

M/S. BARAKA OVERSEAS TRADERS
v.
DIRECTOR GENERAL OF FOREIGN TRADE AND ANR.

SEPTEMBER 11, 2006

[ASHOK BHAN AND MARKANDEY KATJU, JJ.]

Foreign Trade (Development and Regulation) Act, 1992:

Section 5—Exim Policy—Duty exemption Scheme—Advance licence—Transferability—Held, the licences are transferable whether issued under the ‘norms’ or ‘no norms’ category.

Administrative Law:

Licence—Rights accrued—New law enforced in replacement of old law—Held, continues to exist unless there is an express or implied inconsistent provision in the new law.

Under the ‘Duty Exemption Scheme’ envisaged in the Exim Policy 1997-2002, import of certain specified input required for the manufacture and export of the resultant product was allowed with duty exemption benefits. To avail the benefits, the applicant/exporter had to apply for licence with the details of the input requirements. In case the Standard input/output (SION) for a particular export product were not already notified at the relevant point of time, the application has to be considered by the Advance Licensing committee and, if notified, the licences are normally issued by the Licensing Authority concerned without making reference to the committee. The appellant had been granted three advance licences for export of ‘Fresh Forzen Sea foods’ including ‘Shrimps’ and ‘PUDS’.

Against all the three advance licences, the appellant filed three separate applications requesting for endorsement of transferability after fulfilment of the stipulated export obligation which was not allowed by the Director General of Foreign Trade (DGFT). High Court also dismissed the Writ petition filed against the same. Hence, the present appeals.

It was contended by the respondent that the description of the export

A items was wrongly shown in the 'no norms category' by the appellant whereas it should have been shown in the 'norms category' as it was 'Frozen marine products/ frozen meat packed in packing material made out of LDPE/HDPE/ PP Card Board other than Ivory Board' and as such the licence granted to the appellant was contrary to the circular prevalent whereby the licensing authority was advised to issue licences strictly as per the SION in respect of fish and marine products. It, therefore, was further contended that the grant of a licence to the appellant does not confer any vested right in its favour if the licence has been obtained by misrepresentation. It was also submitted that now the new EXIM POLICY 2002-2007 has come into force.

C Allowing the appeal, the Court

HELD:1.1. The Advance licence are transferable whether they are in the 'norms category' or in the 'no norms category'. In the absence of any proceeding *vis-a-vis* cancellation of the licences issued to the appellant, if they were not validly granted, the respondent wrongly refused the appellant's request for endorsement of transferability. [877-F-H; 878-B-C]

2.1. Licence once granted, certain rights accrue to the licence holder and deprivation of such right without an opportunity of hearing is violation of natural justice, the principle applies even when the licensing Authority is of the opinion that the licence was obtained by misrepresentation. [878-D]

E 3.1. Rights that have accrued under the old law continue to exist unless there is an express or implied inconsistent provision in the new law. [879-A]

F *Union of India and Ors. v. Chowgule and Co. Ltd. and Ors.*, [2003] 2 SCC 641, relied upon.

'Principle of Statutory Interpretation', Justice G.P. Singh 9th Edn. (2004), referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1426 of 2001.

G From the Judgment and Order dated 24.3.2000 of the High Court of Andhra Pradesh at Hyderabad in W.P. No. 4755/1999.

R. Thyagarajan and V. Balachandran for the Appellant.

H Mohan Parasaran, ASG, Harish Chandra, Shreekant and N, Terdal for the Respondent.

The Judgment of the Court was delivered by

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MARKANDEY KATJU, J. This appeal has been filed against the impugned judgment and order of the Andhra Pradesh High Court dated 24.3.2000 in Writ Petition No. 4755 of 1999.

Heard learned counsel for the parties and perused the record.

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The writ petition was filed in the High Court challenging the order of the Director General of Foreign Trade (hereinafter referred to as the 'DGTF'), New Delhi dated 19.2.1999 by which the appellant's request for endorsement of transferability of the three licences in question, was refused.

