre-revised norm with respect to the actual exports effected by it before September 25, 1992 but not for the exports effected thereafter. Aggrieved by the decision of Division Bench, both the appellant and the State have filed these appeals, insofar as it went against them. The only question in the appeals is whether the appellant is entitled to advance licences on the basis of the value addition norm obtaining prior to September 25, 1992 on the ground that it had applied therefor prior to the said date.

Sri P.V.Kapoor, learned counsel for the appellant, submitted that the Export and Import Policy devising the Duty Exemption Scheme is statutory in nature, having been issued under Section 3 of the Export and Import (Control) Act, 1947. Applications for advance licences can be filed under this Scheme even before effecting the exports, subject, of course, to the obligation to effect the exports in the prescribed value. Once the appellant made applications for issue of advance licences, a right accrued to it to obtain the licences in accordance with the policy in vogue on that date. Any subsequent change in the policy cannot defeat such a vested right. Learned counsel also relied upon the rule of promissory estoppel. He submitted that the appellant had entered into export commitments at a particular price keeping in view the Export and Import Policy in vogue on that date, the appellant knew that as against the export commitments undertaken by him, he would be entitled to duty free advance licences of a particular value: the price agreed between him and the foreign buyer was arrived at bearing the said consideration in mind: if the Government is permitted to suddenly change the value addition norm to the prejudice of the appellant, it would suffer grievous losses - submitted the learned counsel. Yet another submission urged by the learned counsel is that the authorities cannot take advantage of their own wrong, viz., the delay in issuing the advance licences. If they had issued the licences applied for prior to September 25, 1992, the appellant would have obtained licences of a higher value in accordance with the then existing value addition norm. Merely because the authorities have delayed the issuance of licences, they cannot apply the revised norm to the prejudice of the appellant, especially when the appellant is in no way responsible for the said delay. Sri Kapoor submitted that the appellant should be held entitled to advance licences not merely for the actual exports effected by it before September 25, 1992 but for the whole value of the export contracts entered into by it. He submitted that the appellant has since discharged the export obligation under the said six contracts fully.

Sri A.Subba Rao, learned counsel for the Union of India , on the other hand, submitted that mere filing of an application does not confer any right much less a vested right upon the applicant for the issuance of an advance licence. He submitted that no one has a fundamental right to import and that the said right depends upon the policy for the time being in force. The policy in vogue on the date of issue of licences alone governs the licences. Learned counsel further submitted that there is no allegation much less any finding either by the learned Single Judge or by the Division Bench that the authorities are guilty of any deliberate or undue delay in issuing the licences. The issuance of these licences is not a mechanical or a formal matter. The authorities have to verify the correctness of the various facts stated in the application and also have to satisfy themselves that the applicant satisfies the requirements of the Scheme and other applicable provisions of law before the licences are issued.

The first question in these appeals is whether a vested right accrued to the appellant for issuance of advance licences as per the value addition norm in vogue on the date of filing of the said applications the moment it made those applications and whether any subsequent change in policy effected before the issuance of licences, is not applicable to such licences. For answering this question, one has to look to the policy itself, the material clauses of which have already been set out. The said provisions make it clear that the object behind the scheme is to enable the exporter to import raw materials, components etc. required for the purpose of producing goods for export. It is a facility provided by the Government - an incentive. There is no right to advance licence apart from the policy. No citizen has a fundamental right to import, much less import free of duty. By granting the advance licence, the Licensing authority tells the licensee - "I am permitting you to import raw material, components etc. of a particular value free of duties but you must export goods of a particular value [determined as per value addition norm in vogue on the date of licence] within a particular date. If you fail to do so, you will be liable to levy of penalties and other action according to law." The duty free import of raw materials etc. is permitted to enable the exporter to sell his goods abroad at a more competitive price, thereby fetching precious foreign exchange for the country. Mere making of an application does not create any right in the applicant since he has no pre-existing right to such licence. His right is only that which is given by the Policy. The situation could have been different if the Policy had said that a person exporting goods of a particular value shall be entitled to an import licence of a particular value: in such a case, the export of goods can be said to create a right in the applicant to get an import licence of the specified value. Here is a case, where one has to ask for an import licence promising to export goods of a particular value within a particular time. It is difficult to appreciate how can it be said in such a situation that mere filing of an application creates a vested legal right to obtain a licence according to the value addition norm in vogue on the date of the application. It is the date of licence that is relevant and not the date of application therefor. It is obvious that the norm (value addition norm) in vogue on the date of grant of licence shall govern the licence. The mere fact that the authorities have a discretion to take into account the exports made after the date of application for advance licences makes no difference to this position: it is in the nature of yet another concession. What is relevant is that the licence granted under Chapter-VII of the Policy is an advance licence. It is granted in advance of export - rather to enable the export. The theory of a vested right accruing to the applicant to get a licence as per the norms in force on the date of application is inconceivable in such a situation - unless, of course, the policy itself says so.

