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

WRIT PETITION NO.2762 OF 2001

Sanghavi Vasantlal Ravchandbhai,
a Proprietory firm, having its office at
502, Prasad Chambers, Opera House,
Bombay-400 004. Petitioner

versus

1. Union of India by and through
the Joint Secretary, Ministry of Law and Justice
and Company Affairs, Aaykar Bhavan,
Maharshi Karve Road, Bombau-400 020.

2. The Director General of Foreign Trade,
office at Udyog Baavan, New Delhi.

3. The Joint Director General of Foreign Trade,
office at New CGO Building, New Marine Lines,
Bombay-400 020. Respondents

Mr.Naresh Thakkar with Mr.Ajinkya Lokare and Ms.Ria Dalwari for petitioner.

Mr.Pradeep S. Jetly with Mrs.S.V.Bharucha for Respondents.

CORAM : S.C.DHARMADHIKARI AND
PRAKASH D. NAIK, JJ.

DATE : 7th March 2018

PC :

1. By this petition under Article 226 of the Constitution of India, the petitioner claims the following relief :

"(a) That this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India, directing the Respondents :-

(i) to issue the cheque for the premium amount of Rs.19,95,125/- with interest @ 18% p.a. From the date of filing premium claims as against the surrendered REP licences in terms of the policy Circulars issued by the Respondents from time to time;

(b) … … …
(c) … … …
(d) … … …
(e) … … …"

2. The petitioner is a proprietory firm. When we say the petitioner, it should be taken as the deceased petitioner, for, we have allowed the Notice of Motion No.126 of 2018 to substitute the name of deceased petitioner with that of the applicants in the Notice of Motion stated to be his heirs and legal representatives.

3. It is stated that the deceased petitioner was carrying on business as registered exporter. That was during the relevant import and export policy. The respondent no.1 is the Union of India whereas respondent nos.2 and 3 are the licensing authorities discharging the duties and functions under the provisions of Foreign Trade Development and Regulation Act, 1992 and Import Control Order 1955 and the Import Export Policies issued from time to time by respondent no.1.

4. In paragraph 3 of the petition it is stated that the petitioner has been issued various REP licences, Imprest Licence from time to

time in accordance with the import-export policy in force. On 5th May 1993, the respondents issued a Circular titled as REP Circular No.11 of 1993, inter alia, granting various benefits to various licences including the advance and imprest licences for payment of premium @ 8% in respect of the Gem and Jewellery REP licences i.e. on such licences being surrendered to the authorities, provided, they are valid and unutilised. The scheme prescribed that on valid and unutilised licence being surrendered by the petitioner, the respondents will accept the surrender of such valid and unutilised licence and pay @ 8% or 20% of the value of the said licence as and by way of premium of such licence being surrendered. Annexure-A is the copy of this Circular No.11 of 1993, dated 5th May 1993.

5. The petitioner relies upon further Circular which is annexed as Annexure-B to the petition being REP Circular No.14 of 1993, dated 13th September 1993, which modified and/or amended the earlier REP Circular No.11 of 1993 dated 5th May 1993.

6. The petitioner states that the petitioner had filed three applications pursuant to the REP Circular No.14 of 1993 dated 13th September 1993 in respect of the licences lying with the import-export authorities. It is the contention of petitioner that all these three applications were considered by respondents. Then reliance is placed on Circular No.4 of 1996-97, dated 1st July 1996 which states that earlier policy of payment of premium is further liberalized to the effect that cases which have been admitted for payment on or before 30th June 1994, but where payment could not be made, it was agreed by the Reserve Bank of India to issue cheques in respect thereof and the benefit would be granted.

7. Then the petitioner places reliance upon several writ petitions, which have been filed seeking benefit or payment of premium and orders made by this Court in the same. One such order is made in the case of M/s.Chowgule & Co. Limited Vs. Assistant Director of Foreign Trade. Then reliance is placed on order which is passed in the case of M/s.Atul Gems and another Vs. Union of India and another in Writ Petition No.352 of 1998 decided on 31st March 1998.

8. The petitioner states that it submitted a letter to finalize the premium claims on 14th July 1999 to the Director General of Foreign Trade. The matter was vigorously followed up by the petitioner but there was no response. It is in these circumstances the aforequoted relief is sought in this writ petition. Pertinently the petitioner states in the body of the petition itself that the petitioner has various licences, one of which is the REP gem licence. Further pertinently the petitioner relies upon the scheme, copy of which is at Exhibit-B, which scheme states in paragraph 8 that the same shall commence from 15th May 1993. The last date for filing claims is 15th October 1993. The payments shall be made before 31st December 1993 and no extension in these dates shall be granted. The petitioner made an application for claiming premium on 24th July 1993 under REP Circular No.11 of 1993. The petitioner states that he is required to fill in the details as far as Part-III is concerned. They are for REP licences of Gem and Jewellery sector. The petitioner entered the licence No.A-0108045 dtd.8.2.1993. The petitioner gave the licence number, the date and other particulars in this form. The petitioner annexed an advance receipt with the application and copies of which are found at pages 35 and 36 of the petition paper book. Then the

