M/S. LARSEN & TOUBRO LTD. A

v.

UNION OF INDIA AND ORS.

JANUARY 18, 2005

[ASHOK BHAN AND A.K. MATHUR, JJ.] B

Export contracts—International Price Reimbursement Scheme (IPRS)—Export Import Policy—Para 190(g)—Unit located at Free Trade Zone (FTZ) obtained export order of engineering goods in 1986—Raw Material of steel procured from domestic sources at prevailing domestic price—Claim for reimbursement of the difference in prices of indigenous steel and imported steel as per the terms of IPRS—Entitlement of—Held: IPRS was extended to units located in FTZ for the first time in 1991 provided it does not amount to 'deemed export'—Further, supplies of raw materials from Domestic Tariff Area to units in FTZ is 'deemed exports', thus unit cannot claim benefit under IPRS—Furthermore the unit not entitled to invoke promissory estoppel since it failed to show that it acted on a representation made by the Government to its detriment—Also the unit failed to produce precise data or any data whatsoever in support of its plea—Promissory estoppel—Administrative Law. C D

Appellants' units are located in the Free Trade Zone (FTZ). It obtained an export order in the year 1986 for construction of two steel bridges in Malaysia. Government of India approved the appellant's project and fabrication of steel bridges at its unit subject to the condition that there should be maximum utilization of indigenous steel as raw material and any import of steel was to be done only after taking approval of the working group. Appellant procured its requirement of steel from domestic sources at the then prevailing domestic prices determined by Joint Plant Committee and fabricated steel bridges at its unit and exported them. Appellant then filed a claim for reimbursement of difference in the price of indigenous steel and imported steel as per the terms of International Price Reimbursement Scheme (IPRS) formulated by Government of India whereby Indian Exporters of engineering goods were to be supplied steel required by them for their export contracts at international price w.e.f. 9.2.1981. Government of India rejected the claim. Appellant filed writ petition. Single Judge of High Court allowed the claim. In appeal, the E F G

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A Division Bench held that the appellant was not entitled to claim the benefit of reimbursement under IPRS as the raw material procured by appellant from domestic sources amounted to 'deemed export'. Hence the present appeal.

Appellant company contended that IPRS was introduced by the B Government of India to enable the Indian Exporters of engineering goods to compete in the global market; that the appellant's claim for such reimbursement could not be rejected without valid and proper reasons by treating the physical export made by the appellant to Malaysia with the input of raw material of steel procured from domestic sources as a C "deemed export"; that the concept of "deemed export" was a legal fiction incorporated in the Import Export Policy with a view to extend the export benefits to the suppliers of indigenous steel to domestic area; that since the supplies made from the DTA were not made at international price, these units will not be entitled to claim import replenishment benefits for such supplies; and that since the appellant had purchased the steel at a D higher price from the domestic market at the instance of the Working Group and on the assurance given that he would be reimbursed the difference between the domestic price and the international price, the Government is estopped from denying the benefit of reimbursement of the differential price under IPRS.

E Respondent-Union of India contended that IPRS was extended to the units situated in FTZ in year 1991 with the rider that IPRS will not be admissible for deemed exports, as such the benefits of IPRS cannot be claimed for export effected in 1985-86; that even on assuming that IPRS was applicable, it is evident from the terms of the Scheme itself that it F did not cover contracts for "deemed exports"; and that the appellant is not entitled to invoke the equitable rule of promissory estoppel.

Dismissing the appeal, the Court

HELD: 1.1. The units located in the Free Trade Zone (FTZ) are G entitled to certain facilities and incentives but the International Price Reimbursement Scheme (IPRS) was not extended to the units located in FTZ. Appellant filed a number of representatives seeking to persuade the respondents - Union of India to include the units located in FTZ for IPRS benefits, though the units had the facilities of sourcing the requirements of raw material on duty free basis. Respondent for the first time in the H year 1991 extended the IPRS to the units located in FTZ with the rider

that IPRS will not be admissible for "deemed export", as such the question of claiming benefits of IPRS for export effected in the year 1985-86 could not arise. [540-H; 541-B-C; 540-F-G] A

1.2. As per the terms of the IPRS, it did not cover contracts for 'deemed exports'. It is the admitted fact that the appellant was entitled to import its raw materials from Domestic Tariff Area (DTA) for its unit located in FTZ at international price from DTA or at international price under Open General Licence (OGL). Every import of raw material from DTA to FTZ is 'deemed export" as defined in para 190(g) of Import and Export Policy which provides for categories of supplies which will be treated as "deemed export" and include supplies made in India to units in FTZs, therefore, the supplies of raw materials made by DTA for the units of the appellant in FTZ would be "deemed export" and the appellant will not be covered by the IPRS for the benefits under it. [541-E-G] B C

