

PETITIONER:
JOINT CHIEF CONTROLLER OF IMPORTS AND EXPORTS, MADRAS

Vs.

RESPONDENT:
M/S. AMINCHAND MUTHA ETC.

DATE OF JUDGMENT:
21/07/1965

BENCH:
WANCHOO, K.N.
BENCH:
WANCHOO, K.N.
GAJENDRAGADKAR, P.B. (CJ)
SHAH, J.C.
MUDHOLKAR, J.R.
SIKRI, S.M.

CITATION:
1966 AIR 478 1966 SCR (1) 262
CITATOR INFO :
RF 1968 SC 718 (15)
E 1973 SC 106 (145)
RF 1974 SC1209 (7)
R 1974 SC2346 (5)
RF 1986 SC1021 (13,14,21)
RF 1987 SC1059 (15)

ACT:
Imports (Control) Order, r. 3 and Import Trade Control Policy Instructions, instruction 71-Approval by Chief Controller of transfer of quotas-Date when effective.

HEADNOTE:
By s. 3 of the Imports and Exports (Control) Act, 1947 the Central Government was given power, by means of an Order published in the Gazette, to provide for prohibiting restricting or otherwise controlling the import of goods into India. In pursuance of that power, the Central Government issued the Imports (Control) Order. It provided for a system of licensing and r. 3 thereof provided that no person shall import the goods specified in Schedule I except under a licence granted by the proper authority. Rule 6 gave power to the licensing authority to refuse to grant a licence on the ground that the application was defective. In order to guide the licensing authorities in the matter of granting licences, the Central Government issued administrative instructions. The instructions provide for the granting of licences to "established importers", that is, persons engaged in import trade for at least one financial year falling within a specified period called the basic period. Instruction 71 of the Instructions provided for division of quota rights of a firm among its partners, when the firm was dissolved. It lays down that the partners shall get their shares in the quota rights according to the provision of the agreement between them. Quotas are for the purpose of informing the licensing authority that a particular person has been recognised as an established importer, and it is for the licensing authority to issue a licence to the quota holder in accordance with the licensing

policy for the period with which the licence deals. The respondent was a partner of a firm which was an established importer. The firm was dissolved in January 1957 and on 4th March 1957, an application was made to the Chief Controller on behalf of the dissolved firm, for a division of the quota between the partners. Since the application for a licence for January-June period should be made by 31st March, the respondent applied for the grant of licence for the period January-June 1957, on 25th March 1957 without mentioning his quota as required by the Instructions, because the Chief Controller had not by then approved the division of quota rights among the partners. Since the application was defective the respondent was informed in April 1957 that before a licence could be given, the respondent should get such approval. In September 1957, the Chief Controller informed the respondent that instructions had been issued to the Joint Chief Controller, who was the licensing authority; but the Joint Chief Controller informed the respondent that a licence could not be issued, since the transfer of quota rights in respondent's favour was recognised by the Chief Controller, only after the expiry of the licensing period to which the application related. After an unsuccessful appeal, the respondent moved the High Court

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for the issue of an appropriate writ, and the High Court allowed the petition.

In his appeal to this Court, the Joint Chief Controller contended that, since the transfer of quota rights was a condition precedent to the grant of an import licence, the person in whose favour such a transfer had been recognised or sanctioned was entitled to rely upon that transfer only for a period subsequent to such sanction or recognition and not for any anterior period.

HELD: (Per P. B. Gajendragadkar, C.J., K. N. Wanchoo, J. C. Shah and S. M. Sikri, JJ.) the licensing authority had to deal with the application for a licence on the basis that the approved quotas were given to the partners of the dissolved firm from the date of the dissolution and the agreement to divide, and could not refuse the licence solely on the ground that the approval of the Chief Controller was granted after the expiry of the import period. [269 E, G-H] Since the Chief Controller had no power to refuse division of the quota rights if he was satisfied as to the dissolution of a firm, it follows that when he gives his approval it must take effect from the date of the agreement. Otherwise, it would mean that the partners would lose their advantage on account of the delay of the Chief Controller. It is true that Instruction 71 provides that there will not be a right to the quota till the transfer of the quota rights is approved by the Chief Controller, but that would not mean that such approval will not relate back to the date of the agreement. Further, the fact that the Chief Controller said in his letter of approval that the quota rights should in future be divided between the partners would not mean that the quotas were to take effect only after the date of approval. It only mean that the original quota of the undissolved firm would, from the date of the agreement of dissolution, be divided between the partners as provided thereunder. [269 H; 270 B, C, E, G; 271 A]

Since the application in the present case was made before the approval by the Chief Controller and did not mention what quota the respondent had, the application was incomplete and defective, but that was not the reason for the rejection. [271 F; 272 A]

As no Order of the Central Government prohibiting the import of the articles for which the licence was applied was published in the Gazette, it was open to the licensing authority to issue a licence for the period January-June, 1957, even if there was a change in the import policy of the Government of India with respect to those articles. [272 G] Joint Chief Controller v. H. V. Jain, I.L.R. [1959] Mad. 850, approved.

Jagannath v. Varadker A.I.R. 1961 Bom. 244, overruled.

