

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 1853 OF 1999

M/s. Tristar Private Limited	}	Petitioner
versus		
The Controller, Joint	}	
Director General, office of	}	
Foreign Trade and Ors.	}	Respondents

Mr. Shanay Shah with Mr. Kaushal
Udeshi i/b. M/s. Sanjay Udeshi and Co. for
the petitioner.

Mr. Pradeep S. Jetly for the respondents.

**CORAM :- S. C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.**

DATE :- FEBRUARY 8, 2018

P.C. :-

1. By this petition, the petitioner says that a direction be issued to the respondents to pay a premium amount of Rs.6,98,861/- with interest from the date of making of the application dated 19th July, 1993 till the date of payment.

2. On the own showing of the petitioner, he holds a licence styled as REP Licence. That is issued on account of the petitioner's business of an exporter and importer of rough and polished diamonds. The export and import policy prevailing at the relevant time under the Foreign Trade (Development and

Regulation) Act, 1992 enables the authorities, namely, respondent nos. 1 and 2 to issue these licences and a policy to regulate them.

3. A policy circular no. 11 of 1993 dated 5th May, 1993 is relied upon to claim the premium on the REP Licence. The petitioner claims to be holder of such licence with effect from 2nd February, 1993. Subsequent to the issuance of this circular, the petitioner approached the first respondent and filed an application dated 19th July, 1993. That was a sum equivalent to 8% premium claimed on the unutilised CIF value of the said REP Licence as of 28th February, 1993. It is complained that despite such application being received, the first respondent failed and neglected to pay this premium. Hence, this writ petition was filed on 22nd July, 1999.

4. The petitioner, in the petition itself, states that the first respondent informed it by letter dated 29th December, 1993 that further particulars were required. The petitioner's application, according to it, was not sufficient. However, its processing and the time consumed till the communication of 29th December, 1993 is entirely on account of respondent no. 1. The petitioner has given details of this licence and it states that after the licence was transferred in its name, it came across the circular. It made the

requisite application, but that was not processed. The petitioner has, therefore, filed the petition in this court essentially complaining about this communication. It is claimed that though compliances have been made, even after the communication dated 29th December, 1993, there has been no response. The EXIM Policy was of 1992-97.

5. It is on such a petition that we have heard both sides. We have perused the reply affidavit, which was filed on behalf of the respondents. Apart from the objection that the petition should be dismissed on the ground of delay and laches, it is urged that under the scheme, it was the Reserve Bank of India (RBI) which would provide funds to parties like the petitioner. The Director General of Foreign Trade at its regional offices acted as disbursing officers. They would scrutinise the claims of the parties. The Director General has no funds of its own to be disbursed to the concerned parties. Once the funds were to be provided by the RBI and this was not a open ended scheme, but remained in force till October, 1993 and it was reviewed from time to time by replenishment circulars, pertinently, there is no such replenishment beyond 9th May, 1994. Even as per this circular of replenishment no. 9 of 1994, rejected applications could be reopened only if the licences were valid on 1st March, 1993 either

with their original validity or as per revalidation granted by the licencing office. The affidavit points out that the applicant-petitioner should have first availed of the facilities provided in paras 253 to 255 of the Handbook of Procedure, 1992-97. The export facilitation as per para 249 of the Handbook of Procedure, 1992-97 was, therefore, not availed of and particularly approaching the Grievance Cell. Thus, the petitioner is accused of not approaching a single panel for settlement of the premium claimed and rushing to this court belatedly.

6. After perusing all these materials and particularly the annexures to the petition, we do not think any relief can be granted to the petitioner. The counsel may argue that the entitlement is in terms of the relevant and applicable policy and that may not be in force, but the claim was made during such time as the policy was in force. However, the petitioner relies upon the circular at Annexure 'B'. That circular itself says that firstly, the exporters, who have completed their export and have realised the export proceeds before the introduction of the full convertibility but have not completed their imports under the duty free licence before 1st March, 1993 will be given a cash amount equivalent to 8% of their unutilised import licence. Further, in the case of those exporters who have completed their exports before 1st March,

1992 and who have not exchanged their REP/Eximscrips before 27th February, 1993, will be given a further opportunity to surrender the eximscrips and to receive the premium of 20% on them. Thus, the matter was discussed further and the details are set out in para 3 of the circular. The circular itself says that in cases of advance or imprest licence issued prior to 1st March, 1993, the premium may be paid 8% to the extent imports are yet to be made on or after 1st March, 1993, but is restricted to the permissible imports in proportion to the exports already effected and export proceeds realised prior to 1st March, 1993. Thereafter, there are further stipulations and a reading of this circular would reveal that the benefits thereof would have to be availed of so long as the circular remained in force. The circular was clearly referable to the policy.

7. The petitioner made an application on 19th July, 1993 in terms of this circular and they stated that they are bonafide claimants of the premium as per the particulars given in para III of the application. The counsel may rely upon the contents of this application to submit that this is a complete compliance with the circular and the policy. However, the Government of India, Ministry of Commerce, office of the Joint Director General of Foreign Trade, on 29th December, 1993 stated that there are some

compliances to be made and which, in terms of this communication, have not been made. The petitioner then communicated, according to it, continuously, but beyond stating that their application was under consideration, nothing has been stated in reply. Even the communication at page 45 of the paper book carries the case of the petitioner no further. Even if the request was under consideration, this communication informed that it will be finalised after getting further extension by the RBI. The licence itself was retained.

8. To our mind, therefore, we cannot direct consideration of this application made in the year 1993 by issuing a writ in the year 2018. An entirely new regime has come into force since the policy (EXIM Policy) and the circulars which are relied upon. Going by the affidavit of the respondents, it is evident that this was not a open ended scheme. It was in effect and force for a particular period. It cannot be directed to be extended unless it is so provided in the document itself. Meaning thereby, this court can neither direct continuation of a policy or a circular or framing of a new policy. In policy matters, therefore, the interpretation that was placed on its stipulations by respondent no. 1 cannot be termed as so perverse as would warrant our interference in writ jurisdiction and after a period of nearly 18 years. We do not think

that any relief can be granted to the petitioner, particularly a direction as sought. We do not think that the petitioner, in the garb of a writ, can seek a revival of a policy or a circular in that behalf.

9. Consequently, we find no merit in the petition. It is dismissed. Rule is discharged. However, there would be no order as to costs.

(SMT. BHARATI H. DANGRE, J.)

(S.C.DHARMADHIKARI, J.)