

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 2316 OF 2007

UNION OF INDIA & ANR.

... Appellants

VERSUS

M/S. RUBFILA INTERNATIONAL LTD.

... Respondent

O R D E R

The respondent is engaged in the activity of manufacturing and exporting heat resistant latex rubber threads and has wide ranging exports to several countries. Natural rubber is a major raw material in the manufacture of rubber threads and it was being directly imported. The respondent applied for and was granted advance licenses under the Advance License Scheme for a period of 18 months. This was pursuant to para 4.15 of the Export-Import Policy where under an applicant would be allowed to import inputs free of import duty subject to the fulfillment of the stipulated export obligation as per the policy laid down by the Government.

On 20.02.1999, a circular was issued whereby the import of natural rubber under such advance license was no longer permitted and it had to be sourced through State Trading Corporation ('STC'). The respondent approached the STC for supply of rubber against the advance licenses but on 01.05.2001 STC declined its request. On 16.07.2003, the respondent approached the appellants and pointed out that it

had completed its export obligations before procuring duty free raw materials.

Vide circular dated 10.10.2003, the embargo imposed on the import of natural rubber was lifted and it was stated that fresh advance licenses are issued as per normal EXIM policy. The old licenses can be revalidated up to 31.12.2003.

The respondent represented to the appellants that period of validity of licenses, that had been in force but couldn't be utilized because of the restrictions/ban, i.e., 31.12.2003, was far too short. Accordingly, it requested the extension till 31.12.2004. Vide Circular dated 11.12.2003 the outer limit was extended till 31.03.2004.

Thereafter, the respondent filed a writ petition in the High Court on the ground that even though it had fulfilled the export obligations, it was denied the benefit of advance licenses. Thus, it sought quashing of circulars dated 10.10.2003 and 11.12.2003 to the extent they prescribed for a shorter period of time. The single Judge Bench of the High Court held that fixing of time period is essentially executive in nature and not within the writ jurisdiction. Aggrieved, the respondent filed an appeal before the Division Bench, which allowed the appeal on grounds of arbitrariness and discrimination between new licensees and old licensees.

We have heard the learned counsel for the parties and gone through the impugned judgment.

We find that the aforesaid view taken by the High Court

is without any blemish and the High Court has given cogent reasons while holding that the circulars in question suffer from bias and arbitrariness and were discriminatory in nature. This aspect of classification is without any rational nexus between the differentia and the object which was sought to be achieved and the differentia is discussed by the High Court from paragraphs 30 to 33. Since we agree with the reasons given therein, the said paragraphs are reproduced below for the sake of brevity:

"30. The second aspect of classification is the existence of a rational nexus between the differentia and the object sought to be achieved. Even if it were assumed - arguendo - that a valid differentiation exists, the respondents, in our view have failed to establish how that has a rational nexus with the object sought to be achieved - by the EXIM policy. As observed earlier, the objective of every such EXIM policy is to optimize exports, and one of the mechanisms adopted is advance import licensing, as an incentive. The respondents have failed to show how that objective is promoted or sub-served better by shortening the period of revalidation in respect of old licenses, and retaining the period mentioned in the Handbook for fresh licenses.

31. The impugned policy also, in our considered view, is also arbitrary and unreasonable. Had the respondents really wanted to protect domestic growers, nothing prevented them from responding appropriately, the order of the Supreme Court expressly kept that liberty open. However, the imports as per normal policy parameters, for normal/existing and prescribed periods are permissible for fresh licenses. Yet, for old licensees who could not utilize the period permitted, due to the illegal restrictions, a truncated validity period has been prescribed. This court is impermissible, as it amounts to singling out those affected by an illegal event for further differentiation. In the absence of any public policy imperative.

32. In the light of the above conclusions, the appeal is entitled to succeed. As far relief is concerned, it would be necessary to keep in mind that the appellant

have already secured the benefit of one period stipulated, namely six months, for revalidation of their licenses. That period was not given by one order, but in installments. Yet, it would not be appropriate for us now to give any further relief on that score.

33. The appeal is therefore allowed, and the judgment of the learned single Judge is set aside. The writ petition of the appellant is allowed. We hold and declare that;

- a) The impugned circulars dated 10.10.2003 and 11.12.2003 to the extent that they shorten the period of re-validity of licenses issued to 10.10.2003, are arbitrary and discriminatory;
- b) The appellants are entitled to seek revalidation (of the licenses that could not be worked out/utilized on account of the prohibition imposed in the policy dated 20.02.1999), on the same terms as in the case of fresh licensees, after adjusting the periods permitted to them, through the two impugned orders dated 10.10.2003 and 11.12.2003;
- c) The respondents are directed to consider and process the application of the appellant within 4 weeks."

We, thus, do not find any merit in this appeal which is, accordingly, dismissed.

....., J.
[A.K. SIKRI]

....., J.
[ROHINTON FALI NARIMAN]

New Delhi;
November 04, 2015.

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

Civil Appeal No. 2316/2007

UNION OF INDIA & ANR.

Appellant(s)

VERSUS

M/S. RUBFILA INTERNATIONAL LTD.

Respondent(s)

Date : 04/11/2015 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Appellant(s)

Mr. Yashank Adhyaru, Sr. Adv.

Mr. S. Wasim A. Qadri, Adv.

Ms. Rashmi Malhotra, Adv.

Mr. D. S. Mahra, Adv.

Mr. Zaid Ali, Adv.

Mr. B. Krishna Prasad, Adv.

For Respondent(s)

Mr. Vivek Kohli, Adv.

Mr. Ashwani Sharma, Adv.

Mr. Ankur Prakash, Adv.

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

The appeal is dismissed in terms of the signed order.

(Nidhi Ahuja)
COURT MASTER(Renu Diwan)
COURT MASTER

[Signed order is placed on the file.]