Per Mudholkar, J. (Dissenting) : The Joint Chief Controller's action in refusing to grant a licence for the period January-June, 1957, was well within his powers. On the respondent's own showing the Chief Controller had not recognised the division of the dissolved firm's quota rights by the date on which he made his application. The application was therefore defective and liable to be rejected under cl. (6) of the Control Order. The respondent's position was as if, upon that ground the licensing authority refused to grant a licence for a period antecedent to the recognition of the division of quota rights. [278 C, H; 279 A-B]

The right to a quota is not a legal right and it is only in pursuance of certain administrative instructions that the licensing authority allots quotas to established importers. Where a quota had been allotted to a firm

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the Chief Controller was empowered to recognise upon the dissolution of that firm the division of the quota allotted to it amongst the members of that firm, but that would not create a legal right in favour of the erstwhile partners to a share in the quota, because, the Chief Controller could refuse to recognise a division in conceivable cases. [281 H; 282 A-B, D]

Further, the instructions provide that, the division is to be recognised by the Chief Controller only for the future. The plain meaning of this is that the division is to be made effective only from a date subsequent to the approval of the division by the Chief Controller. [282 H]

Even assuming that the Instructions confer some kind of right upon the partners of a dissolved firm, it can be exercised only in the manner and to the extent provided in the instructions, themselves. Not only that the instructions do not provide for any relation back of the recognition of the division by the Chief Controller, to the date of dissolution of the firm, but they clearly provide for the recognition of the division only in future. [282 F-G]

Jagannath v. Varudker, A.I.R. 1961 Bom. 244, approved.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 60 to 62 and 316 to 320 of 1965.

Appeals by special leave from the judgments and orders, dated December 10, 1962 and March 18, 1963 of the Madras High Court in Writ Appeals Nos. 27, 47 & 48 of 1961, and 74 of 1963, 91 of 1960 and 26, 49 & 50 of 1961.

C. K. Daphtary, Attorney-General, R. K. P. Shankardass, R. H. Dhebar and R. N. Sachthy, for the appellant (in all the appeals)

A. V. Viswanatha Sastri, S. Balakrishnan, B. R. Dolia, R. K. Garg, S. C. Agarwal, D. P. Singh and M. K. Ramaurthi, for the respondents (in C.As. Nos. 60 to 62 of 1965).

Lily Thomas, for respondent (in C. A. No. 316 of 1965).

R.R. Dolia, E. C. Agrawala and P. C. Agrawala, for the respondent (in C. As. Nos. 317-320 of 1965).

The Judgment of Gajendragadkar C.J., and Wanchoo, Shah and Sikri JJ., was delivered by Wanchoo, J. Mudholkar, J. delivered a dissenting Opinion.

Wanchoo, J. These eight appeals by special leave against the judgment of the Madras High Court raise a common question of law and will be dealt with together. It will be enough if we give the facts of one case (Jt. Chief Controller v. Amin Chand Mutha-C. A. 60 of 1965), for the facts in the other cases are more or less similar. It appears that there was a partnership firm known as Nainmull Juthmull. This firm had a quota for import of certain things, as it was an "established importer". Established importers used to be given quotas every year and thereafter licences used to be

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issued to such importers on the basis of the quota allotted to them. The quota was not inheritable or transferable, but under certain circumstances to which we shall refer later it could be divided between partners where the quota-holder was a firm. The firm in the present case had three partners, namely, Amin Chand Mutha, Nainmull-Nathmull and Juthmull Mutha. On January 1, 1957, the firm was dissolved. Consequently in accordance with the instructions contained in what is known as the Red Books, application was made on March 25, 1957 by one of the partners (Amin Chand Mutha) for the grant of a licence with respect to the period January-June 1957. It was noted in the application that quota certificates had been issued in favour of the firm Nainmull Juthmull of which the applicant was a partner. That firm had been dissolved and application had been made to the Chief Controller of Imports, New Delhi for division of the quota of the firm between the three partners of the firm who had separated. It may be mentioned that application for licence had to be made before the 31st of March of the January-June 1957 period. It was stated that the application had already been made to the Chief Controller on behalf of the dissolved firm on March 4, 1957 for division of the quota between the three partners and was pending when the application for licence was made by Amin Chand Mutha on March 25, 1957. The application for licence had to be made to the Joint Chief Controller of Imports at Madras where the partners of the dissolved firm were carrying on business. The Joint Chief Controller informed the respondent on April 8, 1957 that before any licence could be given to him he should get the approval of the Chief Controller about the division of the quota rights of the dissolved firm. It appears that there was some delay in the office of the Chief Controller for reasons into which it is unnecessary to go, and the Chief Controller informed the partner concerned in September 1957 that instructions had been issued to the licensing authority to the effect that quota certificates admissible to the dissolved partnership firm should in future be divided between the three partners in certain proportions which it is unnecessary to set out. Thereafter the Joint Chief Controller was approached to grant a licence. But on January 9, 1958, the Joint Chief Controller informed the partner concerned that it was regretted that his request for the issue of licence for the period January-June 1957 could not be acceded to since the transfer of quota rights in his favour had been recognised by the Chief Controller only after the expiry of the licensing period to which the application related. It appears that there was then an appeal from this order of the Joint Chief Controller which failed. Then came the writ petition to the High Court

in December

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1958 or January 1959, and the main contention on behalf of the respondents was that the Joint Chief Controller could not refuse the issue of licences on the ground that the Chief Controller's approval as to the division had been made after the period of January-June 1957 had come to an end. The High Court allowed the petition holding, on the basis of an earlier decision of that court in the Joint Chief Controller v. H. V. Jain(1), that the approval of the Chief Controller to the division of the quota between partners of a dissolved firm related back to the date of the dissolution of the firm and the partners would be entitled to import licences on the basis of such approval subject to the licensing order. Thereupon the Joint Chief Controller went in appeal and the Division Bench of the High Court which heard the appeals upheld the order of the learned Single Judge. The High Court having refused leave to appeal, the appellant obtained special leave from this Court; and that is how the matter has come up before us.