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The facts of the case are that to enable Indian exporters to compete effectively in the international market a scheme was framed by the Central Government named the 'Duty Exemption Scheme'. Under this Scheme, import of certain specified input items required for the manufacture and export of resultant products was allowed with duty exemption benefits. For getting this benefit, the applicant exporter had to apply for licence with the details of the input requirements. In case, the standard input/output norms (SION) for a particular export product were already notified at the relevant point of time, the licences are normally issued by the Licensing Authority concerned without making reference to the Advance Licensing Committee. In case, the SION is not fixed, the application is to be considered by the Committee.

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The petitioner had obtained three advance licences dated 11.12.1997, 30.7.1998 and 30.7.1998 for export of 'Fresh Frozen Sea foods' including 'Shrimps' and PUDs' from the Regional Office of the Joint Director General of Foreign Trade, Hyderabad under the Export and Import Policy of 1997-2002 (in short hereinafter referred to as 'EXIM POLICY'). These advance licences were issued for import of items such as LDPE/HDPE/PP Moulding Powder, Kraft Paper, Raw Material for Fish Net, PP Moulding Powder/Nylon Moulding Powder/Nylon Monofilament, Anti-oxidants viz., Gentamycin Sulphate, Doxyeyclene HCL, Raw Material for Tubs, Basins, Crats, etc. i.e. HDPE/PP Moulding Powder, Anti-bacterial/Anti-fungal material to increase the shelf life i.e. Tetracyclene HCL used during fishing in ice, Soya Meal, Lecithin, Wheat Gluton, Gum Arabic, Beta-Methazone/Dexamethazone.

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Against all the aforesaid three advance licenses the appellant filed three separate applications all dated 16.9.98 requesting for an endorsement of transferability after fulfillment of the stipulated export obligation. The DGFT,

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A vide order dated 19.2.1999, refused the request of the appellant for an endorsement of the transferability of the advance licenses.

Against the order of the DGTF dated 19.2.1999, the appellant filed a writ petition in the High Court, which was dismissed. Hence, this appeal by way of Special Leave.

B Under the Scheme for Duty Exemption Endorsement in the EXIM POLICY for the year 1997-2002, the advance licenses carry certain export obligations, and for certain goods the standard input and output norms (SION) for import and export for the grant of the duty-free licenses have been fixed, while for some other goods the norms have not been fixed.

C The petitioner had applied for licenses under the 'no norms category' for the export of Fresh Frozen Sea Foods including Shrimps and PUD, and the said licenses were granted by the Licensing Committee. The High Court in paragraph 8 of it's judgment observed that norms did exist for the export product "Frozen Marine Products/Frozen Meat packed in packing material made out of LDPE/HDPE/PP Card Board other than Ivory Board", and hence the appellant should have applied in the 'norms category' and not the 'no norms category'.

D There is no dispute that whether the advance licenses were issued under the 'norms category' or 'no norms category', in either case the said licences were transferable under the EXIM POLICY 1997-2002, which was issued under Section 5 of the Foreign Trade (Development & Regulation) Act, 1992.

E Clause 7.19(a) of the Duty Exemption Scheme contained in the aforesaid EXIM POLICY for the period 1.4.1997 to 31.3.2002 provided that "a duty free licence except Special Imprest Licence and/or materials imported against it is transferable after the completion of export obligation and endorsement of transferability by the licensing authority".

F Thus, from a reading of the above Scheme it is evident that duty free licenses are transferable whether they are in the 'norms category' or 'no norms category'. The only difference between the 'norms category' and 'no norms category' as per clause 7.4 of the Duty Exemption Scheme is that where the SION norms have been published the application is to be given to the Licensing Authority, and where they have not been published the application is to be given to the Committee which functions as a recommending authority

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to the Licensing Authority.