1.3. Whether the import of raw material from DTA is made at international price or otherwise is of no consequence. The fact that supplies of raw material from DTA to units in FTZ can or cannot claim import replenishment benefits for such supplies does not have impact on the fact that such supplies from DTA to FTZ are "deemed exports". There is nothing in the language of IPRS that the import replenishment which provides that if a supplier in DTA cannot claim import replenishment benefits, the unit in FTZ would for that reason be entitled to claim IPRS benefits. [541-H; 542-A-B] D E

2. Appellant did not furnish the precise data in support of the pleas with regard to the applicability of promissory estoppel raised in the Court. It also failed to furnish any data whatsoever, in support of its claim. It has failed to set out as to how the supplies made to them were not "deemed exports" or that the supplies were not made at the international prices to them. Even the particulars of the exports, the amount of claim, the price difference and the price at which materials were supplied to them have not been furnished. Appellant has failed to show that the Union of India had ever made any representation to it contrary to what is contained in the IPRS that IPRS would be applicable to units located in FTZ. Since the appellant failed to show that it has acted on a representation made by the Union of India to its detriment, it is not entitled to invoke the equitable rule of promissory estoppel. [544-D-F] F G

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Union of India and Anr. **v.** *Wing Commander R..R. Hingorani,* **[1987] 1 SCC 551;** *S.B. International Ltd. and Ors.* **v.** *Asstt. Director General of Foreign Trade and Ors.,* **[1996] 2 SCC 439 and** *Motilal Padampat Sugar Mills Co. Ltd.* **v.** *State of U.P.,* **[1979] 2 SCC 409, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3025 of 2003.

From the Judgment and Order dated 3.4.2001 of the Madras High Court in Crl. W.A. No. 943 of 1993.

A.K. Ganguli and V. Krishna Murthy for the Appellant.

A. Sharan, Additional Solicitor General and Harish Chander, Ms. Sandhya Goswami, V.K. Verma, S.A. Khan and Shreekant N. Terdal for the Respondent No. 1-2.

Atlaf Ahmad, Ms. Sangeeta Mandal and Ms. Jayasree Singh for M/s. Fox Mandal & Co. for the Respondent No. 3.

The Judgment of the Court was delivered by

BHAN, J. This appeal by grant of leave is directed against the final judgment and order dated 3.4.2001 passed by the Madras High Court in Writ Appeal No. 943 of 1993 whereby the Division Bench has set aside the order passed by the Single Judge of the High Court and dismissed the writ petition filed by the appellant.

Larsen & Toubro Ltd. the appellant herein, has its workshop amongst other places within the Kandla Free Trade Zone (hereinafter referred to as 'the KFTZ') in the State of Gujarat. In the year 1986 it obtained an export order for Rs. 24 crores (48 million Malaysian Dollars) from the Malaysian Government for the construction of two steel bridges in Malaysia. The Working Group, a High Level Official Body of the Indian Government gave its approval to the appellant's project and for fabrication required for the work to be done in the appellant's workshop at KFTZ on the condition that there should be maximum utilization of indigenous steel as raw material and that any import of steel was to be done only after taking prior approval of the Working Group.

The units which are located in the Free Trade Zone like that of the appellant in KFTZ is entitled, *inter alia*, to the following facilities and incentives:-

(i) An assured supply of power and good quality of water, is available in these zones at reasonable rates. These zones are also well served by banks, clearing and forwarding agencies, postal and telecommunication facilities and customs clearance facilities.

(ii) Simplified procedures coupled with single point clearance.

(iii) Non-requirement of import licence as all imports into the zones have been placed under the Open General Licence (OGL). The customs duty is not leviable.

(iv) Exemption from central excise duties and other levies on products manufactured within the zones.

(v) Treating raw materials, components etc. supplied to these zones from rest of the country as exports and their eligibility for all export benefits. It means easy availability of high quality inputs at lower cost.

(vi) The zones have all other infrastructural facilities like warehousing, postal, telecommunications and canteen facilities.

(vii) Complete tax holiday for a specified numbers of years is also available.

(viii) Foreign equity participation is permitted upto 100%.