Before we consider the point raised in the present appeals we shall briefly refer to the system of licensing which came into force after the Imports and Exports (Control) Act, No. 18 of 1947, (hereinafter referred to as the Act). By s. 3 of the Act, the Central Government was given power to provide for prohibiting, restricting or otherwise controlling in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the order, the import, export, carriage coastwise or shipment as ship stores of goods of any specified description. This could be done by means of order published in the official gazette. The Act also made by S. 5 any contravention of any order made and deemed to have been made under the Act punishable and by S. 6 provided for cognizance of offences against the provisions of the Act.

In pursuance of the power granted to the Central Government, the Imports (Control) Order was issued on December 7, 1955 (hereinafter referred to as the Order). This Order repealed the earlier orders issued under the Act or the Defence of India Rules 1939. It provided for a system of licensing and r. 3 thereof provided that no person shall import any goods of the description specified in Sch. 1, except under and in accordance with a licence or a customs clearance permit granted by the Central Government or by any officer specified in Sch. IT. Form of application for licences and fees payable therefore are provided in r. 4 and r. 5 provides for conditions to be imposed on a licensee at the time of granting licences. Rule 6 gave power to the Central Government or the Chief Controller to refuse to grant a licence or direct any

(1) I.L.R. [1959] Mad. 850.

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licensing authority not to grant licence for certain reasons. One of the reasons for such refusal was if the application for import licence was defective, and did not conform to the prescribed rules. Rule 7 provided for amendment of licences and r. 8 gave power to the Central Government or the Chief Controller to suspend the issue of licences or debar a licensee from using a licence for certain reasons. Rule 9 provided for cancellation of licences by the Central Government or any other officer authorised in this behalf. The power under rr. 7, 8 and 9 was to be exercised after giving a reasonable opportunity of being heard to the licencees.

These are the statutory provisions under the Act and the

Rules for granting licences. In order however to guide the licensing authorities in the matter of granting import licences, the Central Government issued certain administrative instructions to be followed by the licensing authorities. These instructions provided for grant of import licences to three kinds of persons-(i) established importers, (ii) actual users, and (iii) new comers : (see the Red Book of Rules and Procedure for Import Trade Control for the period January-June, 1957). We are in the present appeals concerned with established importers and may briefly indicate how established importers were dealt with in the Red Book concerned. "Established importers" were defined as persons or firms who had been actually engaged in import trade of the articles comprised in the schedule during at least one financial year falling within the basic period. The basic period out of which the established importer could select the best year for the purpose of calculating the quota was from April 1, 1945 to March 31, 1952. Procedure was provided in these instructions for applications and for establishment or refixation of quotas : (see Section 1 of the Red Book for the period January-June 1957, instruction 22).

After setting out the system of granting quotas to established importers on the basis of their past imports, instructions 71 with which we are particularly concerned, laid down that quotas were granted on the pre-supposition that no change had taken place in the constitution of the firm. The expression "firm" included a partnership, a limited company and a proprietary business. It was further provided that when a change occurred in the constitution or the name of a firm or the business changed hands, the reconstituted firm would not be entitled to the quota of the original firm until the transfer of the quota rights in their favour had been approved by the Chief Controller or other licensing authority, as the case may be. Instruction 71 also provided how the transfer of quota rights would be recognised or approved. In the present case we

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are concerned with cl. (b) of Instruction 71, which is in these terms : -

"Where a firm is dissolved, and the partners agree to divide its business, assets and liabilities, and its goodwill is taken over by one of the partners or none of them is allowed to use it, the partners shall get their respective share in the quota rights according to the provision of the agreement."

Instruction 72 provided for documentary evidence to be produced by the applicants in support of their case for transfer of quotas.

It will be seen that these administrative instructions do not create any right as such in favour of persons with whom they deal. They are for guidance of the authorities in the matter of granting quotas for the purpose of the Order. That is why when cl. (b) of Instruction 71 provides for division of quota rights it lays down that the partners shall get their respective share in the quota rights according to the provision of the agreement between them. Once the Chief Controller is satisfied, on the evidence produced before him that the firm had certain quota rights and had been dissolved, he has to divide the quota rights between partners in accordance with the provisions of the agreement between them. As we read cl. (b), it is clear that where the conditions contained in Instruction 71 are fulfilled, the Chief Controller must divide the quota rights