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Clause 7.27 of the Duty Exemption Scheme reads as under:

(i) "After export obligation has been fulfilled and the Undertaking redeemed and subject to fulfillment of other conditions as laid down in paragraph 7.25 above, the duty free license holder (except the Special Imprest License and Advance license used under paragraph 7.4) shall be allowed transfer of the license, provided the request for endorsement of transferability is made within 36 months of the issuance of license, by the licensing authority. Upon such endorsement of transferability by the licensing authority, the concerned license holder may transfer:

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(a) The license in full, if no imports have been made;

(b) The license in part, excluding the quantity and value of imports already made; and

(c) The materials or the balance thereof already imported.

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(ii) Upon endorsement of transferability, issue of duplicate license, enhancement in the cif value or amendments including revalidation shall not be allowed.

(iii) Upon endorsement of transferability, a duty free license shall be valid for the balance period of its validity or for a period of six months from the date of endorsement, whichever is later. However, licenses submitted for endorsement of transferability after 30 months of the issuance shall have a validity upto maximum period of 36 months from the date of issuance".

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Thus, it is evident that all duty free licenses are transferable, whether they belong to the 'norms category' or 'no norms category'.

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By the order dated 19.2.1999 the DGFT rejected the application for endorsement of transferability on the ground that the description of the export items was wrongly shown in the 'no norms category', whereas it should have been shown in the 'norms category', as it was Frozen Marine Products/Frozen Meat packed in packing material made out of LDPE/HDPE/PP Card Board other than Ivory Board.

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The DGFT was of the view that the license was granted to the appellant

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A contrary to the Circular dated 31.3.1997 whereby the Licensing Authority was advised to issue advance licenses strictly as per the standard input output norms (SION) in respect of fish and marine products.

B In our opinion, the view taken by the High Court as well as the DGFT was clearly erroneous in law and liable to be set aside. There is no dispute that the appellant was granted the advance licenses which were applied for. If there was any complaint that the licenses were not validly granted, then a show cause notice should have been issued to the appellant to show cause why the said licenses should not be cancelled, and thereafter cancellation order could have been passed. However, in the present case, neither was any show cause notice issued to the appellant nor the licenses were actually cancelled.

C If a license is granted to someone certain rights accrue to the licence holder, and deprivation of such right without a hearing is violation of natural justice. Before withdrawal of such right opportunity of hearing has to be given. In the present case, no such opportunity was given at all. The stand of the respondents is that grant of a licence does not confer any vested right in favour of the licensee if the licence has been obtained by misrepresentation. We do not agree. The grant of a licence certainly creates certain rights in favour of the licensee, and if the Licensing Authority was of the opinion that the licence was obtained by misrepresentation, then a show cause notice should have been given to the appellant, as well as an opportunity of hearing. In the present case neither an opportunity of hearing was given to the appellant nor was the licence cancelled.

D As already stated above, under the Duty Exemption Scheme, whether the licence is in the 'norms category' or 'no norms category', in either case it is transferable. Hence, in our opinion, the DGTF wrongly refused the appellant's request for endorsement of transferability of the licences in question.

E Learned counsel for the respondents submitted that, now the new EXIM POLICY 2002-2007 has come into force. However, a perusal of the same shows that broadly there is no difference between the Scheme of 1997-2002 and that of 2002-2007, so far as the matter in question is concerned.

F In *Union of India and Ors. v. Chowgule & Co. Ltd. and Ors.*, [2003] 2 SCC 641, this Court held that even under the new policy, the appellant who had an accrued right under the old policy was entitled to the benefits under H the new policy.

It is well settled that rights which have accrued under the old law continue to exist unless there is an express or implied inconsistent provision in the new law vide '*Principles of Statutory Interpretation*' by Justice G.P. Singh, 9th Edition (2004) p. 586. We find no material inconsistency between the EXIM POLICY of 1997-2002 and that of 2002-2007 so far as the matter in question is concerned. A

For the reasons given above, this appeal is allowed. The impugned judgment of the High Court dated 24.3.2000 as well as the order of the DGTF dated 19.2.1999 are set aside. The DGTF is directed to endorse the transferability of the licences in question as prayed for by the appellant. B

There shall be no order as to costs. C

B.K.

Appeal allowed.