(ix) Capital invested by foreign investors/entrepreneurs including profits ploughed back in the project in the zone and dividends can be freely repatriated after deduction of applicable taxes.

(x) The EPZ units are permitted to sell to the extent of 25% of their production in addition to 5% of the rejects in Domestic Market.

(xi) Concessional financing facilities are available.

The Government of India had introduced a special scheme known as *International Price Reimbursement Scheme* (for short 'IPRS') to ensure that the supplies of steel required by the engineering exporters for their export contracts are made available to them at international price w.e.f. 9.2.1981 and to reimburse them the difference in the price of indigenous steel and the imported steel. The Scheme provided for an elaborate procedure and also conditions under which the benefits could be claimed. Relevant clauses which are required to be fulfilled for claiming the benefits under the Scheme are :-

"1. The scheme will not cover "deemed exports" including supplies

of IDA/IBRD assisted/financed projects."

2. Contracts eligible for reimbursement would have to be got registered with the concerned regional office of the EEPC within 40 days from the date of the contract.

3. Applications will have to be made on a monthly basis covering all shipments made during the month to the concerned regional office of the EEPC.

4. After scrutiny of the claims, EEPC will record all the statements of exports furnished by the exporter in an Entitlement Certificate.

5. The licensing authority, after checking the claims, will issue payments to the EEPC and the EEPC will issue the cheque for an amount as authorised by the licensing authority."

The appellant procured its requirement of steel from domestic sources SAIL and TISCO at the then prevailing domestic prices determined by the Joint Plant Committee (for short 'JPC') in preference to their right to import steel at a much competitive international price. Appellant after fabricating the two steel bridges at its unit in Kandla, exported the same to Malaysia. The appellant filed its claim with the Government of India for reimbursement of price difference in accordance with the Price Reimbursement Scheme. The Government rejected the appellant's claim by its order dated 12.2.1992. Appellant filed Writ Petition No. 5499-5500 of 1992 impugning the said order of rejection. The learned Single Judge allowed the writ petition by his judgment and order dated 8.6.1993. It was held that the appellant would be entitled to the reimbursement of the difference in prices of indigenous steel and the imported steel. Accordingly, a direction was issued to the Government to reimburse the appellant with the difference in the price of indigenous steel and the imported steel.

The Government filed an appeal before the Division Bench of the High Court in Writ Appeal Nos. 943 and 944 of 1993. The appellate court reversed the judgment of the learned Single Judge and held that the appellant was not eligible to claim the benefit of reimbursement under the IPRS as the raw material procured by the appellant from domestic sources amounted to "deemed export".

It is a common case of the parties that "deemed exports" have not been defined under the IPRS. The same have been defined in Chapter XVI of Import and Export Policy (Vol. I). Paragraph 190 of the Policy provides,

inter alia, that the following categories of supplies will be treated as "deemed exports" for the purpose of benefits under the Import Replenishment Scheme:-

"(a) Supplies made in India of indigenous items against "Duty Free Licences" issued under the Duty Exemption Scheme and the Import Export Pass Book Scheme;

(b) xx xx xx

(c) xx xx xx

(d) xx xx xx

(e) xx xx xx

(f) xx xx xx

(g) Supplies made in India to units in free trade zones/export processing zones or 100% export oriented units according to the policy laid down under the respective schemes;

(h) xx xx xx

(i) xx xx xx

(j) xx xx xx

(k) xx xx xx

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The Division Bench in the impugned judgment has taken the view that since the supplies made in India to the units located in the free trade zones/ export processing zones or 100% export oriented units are deemed to be exports, the appellant is not entitled to the benefit of reimbursement as provided under the IPRS because the IPRS in terms states that it will not cover contracts for "deemed exports".

Shri A.K. Ganguly, learned Senior Counsel appearing for the appellant has strenuously contended that IPRS was introduced by the Government of India to enable the Indian Exporters of engineering goods to obtain reimbursement of the difference between the domestic price and the

A input of raw material of steel procured from domestic sources as a "deemed export". According to him, the concept of "deemed export" was nothing but a legal fiction incorporated by the Government of India in the Import Export Policy with a view to extend the export benefits which are otherwise available only for physical exports so that the consumption of indigenous raw material in the exports is encouraged and foreign exchange is conserved. It was B submitted by him that the Division Bench has erred in holding that the transaction of procurement of steel by the appellant from domestic supplies SAIL and TISCO was a "deemed export" so as to deprive the appellant of the benefit of IPRS. According to him, "deemed export" is only a legal fiction used in the Import Export Policy in contradistinction to physical export C so that certain consignments made from one domestic area to another domestic area within the territory of India are deemed to be exports for the purpose of conferring certain benefits which are otherwise available only for physical exports so that suppliers of indigenous steel to domestic area become eligible to claim the said export benefits and the said concept has no relevance to the physical export made by the appellant by procuring indigenous steel at D domestic price from domestic supplier, both being mutually exclusive.