in accordance with the provisions of the agreement between the partners of the firm that has been dissolved. Clearly therefore these administrative instructions provide a machinery for division of quota rights in certain cases including the dissolution of a firm consisting of a number of partners and all that the Chief Controller has to do is to satisfy himself that there has been a dissolution in accordance with the provisions in cl. (b) and thereafter he is bound to accord approval to the division of quota rights according to the provision of the agreement between the partners. He cannot refuse to divide the quota rights between the partners of a dissolved firm where he is satisfied on the evidence produced before him that the conditions contained in cl. (b) have been satisfied. The function of the Chief Controller under Instruction 71 read with Instruction 72 appears more or less of a ministerial nature and he is bound to divide the quota rights in accordance with the Provisions of the agreement between the partners of a dissolved firm, once he is satisfied on the evidence produced before him of such dissolution and the agreement leading to dissolution provides for the division of quota rights. The division of quota rights according to the instructions is merely for the purpose of helping the licensing

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authority under the Order in the matter of grant of licence to the class of established importers with which this division is concerned. The approval of the Chief Controller is provided by these instructions in order that the licensing authorities may have a clear guidance as to how they should deal with the quota allotted to a firm consisting of a number of partners which has been dissolved. It is in the background of this position that we have to consider whether this approval granted by the Chief Controller relates back to the date of the agreement relating to the dissolution of the firm consisting of a number of partners.

Two views have been expressed by the High Courts in this behalf. The Madras High Court took the view in Jain's case(1) that "where a firm is dissolved and the partners agree to divide the business, assets and liabilities, the partners shall get their respective share in the quota rights according to the terms of the agreement. Such rights would accrue to each of the partners from the date of the agreement." The Madras High Court further held that even where the approval of the Chief Controller is made after the licensing period for which application has been made is over, the approval dated back to the time when the firm was dissolved and the agreement to divide the quota rights was made. The licensing authority therefore according to this view has to deal with the application for licence on the basis that the approved' quotas were given to the partners of the dissolved firm from the date of the agreement and cannot refuse the licence only on the ground that the approval was granted after the import period had expired.

The other view is taken by the Bombay High Court in Jagannath v. Varadkar(2). It was held in that case that the transfer of quota rights was a condition precedent to the grant of an import licence. The person in whose favour such a transfer had been recognised or sanctioned was consequently entitled to rely upon that transfer for a period subsequent to such sanction or recognition and not for any anterior period, even though the application for licence might have been made in proper time before the import period expired.

We have given the matter careful consideration and are of opinion that the view taken by the Madras High Court is correct. We have already pointed out that on a proper interpretation of Instruction 71, there is no doubt that the Chief Controller is bound to divide the quota of a firm consisting of partners which has been dissolved in accordance with the provisions of the agreement

(1) I.L.R. [1959] Mad. 850.

(1) A.L.R. [1961] Bom 244.

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between the partners provided the necessary evidence has been produced before him, as required by Instruction 72 in that behalf. Such being the nature of the proceeding before the Chief Controller it follows that when he gives approval to the division of the quota between the partners of a dissolved firm in accordance with the agreement between them, the approval must take effect from the date of the agreement between the partners. It might have been a different matter if the Chief Controller had the power to refuse division of the quota rights under these instructions; but he has no such power and must divide the quota in accordance with the agreement if he is satisfied as to the dissolution on the evidence produced in accordance with Instruction 72. If such approval by the Chief Controller were not to date back to the date of agreement it would mean that the partners who were otherwise entitled to approval under Instructions 71 and 72 might lose the advantage that they would have before the licensing authority by delay in the approval by the Chief Controller. In this connection our attention was drawn to the opening words in Instruction 71 which provided that "the reconstituted firm will not be entitled to the quotas of the original firm until the transfer of the quota rights in their favour has been approved by the Chief Controller." It is true that these words make it necessary that there should be approval of the Chief Controller before a partner of a dissolved firm can say that he holds a quota. But these words do not mean that such approval will not date back to the date of agreement dividing the quota rights, for the Chief Controller, as already indicated, has to divide the quota rights once he is satisfied as to dissolution on the production of evidence mentioned in Instruction 72. In such circumstances it would in our opinion be fair to hold that the Chief Controller's approval dates back to the date of agreement so that such persons may not suffer on account of the delay in the Chief Controller's office in the matter of according approval.

The fact that in his letter of approval the Chief Controller usually says that the quota rights admissible to the dissolved partnership should in future be divided between the partners would not necessarily mean that the quotas for the partners were to take effect only after the date of approval. If the division of quota has to be recognised by the Chief Controller on production of evidence required by Instruction 72 and this division has to be in accordance with the agreement between the partners of a dissolved firm, the approval must relate back to the date of agreement, for it is the agreement that is being recognised by the Chief Controller. In such a case the fact that the Chief Controller says that in future

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the quota would be divided, only means that the original quota of the undissolved firm would from the date of the agreement of dissolution be divided between partners as

provided thereunder.

