

CASE NO.:
Transfer Case (civil) 165 of 2006

PETITIONER:
M/s Hindustan Granites

RESPONDENT:
Union of India & Ors

DATE OF JUDGMENT: 10/01/2007

BENCH:
Arijit Pasayat & S. H. Kapadia

JUDGMENT:
JUDGMENT
I.A. Nos. 1 & 2
in
T.C.(C) No. 165/2006
with

I.A. Nos. 2, 4, 5, 6, 7 & 10 in T.P. (C) No. 579/2006
and S.L.P. (C) No. _____ of 2006 (CC No. 9881/06)

O R D E R

Ban on DTA sales by 100% EOU under OGL licence and limiting the issuance of licences to those applicants who have imported crude marble between 1999-2001 under SIL scheme vide impugned policy circulars Nos. 24 dated 30.8.2005, No. 34 dated 30.11.2005 and notification Nos. 23 and 24 dated 31.8.2005 (hereinafter referred to as the impugned new policy) was the subject matter of challenge vide writ petitions filed in various High Courts.

By order dated 29.9.2006, the said writ petitions stood transferred to this Court.

Having regard to the arguments advanced before us and in view of the fact that the entitlement of Domestic Users for financial year 2005-06 is going to lapse on 31.3.2007 the following interim order is passed.

DGFT would be entitled to grant licences to the applicants who are so entitled under policy circular No. 24 dated 30.8.2005. To that extent our order dated 29.9.2006 stands vacated.

In T.P. (C) No. 579/06 filed by the Director General of Foreign Trade it has been inter alia stated that on account of representations received from the traders and the material (including complaints) gathered by DGFT, the impugned new policy came to be enacted. This was after detailed discussions with the Trade. The broad features of the new policy and the reasons for enacting the policy are given in paragraphs 15, 16 and 17 of T.P. (C) No. 579/06. However, it appears that the requisite material was not supplied to the affected 100% EOUs. who have complained before us that the changes have been made in FTP vide the impugned policy without giving any opportunity to the affected Units. At this stage we may point out that learned Solicitor General of India stated before us that the impugned policy decision is taken on certain material (including complaints/representations received) which he is prepared to disclose to the concerned EOUs. Accordingly, we direct DGFT to supply the material in its possession to the affected EOUs., who have filed the writ petitions, on or before 15.1.2007. The said petitioners (EOUs.) who have filed writ petitions in the High Court shall thereafter make representations to the DGFT within 10 days on and from the receipt of the material (including complaints) from DGFT. Thereafter, DGFT will decide the matter in accordance with law. We make it clear that it will be open to DGFT to equitably work out the matter, if possible. One point, however, needs to be mentioned. It is stated on behalf

of M/s Hindustan Granites that they have accumulated wastes which they are entitled to sell in DTA under the unamended policy. It is contended on behalf of M/s Hindustan Granites that they have fulfilled the benchmark of Net Foreign Exchange earnings and, therefore, they were entitled to sell the accumulated wastes in the domestic market (DTA) under para 6.8 (h) on payment of full duty. On this point, M/s Hindustan Granites can also make the representation giving facts and figures regarding the quantity of waste which has accumulated and it will be open to DGFT if possible to decide the question regarding sale of the said waste in the DTA.

The question as to whether the impugned circulars/notifications constitutes a change in the policy or whether it is a matter of detail within the existing policy is the question which will be decided on the next date of hearing when we will examine the merits of the case.

On receiving the report from DGFT, we shall hear the matter on merits on the next occasion. In the meantime, the ban on EOU Units undertaking DTA sales shall continue to remain in operation. Consequently, interim order of the Rajasthan High Court dated 26.10.2005 in DB Civil Writ Petition No. 5811/05 shall remain stayed.

Stand over to 31.1.2007.