The Government of India had formulated the IPRS in order to ensure that the supply of steel required by the engineering exporters for their export contracts is made available to them at international prices w.e.f. 9-2-1981 so E as to enable them to compete in the global market and, therefore, the High Court should have considered the applicability of the said scheme to the export made by the appellant by procuring the indigenous steel as raw material.

As against this, counsel for the respondent contended that the IPRS was not applicable to the appellant in the year 1985 when the goods were exported. F It was extended to the units situated in Free Trade Zones on 20.9.1991 and that too with the rider that IPRS will not be admissible for deemed exports. Under the circumstances, the question of claiming benefits of IPRS for export effected in 1985-1986 did not arise on facts. Even on assuming that the IPRS was applicable, it is evident from the terms of the Scheme itself that it did not cover contracts for "deemed exports".

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After due deliberations on the submissions made by the learned counsel for the parties we are of the view that there is no merit in this appeal. The units located in the Free Trade Zone are entitled to certain facilities and incentives such as assured supply of power and good quality of water at reasonable rates. Simplified procedures coupled with single point clearance H

have been provided for them. All imports made by them into the zone were placed under the Open General Licence (OGL). Custom duty was not leviable on the imported materials. They were given exemption from central excise and other levies on the products manufactured by them. Complete tax holiday for specified number of years was made available to them. Like this, many other benefits had been extended to them as is evident from the perusal of the terms of the Scheme which have been reproduced in the earlier part of the judgment. But the IPR scheme was not extended to the units located in free trade zone. The appellant, as a matter of fact, through a number of representatives had been seeking to persuade the respondents to include the units located in Free Trade Zone for IPRS benefits, though the units had the facilities of sourcing the requirements of raw material on duty free basis. EEPC placed its argument on behalf of the appellant before the Union of India - the respondent herein, who by their letter dated 20.9.1991 extended the IPRS to the units located in Free Trade Zone with the rider that IPRS will not be admissible for "deemed export". As benefits under IPR Scheme were extended for the first time in the year 1991 the question of claiming benefits of IPRS for export effected in the year 1985-86 under the circumstances could not arise.

Even otherwise, it is evident as per the terms of the IPRS itself that it did not cover contracts for "deemed exports". The admitted fact is that the appellant was entitled to import its raw materials from Domestic Tariff Area (DTA) for its unit located in Free Trade Zone at international price from DTA or at international price under Open General Licence (OGL). Every import of raw material from DTA to FTZ is "deemed export" as defined in para 190(g) of Import and Export Policy which provides for categories of supplies which will be treated as "deemed export" and include supplies made in India to units in FTZs. Quite plainly, therefore, the supplies of raw materials made by DTA for the units of the appellant in FTZ would be "deemed export" in terms of the definition at para 190(g) of Import and Export Policy and thus on terms of IPRS itself, the appellant will not be covered by the IPRS for the benefits under it.

It was submitted by the counsel for the appellants that since the supplies made from the DTA were not made at the international price, these units will not be entitled to claim import replenishment benefits for such supplies. Whether the import of raw material from DTA is made at international price or otherwise is of no consequence. The fact that supplies of raw material from DTA to units in FTZ can or cannot claim import replenishment benefits

A for such supplies does not impact on the fact that such supplies from DTA to FTZ are "deemed exports". There is nothing in the language of IPRS or the scheme that the import replenishment which provides that if a supplier in DTA cannot claim import replenishment benefits, the unit in FTZ would for that reason be entitled to claim IPRS benefits.