Further we would like to make it clear that quotas should not be confused with licences. Quotas are merely for the purpose of informing the licensing authority that a particular person has been recognised as an established importer for import of certain things. Thereafter it is for the licensing authority to issue a licence to the quota holder in accordance with the licensing policy for the half year with which the licence deals. For example, if in a particular half year there is an order of the Central Government prohibiting the import of certain goods which are within the quota rights, the licensing authority would be entitled to refuse the issue of licence for import of such goods whose import has been banned by the Central Government under the Act by notified order. Thus the approval of the Chief Controller under Instruction 71 is a mere recognition of the division made by the partners of a dissolved firm by agreement between themselves and in that view the recognition must clearly relate back to the date of the agreement. Further when the Chief Controller says in his letter that in future the division would be recognised in a certain ratio based on the agreement, it only means that the Chief Controller has approved of the division made by the parties and such approval then must relate back to the date of the agreement between the parties. We therefore hold that the view taken by the Madras High Court that the approval by the Chief Controller relates back to the date of agreement is correct.

It was next urged that the application when it was made to the Joint Chief Controller was not complete inasmuch as it did not mention what quota the particular partner had. That is undoubtedly so for the applications in the present cases stated that the firm had been dissolved and application had been made to the Chief Controller for division of the quota of the original firm between the partners according to the agreement between them. To that extent the application was defective. It is pointed out that under Instruction 13 application for licence has to be made before a certain date and has to be complete in all respects. It was further urged that it is always open to the Joint Chief Controller to reject an application which is defective and is thus incomplete. Assuming that is so, one should have expected such a defective application being dismissed immediately after the last date for making the application had expired and the Joint Chief Controller

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should have given that as the reason for the rejection of the application for licence. But this was not done in the present cases and the reason for rejection of the application was not that it was not complete when made. Further it appears that it is not unusual for licences to be granted after the import period is over. It is also not denied that it was open to the Chief Controller in his discretion to say that the division of quota rights would be recognised from the date of the agreement even though the approval came much later. If that is so, it would mean that the applicant for division of quota would be entirely at the mercy of the Chief Controller because there is nothing in the Red Book to show under what circumstances the Chief Controller can grant recognition from the date of the agreement even though the approval comes much later. On the whole therefore we are of opinion that the view taken by the Madras High Court is correct as the grant of approval in accordance with the agreement is obligatory on the Chief Controller if the evidence required under Instruction 72 has

been produced to his satisfaction.

The last point urged was that subsequent to October 1957, Government of India changed its policy with respect to import of fountain pens with which some of the present appeals are concerned. This it was urged amounted to a ban on the import of fountain pens and it would not be open to the Joint Chief Controller to issue any licence for any period, be it January-June 1957, after the import of fountain pens had been banned from October 1957. Now there is no doubt that it is open to the Central Government under s. 3 to prohibit the import of any article but that can only be done by an order published in the official gazette by the Central Government under S. 3. The High Court has found that no such order under S. 3 of the Act has been published. Nor has any such order by the Central Government been brought to our notice. All that has been said is that in the declaration of policy -as to import, the word "nil" appears against fountain pens. That necessarily does not amount to prohibition of import of fountain pens unless there is an order of the Central Government to that effect published in the official gazette. We therefore agree with the High Court that unless such an order is produced it would be open to the licensing authority to issue a licence for the period of January-June 1957 even after October 1, 1957.

The appeals therefore fail and are hereby dismissed with costs. There will be one set of hearing fee.

Mudholkar, J. A common question of law arises for decision in these appeals. The essential facts bearing on this question being

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more or less similar it would be sufficient to state those which give rise to Civil Appeal No. 60 of 1965. A partnership firm styled as Nainmull Juthmull carried on, amongst other things, the business of importing goods from foreign countries. As an established importer, the Joint Chief Controller of Imports and Exports Madras had granted it a quota for import of certain commodities. On the strength of this the firm used to be granted import licences every half year. There were three partners in that firm, namely, Aminchand Mutha, Nainmull Nathmull and Juthniull Mutha. On January 1, 1957 the firm was dissolved. On March 25, 1957 Aminchand Mutha made an application to the appropriate authority for the grant of an import licence in respect of the period January-June, 1957 stating in his application the facts that the firm Nainmull Juthmull held a quota certificate, that the firm was dissolved and that an application was made to the Chief Controller of Imports for the division of the quota amongst the erstwhile partners of the firm. That application had in fact been made on March 4, 1957 and was pending on the date on which an import licence was applied for by Aminchand to the Joint Chief Controller of Imports and Exports at Madras. On April 8, 1957 the latter informed Aminchand that before a licence would be granted to him he should get the approval of the Chief Controller for the division of quota rights of the dissolved firm. For certain reasons which are not material for the purpose of the appeal, there was delay in the disposal of the aforesaid application. In September 1957 the Chief Controller informed Aminchand that instructions would be issued to the Licensing Authority to the effect that quota certificates admissible to the dissolved firm should in future be divided between the three partners in certain proportions. Aminchand thereupon approached the Joint Chief Controller for grant of a licence and on January 9, 1958 the latter informed him that no licence could be

issued to him for the period January-June, 1957 since the division of quota rights of the firm was recognised by the Chief Controller only after the expiry of the licensing period to which the application related. Aminchand then preferred an appeal from the decision of the Joint Chief Controller but failed. Thereupon he moved a writ petition in the High Court of Madras for the issue of a writ of mandamus or any other appropriate writ to the Joint Chief Controller for the issue of an import licence to him for the period January-June, 1957. The High Court following its earlier decision in the Joint Chief Controller v. H. V. fain(1) granted the application. It is against this decision of the High Court that the Joint Chief Controller has come up in appeal

(1) I.L.R. [1959] Mad. 850.