petitioner relies on Exhibit-C-2, dated 24th July 1993 which is an application form for claiming premium under REP Circular No.11 of 1993. The petitioner filled up the information in Part-III of the form meant for REP licences of Gem and Jewellery sector and lodged the claim for payment. It was requested to issue an account payee cheque in favour of the banker. The petitioner in this case sought premium in respect of Licence No.A-0105769, dated 29th January 1993. This second application also sent with advance receipt. Then the petitioner gave another application for claiming premium dated 24th July 1993 under REP Circular No.11 of 1993 in respect of REP Licence of Gem and Jewellery sector. The petitioner in this application divides Part-III into sub part-A, sub part-B, as done in the previous two applications. However, the petitioner in this case has not mentioned the licence number and date and other details in sub part-A. The details are Nil. In sub part-B, the petitioner gives details of the pending application and mentions other particulars.

9. Thereafter petitioner relies upon REP Circular No.4 of 1996-97, dated 1st July 1996, a copy of which is at page 43 of the paper book, to submit that there were various representations received by Directorate General of Foreign Trade from the export organizations as also individual exporters in relation to the matter of payment of premium; the issue of payment of premium was considered and a review was undertaken in consultation with Reserve Bank of India. Since the scheme was to operate on scrutiny and co-operation of Reserve Bank of India, it was stated in this circular as under :

> *"... ... ... RBI has agreed to make payment in the following categories of cases :*

(i) Cases of revalidation where Court had given the orders before 01/03/1993 but the premium could not be paid before 30/06/1994.

(ii) Cases of revalidation where Courts had given orders after 01/03/1993 but on or before 30/06/1996. These cases were not considered earlier because of REP Circular No.9/94 dated 17/05/1994. Now RBI has agreed to make payments in these cases also.

(iii) Cases which have been filed before the Courts on or before 07/06/1996, as and when decided by the Courts.

(iv) Cases admitted by the Appellate Authority for payment. RBI will also consider cases in which appeal has already been filed before the Appellate Authority and which may be approved by the Appellate Authorities.

(v) Cases have been admitted for payment on or before 30/06/1994 but where payment could not be made.

(vi) Cases where cheques were issued but these cheques were not presented for payment.

2. It has been decided that in all above types of cases the payments would be made only after the pre-audit is done by the RBI.

3. RBI pointed out that some of the Regional Licensing Authorities are not responding to audit objections pointed out by RBI/SBI. In such cases where premium payments have already been made all the Regional Licensing Authorities are requested to kindly ensure to comply with any such requirement of RBI/SBI on priority basis."

10. On such a petition, there is a reply affidavit filed by Joint Director General of Foreign Trade. It is stated in the reply affidavit that in the absence of records and particulars in relation of three applications viz Exhibits C-1 to C-3 to the petition, made by the petitioner, the claim of the petitioner cannot be verified. It is claimed

that circulars were issued so as to give benefits to those persons who approached various Courts including Appellate authorities and such cases had been decided in favour of applicants therein. In the present case, the petitioner neither approached a Court nor any decision was given in his favour. Hence, all the orders and cases of other parties, which are relied upon by the petitioner, are of no assistance to the petitioner.

11. Thereafter the affidavit states as to how a letter was issued to the petitioner on 30th January 2004 calling upon him to produce the original receipt under which premium application was filed by the petitioner, original receipt under which petitioner had filed various letters referred to in the petition. It is stated that inspection of record does not show compliance of the requirements. Finally it is stated that the Reserve Bank of India has not been impleaded as party respondent, as the premium claims are subject to Reserve Bank of India's pre-audit. Further the premium has been paid to those persons whose applications were complete with material information and accordingly licences were issued. In all these circumstances, the claim of petitioner is denied and it is prayed that the petition be dismissed.

12. Thus, the writ petition which was filed in this Court on 11th September 2001, the reply affidavit is filed in the month of October 2004.

13. Though Mr.Thakkar appearing for petitioner would submit that the petitioner's case must be considered in the light of policies which were then existing and the rights and benefits therein cannot be

denied to the petitioners, we are unable to agree with him for more than one reason.

14. The petitioner may claim to have sought benefit of the policies and urged that only payment of premium was outstanding and that can be directed even now, we do not see how such a contention can be accepted and on the own pleadings of the petitioner. The petition is not filed as expeditiously as possible like others. The petition is filed in this Court on 11th September 2001. The first Circular at Exhibit-A is dated 5th May 1993. The said Circular itself says that those exporters, who have completed their exports and have realized the export proceeds before the introduction of the full convertibility but have not completed their imports under the duty free licences before 1st March 1993, will be given a cash amount equivalent to 8% of their unutilised import licences. Further, in the case of those exporters who have completed their exports before 1st March 1992 and who have not exchanged their REP/Exim Scrips before 27th February 1993, will be given a further opportunity to surrender the Exim Scrips and to receive the premium of 20% on them. This matter was discussed with Reserve Bank of India. It was decided that the work relating to disbursement of premium amount shall be done by the designated Port Licencing authorities. Then the details of the scheme are set out in paragraph no.3. Part-I thereof envisages payment of 8% premium against advance/imprest/gem jewellery REP Licences. The advance/imprest licences issued prior to 1st May 1993 may be held eligible for payment of 8% premium 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. 8% premium may be paid for the unutilized CIF value as indicated on the Exchange Control copy of the licence as on 1^{st} March 1993. The REP licences for the gem and jewellery sector which were not issued then on the exports made prior to 1^{st} March 1993 for which export proceeds have also been realised prior to 1^{st} March 1993, the premium may be paid on the full CIF value of the licence.

