

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).13070/2006

(From the judgement and order dated 14/03/2006 in WA No. 51/2006 of The HIGH COURT OF KERALA AT ERNAKULAM)

DIRECTOR GEN. OF FOREIGN TRADE & ORS.

Petitioner(s)

VERSUS

ALEYAMMA GEORGE

Respondent(s)

(With prayer for interim relief and office report)

(For final disposal)I.A.No.1 (Appl. for permission to file additional affidavit)

Date: 11/05/2007 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.B. SINHA

HON'BLE MR. JUSTICE MARKANDEY KATJU

For Petitioner(s)

Mr. A. Subba Rao, Adv.

Mr.Vikas Sharma, Adv.

Mr. V.K. Verma,Adv.

For Respondent(s)

Mr. M.P. Vinod,Adv.

Mr.Ajay K. Jain, Adv.

Ms.Seema Jain, Adv.

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

(Meenu Sethi)

(Pushap Lata Bhardwaj)

Court Master

Court Master

Signed order is placed on the file

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2487 /2007

(@SLP(C) No. 13070/2006)

Director Gen. of Foreign Trade & Ors. ...Appellants

Versus

Aleyamma George

...Respondent

ORDER

Leave granted.

Respondent was granted a

license/authorization to export Sandal Wood Oil as far back

as in 1996. The goods, however, were not exported within the

time stipulated.

The Central Government in its EXIM policy

for the years 2002-2007 took a policy decision that the

license/certificate/permission could be re-validated on merit

by the Licensing Authority only for a period of six months

and not beyond twelve months reckoned from the date of expiry of the validity period.

Permission to export Sandal Wood Oil to the respondent was again granted on 24.7.2002. It came to an end on 23.1.2003. Yet again authorization was granted to the respondent to export 350 kgs of Sandal Wood Oil within the stipulated validity period of six months from the date of issuance of the authorization letter dated 24.7.2002. Indisputably, the respondent did not fulfill the said obligation. Time was, however, extended from time to time.

Respondent's application for grant of further extension was dismissed by the competent authority by an order dated 28.5.2004. She aggrieved thereby filed a writ petition before the Kerala High Court on or about 11.3.2005. By reason of the judgment dated 27.10.2005, the learned Single Judge of the said Court although opined that the respondent, in view of the prohibition imposed on export of Sandal Wood Oil, could not claim any right to export the same, directed the appellant herein to consider as to whether she could be given some time as a last chance.

The appeal preferred by the respondent has been disposed of by the Division Bench of the High Court by reason of the impugned judgment directing as follows:

"It is the case of the petitioner that the respondent is taking the stand that as per the new policy for 2002-2007, extension cannot be made for more than one year. We agree with the view of the learned Single Judge. Once the license is issued, it cannot be eternal. The export of Sandal Wood Oil sought to be made by the petitioner is a prohibited item as per the present policy, but, when license was granted it was not a prohibited item. By export the Nation will be earning foreign exchange also. Even under the new policy, DGFT has got power to give relaxation. Therefore, we direct the Director General of Foreign Trade to consider the case of the petitioner for one time export since the petitioner has already procured the materials and got a license as per the earlier policy."

The short question which arises for consideration in this appeal is as to whether in view of Section 51 of the Customs Act, 1962, the petitioners (appellants herein) could be directed by the High Court to consider the respondent's application for extension of time despite the aforementioned policy of prohibition adopted by the Central Government.

Section 51 of the Customs Act as also the Circulars issued thereunder came up for consideration before this Court in Union of India Vs. Asian Food Industries

- 2006(204) ELT 8 (S.C.). It was held as follows:

"43. We are, however, not oblivious of the fact that in certain circumstances regulation

may amount to prohibition. But, ordinarily the word "regulate" would mean to control or to adjust by rule or to subject to governing principles ( See U.P. Cooperative Cane Unions Federations Vs. West, U.P. Sugar Mills Association and Ors. (2004) 5 SCC 430) wheres the word "prohibit" would mean to forbid by authority or command. The expressions "regulate" and "prohibit" inhere in them elements of restriction but it varies in degree. The element of restriction is inherent both in regulative measures as well as in prohibitive or preventive measures.

46.The term,however, indisputably would be construed having regard to the text and context in which they have been used. Section 3(2) of the 1992 Act uses prohibition, restriction and regulation. They are, thus, mean to be applied differently, Section 51 of the 1962 Act also speaks of prohibition. thus, in terms of the 1992 Act as also the policy and the procedure laid down thereunder, the terms are required to be applied in different situations wherefor different orders have to be made or different provisions in the same order as required therefor.

47.We, however, need not dilate on the said question as in the case of Agri Trade India Services(P) Ltd, the requirements of Section 51 of the 1962 Act had not been complied with whereas in the case of Asian



Leave granted.

The matter being covered by a decision of this

Court in Secretary, State of Karnataka & Ors. Vs. Uma Devi(3)

& Ors - (2006) 4 SCC 1, the impugned judgment cannot be

sustained. It is set aside accordingly. The cases of the

respondents, however, as and when the vacancies are filled

up, be considered along with the other eligible candidates

subject to the extant Rules.

The appeal is allowed.

.....J.

[ S.B. SINHA ]

.....

...J.

[MARKANDEY

KATJU]

New Delhi,

May 17, 2007