It should be noticed that grant of licence is neither a mechanical exercise nor a formality. On receipt of the application, the authorities have to satisfy themselves about the correctness of the contents of the application. They also have to satisfy themselves that the application satisfies all the requirements of the scheme and the other applicable provisions of law, if any. In a country like ours, where abuse of such facilities is rampant, reasonable time has to be afforded to the authorities to process the application. [What is a reasonable time, of course, depends on the facts of each case. No hard and fast limit can be prescribed.] It is only after appropriate verification that the licence is granted.

We are, therefore, of the opinion that the contention that a vested right accrues to an applicant for issuance of advance licence on the basis of the norm obtaining on the date of application is unacceptable. The Scheme and the context militate against the contention. The fact that the policy is

statutory in nature (delegated legislation) has no relevance on the question at issue. It would be wrong to equate the filing of an application for advance licence with the filing of a suit where it is held that appeal being a substantive right, the right of appeal inhering in the party on the date of filing of the suit cannot be taken away by a subsequent change in law.

So far as the argument of promissory estoppel is concerned, it is equally unsustainable in the facts and circumstances of the case. Having regard to the nature of the advance licence - import first and export later - there is no room for this argument. The discretion inhering in the authority to take into consideration the exports effected after the date of filing of the application for advance licence does not detract from its essential character, as explained hereinabove. We may also mention that no precise date has been furnished by the appellant in support of the said plea. In the absence of such date, the plea of promissory estoppel is misconceived. The appellant has to establish the various ingredients of this rule, as enumerated by this Court in Motilal Padampat Sugar Mills Co.Ltd. v. State of Uttar Pradesh (1979 (2) S.C.R.641) and other subsequent decisions. It is not a pure question of law.

Now, coming to the argument of the authorities taking advantage of their own wrong, viz., delay in issuing the advance licences, it may be noticed that there is no allegation/averment in the writ petition that the authorities have deliberately delayed the issuance of the advance licences. We have mentioned hereinbefore that issuance of these licences is not a formality nor a mere ministerial function but that it requires due verification and formation of satisfaction as to compliance with all the relevant provisions. In this case, the applications for advance licence were made on 29th May, 18th June, 24th June (two applications) and 15th September, 1992. The application of 15th September, 1992 relates to two contracts of much higher value. The change in policy was on September 25, 1992, i.e., within a few days of the last application. Without a doubt, these applications have to be disposed of within a reasonable time - indeed with due expedition. But in the absence of any plea in this behalf, it is not possible to hold that there has been any undue delay, procrastination or deliberateness on the part of the authorities in issuing the licences. There is no finding either by the leaned Single Judge or the Division Bench to this effect. In such a situation, the mere fact that the appellant is likely to suffer some loss or prejudice - assuming that the said plea is factually true - cannot be a ground either for invoking the rule of promissory estoppel or to otherwise bind the Government to apply and adopt the value addition norm in force on the date of application. In this context, the observations of this Court in Pankaj Jain Agencies v. Union of India (1994 (5) S.C.C. 198) are apposite. M.N. Venkatachaliah, CJ., speaking for the Court, held :

> "The third and the last submission is that the sudden and sharp increase of duty steeply puts up the petitioner's liability from Rs. 1,84,341 to Rs. 6,42,065 on these consignments and constitutes an unreasonable restriction on the petitioner's fundamental rights under Article 19(1)(g) of the Constitution. A tax, in particular, in the nature of duties of customs is not per se violative of Article 19(1)(g). Mere excessiveness of a tax is not, by itself, violative of Article 19(1)(g). This question cannot be divorced from the nature of the right to import. There is no absolute right much less a fundamental right to import. [See:

> Deputy Assistant Iron and Steel Controller v. L. Manickchand, Proprietor, Katrella metal Corpn., Madras (1972 (3) S.C.C.324) and Andhra Industrial Works v. Chief Controller of Imports (1974 (2) S.C.C. 348); J. Fernandes & Co. v. Deputy Chief Controller of Imports and Exports 1975 (1) S.C.C. 716). That apart, no factual foundations are laid to demonstrate how this impost has had the effect of destroying the petitioner's right to carry on a trade or business. This contention also has no merit."