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before this Court as also against similar decisions in the other connected appeals.

The point which is urged on behalf of the respondents in these appeals is that the Joint Chief Controller is bound to grant an import licence for the period for which it was sought even though the division of quota rights was approved by the Chief Controller subsequent to the expiry of the licensing period provided that the application for the grant of the licence was made within time and an application for division of quota rights is made before the expiry of the licensing period. The contention of Mr. Viswanatha Sastri who appears for all these respondents is that in such cases the approval of the Chief Controller of the division of quota rights even though accorded after the expiry of the licensing period would relate back to the date of dissolution of the firm or at any rate to the date of the application for approval.

It would be appropriate to advert now to the legal position pertaining to the import of foreign goods. In the first place there is the Imports & Exports (Control) Act, 1947. Sub-section (1) of s. 3 of that Act, amongst other things, provides that the Central Government may by order published in the Gazette prohibit, restrict or otherwise control in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the order "(a) the import..... of goods of any specified description". Sub-section (2) makes the provisions of s. 19, Sea Customs Act applicable to goods with respect to which any order under sub-s. (1) of s. 3 of the Imports & Exports (Control) Act, 1947 has been made. Sub-section (3) of that section provides as follows :

"Notwithstanding anything contained in the aforesaid Act, the Central Government may, by order published in the Official Gazette, prohibit, restrict or impose conditions on the clearance, whether for home consumption or for shipment abroad of any goods or class of goods imported into the Provinces of India."

Section 5 provides for certain penalties for contravention of any order made or deemed to have been made under the Act. In exercise of the powers conferred by s. 3 the Government of India promulgated on December 7, 1955 an Order for the control of import trade. Clause (3) thereof runs thus :

"Restriction on import of certain goods Save as otherwise provided in this Order, no person shall import any goods of the description specified in Schedule 1,

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except under, and in accordance with, a licence or a customs

clearance permit granted by the Central Government or by any officer specified in Schedule II."

Clause 4(1) provides for making an application for grant of a licence to import. Clause (5) provides for attaching conditions to a licence issued under the Order. Clause (6) confers power on the Government of India or the Chief Controller of Imports & Exports to refuse to grant a licence for any of the reasons specified in that clause. Clause 8 empowers these authorities to suspend the issue of licences or debar a licensee from receiving licences and clause 9 provides for cancellation of licences. The grounds on which action can be taken under either of these clauses are also specified in them. It is not necessary to refer to the other clauses of this Order. Appended to the Order are schedules contemplated by cl. (3) of the Order. Amongst the grounds for refusal of licence under cl. (6) the following are relevant for the purpose of deciding the point which arises before us

- "(a) if the application for a licence does not conform to any provision of this Order;
- (e) if the application for an import licence is defective and does not conform to the prescribed rules;
- (g) if the applicant is not eligible for a licence in accordance with the Import Trade Control Regulation;"

Reading the Act and the Import Control Order together it would follow that no person is entitled to import into India goods or commodities included in Schedule 1 of the Order except in accordance with the provisions of the Act and of an Order promulgated thereunder by the Government of India or as permitted by that Order. The Import Control Order, save in case, -, failing within cl. (11) of that Order, prohibits the import of any commodity set out in Schedule 1 except under a licence issued under the Order. The granting of licences for import of commodities into India and the allotment of the requisite foreign exchange for the purpose is regulated by the policy framed in that behalf from time to time by the Government of India. The commodities sought to be imported by each of the respondents are those included in Schedule 1 and could be imported only under a licence. Each of them claims to be an established importer in the sense that he is

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entitled to a proportionate quota which had been allotted to the dissolved firm of which he was a member.

The principles to be borne in mind while dealing with applications for licence for import are set out in what is known as "Red Book" which is issued by the Government from time to time with respect to each licensing period. The title of the book is "Import Trade Control Policy". The procedure to be followed by the authority while dealing with applications for import licences is given not only in this book but also in what is called the "Handbook". The Red Book in addition to the instructions, also contains the "Policy Statement" which gives details of licensing policy for the particular licensing period dealt with in that book. The instructions divide the intending importers into four broad categories (a) established importers; (b) actual users; (c) newcomers and (d) others who do not come in any of the above categories (see para 22 of the Handbook). The share available to the applicants in these categories is fixed from time to time. We are here concerned with category (a), that is, with established importers. If a person or a firm is recognised as an established importer

certain quota of imports is made available to that person or firm for the particular licensing period from out of the share in imports allotted to established importers. The expression "firm" used in the instructions is a wide one and includes a partnership, a limited company or a proprietary business. The business of an exporter of a dissolved firm would thus fall within the definition. Paragraph 71 of the Red Book provides that where a change occurs in the constitution or the name of a firm or the business changes hands the re-constituted firm will not be entitled to the quotas of the original firm until the transfer of the quota rights in their favour has been approved by the Chief Controller of Imports & Exports. Sub-para (a) of para 71 deals with transfer of quota rights. With this sub-paragraph we are not concerned. Subparagraph (b) deals with division of quota rights and reads thus

"(b) Division of Quota Rights.-Where a firm is dissolved, and the partners agree to divide its business, assets and liabilities, and its goodwill is taken over by one of the partners or none of them is allowed to use it, the partners shall get their respective share in the quota rights according to the provision of the agreement."

