

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

CIVIL APPEAL NOS. 4315-4316 OF 2001

Palani Andavar Mills Ltd.

Appellant(s)

Versus

Chief Controller, Imports & Exports & Ors.

Respondent(s)

(with prayer for interim relief and office report)

Date: 12/09/2006 This/these matter(s) was/were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN
HON'BLE MR. JUSTICE TARUN CHATTERJEE
HON'BLE MR. JUSTICE MARKANDEY KATJU

For Appellant(s)

Mr. Joseph Vellapally, Sr. Adv.
Mr. S. Nanda Kumar, Adv.
Mr. G. Ananda Selvam, Dv.
Mr. A. Santha Kumar, Adv.
for Mr. Rakesh K. Sharma, Adv.

For Respondent(s)

Mr. Vikas Singh, ASG
Mr. A. Subba Rao, Adv.
Mr. T.A. Khan, Adv.
Mr. B.K. Prasad, Adv.
Mr. V.K. Verma, Adv.
Mr. Shreekant N. Terdal, Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeals are dismissed in terms of the signed order.

h) (J.S. Rawat)

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Court Maste

[Signed order is placed on the file.]

CIVIL APPELLATE JURISDICTION

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O R D E R

These appeals with the leave of the Court are directed against the judgment dated 11th September, 2000 rendered by the Division Bench of the High Court of Judicature at Madras in Writ Appeal Nos. 1554 and 1555 of 2000 whereby the Division Bench has confirmed the decision of the Single Judge dated 6th July, 2000 in WP Nos. 11544 and 11545 of 1993.

Briefly stated the facts giving rise to the present appeals are:

Paragraph 197 of the Import and Export Policy for April 1990 - March 1993 [for short "the EXIM Policy"] provided for the import of capital goods on the concessional rates of customs duty at 25% if imported under a licence issued under the said paragraph. Clause (2) thereof provided that the facility to import the goods under clause (1) of paragraph 197 was available to registered manufacturer-exporters, who have been regularly exporting for a period of not less than three years.

Pursuant to paragraph 197 of the EXIM Policy, the Central

Government issued Notification No. 169/90-Cus. Dated 3rd May, 1990, reducing the duty of customs on capital goods to 25% if the same are imported under a licence issued under the paragraph 197 of the EXIM Policy. On 7th of September, 1990 vide circular No. 38/90, the Central Government amended paragraph 197 of the EXIM Policy and relaxed the requirement of three years' experience for issuance of a licence under the said paragraph stating that the people who do not have three years' experience can also apply for a licence.

Pursuant to the aforesaid relaxation, the assessee-appellant made an application on 6th November, 1990 for the import of capital goods with export obligation under paragraph 197 of the EXIM Policy. Chief Controller of Imports and Exports, without noticing the amendment brought in by Circular No. 38/90 dated 7th of September, 1990, rejected the application requiring the assessee to build up export performance and then re-apply.

Aggrieved by the rejection of its application, the assessee filed WP No. 8142/91 in the High Court of Madras. In the said writ petition, the assessee moved an interim application praying for clearance of imported goods, i.e., three Cherry High Speed Combers and two Automatic Winder Machines, under paragraph No. 197 of the EXIM Policy read with Notification No. 169/90-Cus.

The High Court by its interim order dated 11th of June, 1991 directed the clearance of the aforesaid goods under paragraph 197 of the EXIM Policy read with Notification No. 169/90-Cus. subject to the payment of 50% of the differential duty in cash and furnishing of bank guarantee for the balance amount of 50%. In pursuance to the aforesaid interim order passed by the High

Court, the appellant cleared the goods under paragraph 197 on 17th of August, 1991.

The assessee was issued the Import licence on 15th of January, 1992, i.e., during the pendency of the afore-mentioned writ petition.

The assessee wrote a letter dated 14th March, 1992 followed by the letter dated 24th March, 1992 to the Joint Chief Controller of Imports & Exports, Madras, informing him that the goods had been cleared from the Customs on 17th of August, 1991 after payment of 50% of the differential duty and furnishing the bank guarantee as directed by the High Court.

On 24th of September, 1992, on a statement made by the counsel for the assessee, WP No. 8142/91 was dismissed as infructuous, in view of the fact that the licence had already been issued to the assessee.

The assessee applied to the assessing authority to finalise the assessment. The Asstt. Commissioner of Customs recorded a finding that, according to condition no. 7 of the licence, which reads:

"7. THE BENEFITS OF PARA 197 SHALL NOT BE VALID IN CASE THE GOODS HAVE ALREADY BEEN CLEARED BY THE CUSTOMS OR BILL OF ENTRY HAS BEEN FILED PRIOR TO 3.5.1990."

benefit of paragraph 197 was not available to the assessee, as the goods had been cleared prior to the grant of licence.

The assessee thereafter filed the Writ Petition Nos. 11544 and 11545 of 1993 in the High Court of Madras challenging the afore-quoted condition no. 7 attached to the licence being contrary to the express provisions of the EXIM

Policy as also taking the ground that the authority had the power to relax the condition, which were dismissed by the Single Judge, against which Writ Appeals were filed. The said Writ Appeals having been dismissed by the Division Bench of the High Court, the present appeals have been preferred by the assessee.

Mr. Vellapally, learned senior counsel initially made his submissions challenging the correctness of the impugned judgment, but soon thereafter prayed that these appeals be dismissed as withdrawn with liberty to the assessee to file an application before the High Court to recall/review the order dated 24th September, 1992 passed by the Single Judge in the WP No. 8142/91. According to him, the counsel appearing for the assessee before the High Court should not have got the writ petition dismissed as infructuous so long as he was not satisfied with the conditions attached to the licence or should have obtained an appropriate direction regarding goods already cleared under the interim orders passed by the High Court in the said Writ Petition.

In view of this, the appeals are dismissed as withdrawn with liberty to the assessee to file an application for recall/review of the order dated 24th September, 1992 in WP 8142/91. In case, such an application is filed, the same shall be decided by the High Court, in accordance with law, without being influenced by any of the observations made in this order of ours.

.....J.

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(ASHOK BHAN)

.....J.

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(TARUN CHATTERJEE)

New Delhi;

.....J.

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September 12, 2006. (MARKANDEY KATJU)