Sri A. Subba Rao, learned counsel for the Union of India, brought to our notice certain decisions to which a brief reference would be in order. In Deputy Assistant Iron and Steel Controller v. L. Manickchand, Proprietor, Katrella Metal Corporation, Madras (1972 (3) S.C.C. 324), the respondent applied for an import licence in December, 1968 for importing stainless steel for the licensing period 1968-

69. His registration certificate showed that he was engaged in the manufacture of hospital and surgical instruments and household utensils or stainless steel. In view of the large number of applications for import licences for stainless steel, instructions were issued in January, 1969 that applications should be scrutinized carefully after asking for relevant information from the applicants as to the details of end products to be manufactured by them. The respondent supplied information in May, 1969 that the hospital requisites proposed to be manufactured by him were surgical bowls, spittoons and trays. The Chief Controller, Exports Imports, however, issued instructions that only "medical and surgical equipment and appliances" should have priority and not other types of hospital equipment, such as bowls, trays, jugs, etc. In April 1970, the Chief Controller issued instructions to consider the respondent's application in terms of the Licensing Policy of 1970-71. The respondent thereupon filed a writ petition in the High Court contending that his application having been filed when the 1968-69 Import Policy was in vogue should be considered in accordance with that Import Policy alone and not in the light of or under the Import Licensing Policy in vogue in 1970-71. The High Court allowed the writ petition but was reversed by this Court on appeal. This Court held, "no case has been made out on the present record for a mandamus to the department to consider the respondent's application for import licence in terms of 1968-69 policy. It is not possible on the existing material to conclude that the department is guilty of any undue laches or delay in dealing with the respondent's application which would justify the Court in granting the mandamus prayed for." It was also held that keeping the respondent's application pending until completion of its examination in the light of policy in vogue cannot be said to be unreasonable nor can the time taken in that behalf be characterized as undue delay. Above all, it was held, while emphasising the necessity of disposing of such applications with due expedition, that "an applicant has no absolute vested right to an import licence in terms of the policy in force at the time of his application because from the very nature of things at the time of granting the licence the authority concerned may often be in a better position to have a clearer over- all picture of the various factors having an important impact on the final decision of the allotment of import quota to the various applicants".This decision rendered by a Bench of four learned Judges of this Court clearly negatives the contention of a vested right urged by Sri Kapoor.

The proposition in Manickchand was reiterated by a Constitution Bench in Andhra Industrial Works v. Chief Controller of Exports (1975 (1) S.C.R.321). While observing that the import Control Policy statement contained in what was known as "Red Book" was not statutory, the Court observed, "no person can merely on the basis of such a Statement claim a right to the grant of an import licence, enforceable at law. Moreover, such a policy can be changed, rescinded, altered by mere administrative orders or executive instructions issued at any time". The Court held further:

> "From the counter-affidavit filed on behalf of the Respondents, it is clear that the Import Trade Control policy (Red Book Vol.I) had been amended and the import of the materials in question for utilization in the end products of most 'automobile parts' was prohibited as per instructions conveyed by Chief Controller of Imports & Exports in his letter No.IPC (Gen.33)/73/72/3499, dated September 29, 1972 although general notice of this amendment was published later on august 18, 1973 (Vide Annexure R-5). The result was that in accordance with the amended Import Trade Control Policy, the Respondent could not, in November, grant the licences applied for to the petitioners in respect of the past period, April 1969-March 1970."

The Court reiterated the proposition in Manickchand that "on the basis of an Import Trade policy an applicant has no absolute right, much less a fundamental right to the grant of an import licence". It is true that both decisions in Manickchand and Andhra Industrial Works dealt with the Import policy which was not statutory in nature but as explained by us hereinabove because of the very nature and contents of the scheme, the theory of a vested right is misconceived and out of place.

On the question of Promissory estoppel, Sri Subba Rao cited the decisions in D.Navinchandra & Co., Bombay & Anr. v. Union of India & Ors. 1987 (2) S.C.R.989), Collector of Customs, Calcutta v. M/s.M.Shashikant & Co.(1992 (2) Supp.S.C.C.306) and Kasinka Trading v. Union Of India (1995 (1) S.C.C.274). On the basis of these decisions, the learned counsel submitted that any change in policy or rate of duty between the date of placing the order for import and the actual import import applies to the imported goods and that the theory of promissory estoppel cannot be invoked in such a situation. We do not think it necessary to dilate upon these decisions in view of our holding that in the light of the Scheme concerned herein, there is no room for nay such plea. For the same reason, it is also not necessary for us to deal with the decision in Union of India v. Kanunga Industries (J.T.1990 (3) S.C.723) relied upon by the learned counsel for the appellant.

Accordingly, the appeal arising from Special Leave Petition (C) No.607 of 1995 [preferred by the appellant] is dismissed and the appeal arising from Special Leave Petition (C) No.23900 of 1995 [preferred by the respondents- authorities] is allowed. No costs.