In these appeals we are concerned only with cases which fall under this sub-paragraph. Consideration of all the provisions of the Act and the Order along with the instructions leaves no doubt that no person has a right to import a foreign commodity into

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India the import of which is prohibited. Where, however, the ban on import of foreign goods is permitted to be lifted in favour of a person who has obtained a licence for import under the Order he can make an application for grant of a licence. But even then he must comply fully with the requirements specified in the Control Order and make the application in the prescribed form. The instructions contained in the Handbook and the Red Book including those in paragraph 71 are meant for the guidance of the Licensing Authority and cannot be put higher than administrative instructions. It would follow, therefore, that such instructions would not confer a legal right upon an exporter for the division of the quota rights of a dissolved firm and for treating him as an established importer though strictly speaking he was not one. Once this position is reached there would be no difficulty in answering the question which we are called upon to decide. Further, even though a firm is an established importer it cannot be said to possess a legal right to import according to its quota. If the firm itself had no legal right to import according to its quota there is no room for saying that upon its dissolution each of its erstwhile members would acquire a right to import either in proportion to their respective shares in the firm or in the proportion provided for in the agreement whereunder the dissolution was effected or be entitled to be treated as an established importer. 'Me Government, however, with a view to ensure a fair administration of the licensing system has given instructions in paragraph 71 of the Red Book to certain authorities to divide the quota rights of the dissolved firm in the manner provided in sub-para (b). The failure of the authority concerned to abide by these instructions may conceivably draw upon that authority certain consequences but would not confer any justiciable right upon any member of the erstwhile firm. The action of the authority concerned could be rectified in

an appeal to a superior authority. Where, however, it is not so rectified the claimant to the quota right has no remedy in law. However, in none of the cases before us has there been an arbitrary or unfair refusal to apply the instructions contained in sub-para (b).

Now, what has happened here is that though the applications for licences were made for a specified period within the time allowed they were rejected and the applicants were informed by the licensing authority that the division of quota rights would be given effect to only for future periods inasmuch as the divisions were recognised by the appropriate authority after the expiry of the particular periods to which the applications for import licences related. As rightly pointed out by my brother Wanchoo J. a quota

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right is not something which is transferable or heritable in law. It would follow therefore that recognition of a division of quota rights and thus treating him as an established importer, though he was not one, is no more than a concession given by the appropriate authority in pursuance of administrative instructions. Where, therefore, the recognition of a division of quota rights is accorded by the Chief Controller of Imports and Exports, as was done in these cases, only in respect of future imports, the erstwhile partner has no right to seek redress from a court or even the High Court under Art. 226 of the Constitution. His position would be no better if upon that ground the licensing authority refused to grant a licence for a licensing period antecedent to the recognition of the division of quota rights. The reason is that for an application for grant of a licence to be a proper application it must conform to the form prescribed in that behalf and that where it does not do so it is liable to be rejected. The power conferred by cls. (a), (e) and (g) of the Control Order is available to the Licensing Authority for this purpose. Here it is said that the respondent's application was defective because it does not conform to rules. It is not disputed that the application was made in Form A of Appendix IV which is a form for application by an established importer. This form is reproduced at p. 319 of the Red Book for the period January-June, 1957. Item 8 of that form requires "General Information to be furnished". Sub-item 'h' is as follows :

"Whether the constitution of the firm has undergone any change after the issue of the quota certificate to the firm? If so, quote No. and date of orders issued by the appropriate authority sanctioning transfer of quota rights in favour of the applicant."

This clearly shows that an application as an established importer can be made by a firm or person claiming the whole or a part of the quota only after the appropriate authority has sanctioned transfer of quota rights. For, the information required by this sub-para to be furnished cannot possibly be furnished till the recognition of the division is accorded by the Chief Controller of Imports and Exports. The consequence that would ensue, if an application is made for grant of a licence without furnishing the information required by this sub-para is that application would have to be treated as defective and would, therefore, be liable to be rejected under cl. (6) of the Control Order. Here, on the respondent's own showing the appropriate authority had not recognized the division of the dissolved firm's quota rights by the date on which he made an application for grant

of an import

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licence for the period January to June, 1957. He could not thus claim to have been an established importer though he purported to apply for a licence upon the basis that he was one. I, therefore, hold that the Joint Chief Controller's action in refusing to grant a licence for that period was well within his powers. It is said that in some other similar cases licences were issued by that authority. That may or may not be a fact; but even if it is a fact it is not relevant for the purpose of determining whether the action of the authority was lawful or not. For, the respondent's petition is not based upon the ground that he has been unfairly discriminated against.