15. Thus, for the aforesaid cases, where advance/imprest licences have already been issued, the claim was to be filed with the licensing offices in Part-II of the application form. The claim shall be scrutinized and in the manner indicated in Part-II of the Circular along with E.P.copy of the shipping bill and bank certificates of export/realisation. The premium amount will then be paid for the unutilised CIF value, as indicated in the exchange control copy of the licence as on 1^{st} March 1993. As far as pending advance licence application, it shall be filed with the licencing authority with whom the application for advance licence is still pending and there are other stipulations in para 2(c), which have to be complied with. Para 3(2)(d) deals with the pending claims of gem and jewellery REP licences. The procedure for making application is set out in this paragraph. Part-II of this policy/scheme deals with payment of premium against surrender of Exim Scrips/REP licences. The stipulations contained therein makes it clear that general provisions will also be taken into account for granting benefit. After this circular was issued and with clarification that scheme for claiming premium shall commence from 15^{th} March 1993, the last date for filing claim is 31^{st} July 1993 and the payment shall be made before 31^{st} August 1993 and no extension shall be granted.

16. What we find is that there is another circular viz Circular No.14 of 1993, copy of which is at Exhibit-B, dated 13th September 1993. The review of the earlier Circular No.11 of 1993, dated 5th May 1993 (Exhibit-A) resulted in issuance of this circular No.14 of 1993 dated 13th September 1993. That added certain stipulations and pertinently in paragraph 7 of this circular, it was stated that this scheme for claiming premium shall commence from 15th May 1993, the last date for filing the claim is 15th October 1993 and payments will be made by 31st December 1993. Clause-7, therefore, sought to make a modification or change and the petitioner applied on 24th July 1993. That was for claiming premium for two licences; one was of 8th February 1993 and another is of prior date of 29th January 1993. The third was for issuance of licence but styled as application for payment. With all this, the petitioner should have been aware that on 1st July 1996, the circular was amended by REP Circular No.4/1996-97, a copy of which is annexed as Exhibit-D to the petition. We have reproduced the portion of Circular No.4/1996-97 to impress upon the petitioner that neither in this case the Court has been approached on or before 30th June 1996 nor it was brought on record that there is any appeal filed or the petitioner's case was admitted for payment on or before 30th June 1994, on which date payment could not be made to the petitioner. Even it is not the case of petitioner that cheques were issued to him but the cheques were not presented for payment. Even in this type of cases payments were to be made only after pre-audit made by Reserve Bank of India.

17. There is thus merit in the contentions of the respondents that the scheme was to operate exclusively under the supervision of

Reserve Bank of India. Secondly, the benefit of orders passed by this Court in the writ petitions which were filed in this Court but before the cut off date, can be of no assistance. Pertinently in the case of M/s.Sehgal Traders Vs. Union of India and others (Writ Petition No.2117 of 1998 decided on 26th November 1998), unlike in the case of M/s.Atul Gems and another Vs. Union of India and another, in Writ Petition No.352 of 1998 decided on 31st March 1998, this Court did not direct payment. All that this Court directed is consideration of the pending applications. We do not see how any assistance can be derived from this order. The petitioner must blame himself for having approached this Court belatedly and much after the cut off date. Secondly, the respondents are not obliged to preserve the records and endlessly. All that we have are three copies of applications made by the petitioner and we have referred to the details thereof. As far as the criticism of Mr.Thakkar on the affidavit-in-reply and its contents are concerned, we find that to be without merit. In the case of two applications Exhibit-C-1 and Exhibit-C-2, the petitioner was issued licence whereas Exhibit-C-3 is regarding a pending application. There the petitioner has not clarified the nature of pending application. Pertinently we have no answer from the petitioner while relying upon the letter dated 30th January 2004 from the respondents, copy of which is also not available with the petitionr, as to how the petitioner can claim the benefit of three circulars when the scheme was not open ended. That was not to operate endlessly or till such time as parties like. The petitioner should have approached the Court of law or the appellate authority and obtained favourable orders or directions.

18. Mr.Jetly is, therefore, right in urging that this case is covered by order passed by a Division Bench of this Court presided over by Justice S.C.Dharmadhikari namely Writ Petition No.1853 of 1999 decided on 8th February 2018 (M/s.Tristar Private Limited Vs. The Controller, Joint Director General, Office of Foreign Trade and others). On a parity of reasoning and with additional materials, we find that even in this petition, the petitioner cannot be granted any relief.

19. As a result of the above discussion, Rule is discharged in this petition. It is dismissed, but without any order as to costs.

(PRAKASH D. NAIK, J.) (S.C.DHARMADHIKARI, J.)

MST