B In the High Court the appellant had invoked the equitable rule of promissory estoppel but in the Special Leave Petition this ground has not been taken. However, during the course of arguments before us the learned senior counsel appearing for the appellant made submissions on the equitable rule of promissory estoppel as well. It is submitted by him that the IPRS in C express terms confers upon the Engineering Export Promotion Council (EEPC) the responsibility to administer the scheme by not only sponsoring the demand of steel for export production but by undertaking detailed scrutiny of the applications for reimbursement of differential price sought by the exporters and finally by making payment to the exporters. It was contended that in respect of another export contract executed by the appellant in June, 1985 for D export of Steel Sliding Gates to Nepal, EEPC not only categorically given out that the appellant "*will be eligible for reimbursement of price difference on consumption of steel/pig iron in the products exported provided all documents as per the International Price Reimbursement Scheme are furnished to council*" but had, in fact, been reimbursed with the full amount of the difference E between the domestic price and the international price of the indigenous material by the EEPC. The appellant therefore *bona fide* believed that it was entitled to reimbursement of the differential price under the IPRS. That the Working Group had approved the international pricing of export contract on the basis of international prices of the raw material. That it is at the instance of the Working Group that the appellant instead of importing the steel at F international price without paying custom duty which it was entitled to, being located in Free Trade Zone, agreed to procure steel from SAIL and TISCO at a much higher price determined by JPC only on the assurance that it will be entitled to the reimbursement of the differential price under the IPRS. Since the appellant had purchased the steel/pig iron at a higher price from the G domestic market at the instance of the Working Group and on the assurance given that he would be reimbursed of the difference between the domestic price and the international price, the Government is estopped from denying the benefit of reimbursement of the differential price under the IPRS.

As against this, counsel for the respondent submitted that no H representation had ever been made on behalf of the Union of India or its

officers that benefits of IPRS would be extended to the appellant. That applicability of Promissory Estoppel was not a pure question of law. The appellant was required to provide precise factual data in support of his plea. It was for him to show as to how supplies made to it were not "deemed exports". The appellant should have placed the factual data to show that the supplies had not been made to it at the international price which it failed to do. Particulars of the export, the amount of claim, the price difference and the price at which materials were supplied to it have not been furnished. In the absence of these facts, the appellant is not entitled to invoke the equitable rule of promissory estoppel.

Strictly speaking since the appellant has not raised this point in the special leave petition, we are not called upon to adjudicate on this point, but as we permitted him to make submission on the equitable rule of promissory estoppel we might as well decide this point. In *Union of India and Anr.* v. *Wing Commander R.R. Hingorani,* [1987] 1 SCC 551, this Court has held that before an estoppel can arise, there must be first a representation of an existing fact distinct from a mere promise made by one party to other; secondly, that the other party believing it must have been induced to act on the faith of it; and thirdly, that he must have so acted to his detriment. In the present case, no representation had ever been made by the Union of India that IPRS would be applicable to the units located in FTZ. On the contrary, the appellant had filed a number of representations seeking to persuade the Union of India to include the units located in FTZ for IPRS benefits. The Union of India by its letter dated 20.9.1991, for the first time, extended the IPRS to the units located in FTZ but at the same time reaffirmed that IPRS will not be admissible for "deemed exports". This reiteration is mere restatement of what is already provided in IPRS and any modification thereof sought by the appellant was not acceptable to the Union of India. Under the circumstances, the question of promissory estoppel would not arise on the facts itself inasmuch as no representation contrary to IPRS had ever been made which could mislead the appellant into altering his position to his detriment.

In *S.B. International Ltd. and Ors.* v *Asstt. Director General of Foreign Trade and Ors.,* [1996] 2 SCC 439, this Court has taken the view that applicability of promissory estoppel is not a pure question of law. Person invoking the equitable rule of promissory estoppel is required to provide precise data in support of his plea and specify the various ingredients of the rule enunciated in *Motilal Padampat Sugar Mills Co. Ltd.* v. *State of U.P.,* [1979] 2 SCC 409, wherein it was observed:

A "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 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 data has been furnished by the appellant in support of the said plea. In the absence of such data, 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 U.P.*, [1979] 2 SCC 409 and other subsequent decisions. It is not a pure question of law."

In the present case, the appellant has failed to furnish the precise data in support of the pleas raised in the Court. What to talk of precise data, in support of its claim, the appellant has failed to furnish any data whatsoever. It has failed to set out as to how the supplies made to them were not "deemed exports" or that the supplies were not made at the international prices to them. The precise data required for their entitlement has not been given in their affidavits. Even the particulars of the exports, the amount of claim, the price difference and the price at which materials were supplied to them have not been furnished. The appellant has failed to show that any representation had ever been made to it by the Union of India contrary to what is contained in the IPRS. Since the appellant failed to show that it has acted on a representation made by the Union of India to its detriment, the appellant is not entitled to invoke the equitable rule of promissory estoppel.

For the reasons stated above, we do not find any merit in this appeal and dismiss the same with no order as to the costs.

N.J. Appeal dismissed.