It is, however, said that the recognition of the division must relate back to the date of the mutual dissolution of the firm or at least to the date of the application to the Chief Controller for recognition of the division. A similar argument was advanced before a Bench of the Bombay High Court of which I was a member in *Jagannath Prabhashankar Joshi v. Varadkar*(1) and in rejecting it I observed as follows :

"There is one more thing which we would like to point out and that is that an application for the grant of an import licence to a firm, which has undergone a change in its constitution, could be made only after the sanction regarding transfer of the quota, rights is issued in its favour. 'Mat is what is provided in paragraph 13. Therefore, the application made by the petitioners to the first respondent on the 27th of December, 1957 cannot be regarded as a proper application at all. This is made clear in they Form itself which amongst other things requires the following to be answered :

'Whether the constitution of the firm has undergone any change after the issue of the quota certificate to the firm? If so, quota No. and date of orders issued by the appropriate authority sanctioning transfer of quota rights in favour of the applicant.'

"It is clear from this position that unless the quota certificate in favour of the reconstituted firm is sanctioned by the Chief Controller of Imports and Exports, that firm would not be entitled to obtain an import licence on the ground of its being an established importer and a grantee of a quota certificate."

The decision to the contrary in *Jain's case*(2) was also cited' in *Jagannath's case*(1) and in particular the following observations therein :

(1) 63 Bom. L.R. 1.

(2) I.L.R. [1959] Mad. 850.

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"We are in entire agreement with this reasoning. Sub-clause (b) of paragraph 74 is quite clear that where a firm is dissolved and the partners agree to divide its business, assets and liabilities the partners shall get their respective share in the quota rights according to the provisions of the agreement. Such rights would accrue to each of the partners from the date of the agreement. The fact that approval of the agreement (assuming such approval is necessary) is given by the Chief Controller of Imports and Exports on a later date, it cannot be said that the rights of the partners would accrue only on and from the date, of such approval. The words 'in future' can be understood to mean 'from the date of the dissolution'."

Dealing with them I observed as follows

"With respect, we cannot accept the view taken by the learned Chief Justice and concurred in by the learned Judge. In so far as quota rights are concerned, Chagla C. J. in an unreported judgment dated 17th March, 1957 in Chimanlal Popatlal v. B. M. Choksey (Appeal No. 12 of 1957) observed as follows

'But this quota has no market-value; it is not ordinarily transferable or assignable. It is merely a licence or a permit given to a particular party to enable him to import paper into India and as such it has no inherent value.'

"Thus, according to this Court a quota right is not a 'property' which is transferable in law. If that view is correct--and with respect we think it is,-it follows that by reason of the dissolution of the partnership, no transfer takes place with respect to quota rights. It is true, that the Import and Export Authorities are required to take into account a transfer of quota rights, but that is so, because of the instructions specifically issued in this regard by the Central Government and which are to be found in the Book entitled 'Import Trade Control Policy'. These rights, such as they are, must be said to be a creation of the Government notifications and would necessarily be exercisable to the extent and in the manner provided in those notifications. In paragraph 72 of the 'Import Trade Control Policy' Book it is clearly laid down that when a change occurs in the constitution of a firm the re-constituted firm will not be entitled to the quotas of the original firm until the transfer of the quota rights in their favour has been approved by the Chief Controller of Imports and Exports. It, therefore, follows that this transfer is a condition precedent to the

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grant of an import licence. The person in whose favour such a transfer has been recognised or sanctioned, would consequently be entitled to rely upon that transfer only for a period subsequent to such sanction or recognition and not for any anterior period. The date of dissolution of the old firm has thus no relevance whatsoever in so far as the grant of an import licence is concerned. An import licence is granted by the Joint Chief Controller of Imports and Exports to a person not because he has acquired the rights of a dissolved partnership firm, but because the transfer of the quota rights made in his favour is recognised by the Chief Controller of Imports and Exports. We, therefore, agree with the learned single Judge that the transfer sanctioned by the second respondent could not entitle the petitioners to obtain an import licence in respect of a period prior to the grant of the sanction."

I shall maintain the view that I took. I would, however, add that by saying 'the rights such as they are', what I meant was that even if the transfer be said to confer rights, the rights themselves being the creation of the instructions contained in para 72 of the Red Book (corresponding to para 71 of the Red Book for January-June, 1957) would arise only upon strict compliance with the instructions. It is true that here there is no transfer by the firm of its quota rights but upon its dissolution there was a division of its quota rights by the erstwhile partners amongst themselves. Under sub-para (a) (ii) of para 71 no one would be entitled to the firm's quota but under sub-para (b) the quota would be distributed amongst the partners according to the provision in that behalf in the agreement-

of dissolution. The case being one of the business of the firm changing hands as contemplated by the opening words of para 71 the approval of the Chief Controller of Imports and Exports to the division of quota rights was imperative. This position has also not been challenged by Mr. Viswanatha Sastri.

In support of the contention that the approval of the Chief Controller of Imports and Exports would relate back to the date of dissolution it was contended that since the Chief Controller of Imports and Exports had no right to refuse to recognize a transfer (on the division of quota rights) the rights of the transferee would accrue to him as from the date of the transfer. I cannot accede to the proposition that in no circumstances can the Chief Controller of Imports and Exports refuse to recognize a transfer. Indeed, in Jagannath's case(-') such recognition was refused on the ground that the requirements of the instructions had

(1) 63 Bom. L.R. I

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In the result I would allow the appeals, set aside the judgment of the High Court and dismiss the writ petition with costs in all the courts. There will be only one hearing, fee in all these appeals.

ORDER

In accordance with the opinion of the majority the appeals are dismissed with costs. One set of hearing fee.

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