NATIONAL CO. LTD. CALCUTTA

v.

DEPUTY DIRECTOR OF TAX CREDIT (EXPORTS) CALCUTTA & ORS.

March 3, 1977

[P. N. BHAGWATI AND S. MURTAZA FAZAL ALI, JJ.]

Tax Credit Certificate (Exports) Scheme 1965—*Scheme providing for certain categories of goods or merchandise specified in column* 2 *which were exported after* 28-2-1965 *to destinations specified in column* 4—*Scheme amended by Notification dated* 6-6-1966 *disentitling an exporter to tax credit certificate in respect of goods or merchandise exported and the sale proceeds therefor were received after* 5-6-1966—*Second Notification amending the first one providing for grant of tax credit certificate in respect of goods exported on or before* 5-6-1966 *even if the sale proceeds were received thereafter—Whether the Notifications ultra vires the powers of the Central Government vested under s.* 280 *ZE read with* 280 *ZC of the Income Tax Act.*

The jute carpet backing cloth manufactured by the appellant in its jute mills and exported was covered by Item 1 in column 2 which specified "goods made of jute not otherwise specified" of the Table appended to the Tax Credit Certificate (Exports) Scheme, 1965. The notification issued by the Central Government in exercise of the powers vested under s. 280ZE read with S. 280ZC, dated 6-6-1966 and 8-8-1966, provided that no tax credit certificate shall be issued in respect of any goods exported after 5-6-1966. The appellant, who exported diverse quantities of jute carpet backing cloth manufactured by it to various countries during the period 13-7-1966 and 30-11-1966, filed a writ petition in the Calcutta High Court for a writ of *mandamus* for quashing and setting aside both the Notifications and directing the Central Government to consider the application of the applicant for tax credit certificate in respect of the exports without taking into account the two Notifications. The ground of challenge was that the two Notifications were outside the powers conferred on the Central Government u/s 280ZE read with S. 280 ZC, since the Central Government had no power under those sections to make a scheme providing that no tax credit certificate shall be granted in case of any goods or merchandise at all. The single Judge granted *mandamus*, but the Division Bench on appeal took a different view and negatived the challenge.

Dismissing the appeal by certificate the Court,

HELD : (i) The Division Bench of the High Court was right in holding that the Central Government was entitled to issue the two Notifications directing that no tax credit certificates shall be granted in respect of goods or merchandise exported on or after 5-6-1966. [131 A-B]

(ii) No obligation can be spelt out from Ss. 280 ZC and 280 ZE requiring the Central Government to frame a scheme specifying the goods or merchandise in respect of which tax credit certificate shall be granted. The Central Government was entitled to say that having regard to the factors set out in subsection (3) of S. 280 ZC, it does not think it desirable that tax credit certificate should be granted in respect of any goods or merchandise for the time being. [130 F-H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 950 of 1972.

(From the Judgment and Order dated the 5-7-1971 of the Calcutta High Court in Appeal No. 130/71).

N. R. Khaitan, A. T. Patra and *Praveen Kumar,* for the appellant.

A *Lal Narain Sinha, Sol. General, S. N. Prasad* and *Girish Chandra* not present for respondents.

The Judgment of the Court was delivered by

BHAGWATI, J. The appellant owns a jute mill situate at Rajgunj, Railway Station Andul, District Howrah in the State of West Bengal and among other jute products, it manufactures jute carpet backing
B cloth at its jute mill. The appellant exported diverse quantities of jute carpet backing cloth manufactured by it to various countries during the period 13th July 1966 to 30th November 1966. There was a Tax Credit certificate Scheme framed by the Central Government under Section 280 ZE read with Section 200 ZC of the Income Tax Act 1962. The Scheme was called the Tax Credit Certificate (Exports)
C Scheme 1965. The Scheme provided for grant of Tax Credit Certificate in respect of certain categories of goods or merchandise specified in column 2 which were exported to destinations specified in column 4 and the dates of export of which fell after 28th February 1965, for an amount calculated at the rates specified in column 3 of the Table attached to the Scheme. Jute carpet backing cloth was covered by Item 1 in column 2 of the Table which specified "goods made of jute
D not otherwise specified". If the Scheme had remained unamended, the appellant would have been entitled to tax credit certificates in respect of the exports made by it of jute carpet backing material, but a notification was issued by the Central Government on 6th June, 1966 in exercise of the powers conferred by Section 280 ZE read with Section 200 ZC, whereby paragraph 3 of the Scheme which provided for grant of tax credit certificates was amended by re-numbering that paragraph
E as sub-paragraph (1) and adding a sub-paragraph (2) to the following effect :

> "No certificate shall be granted under sub-paragraph (1) in respect of any sale proceeds referred to in that sub-paragraph or part of such sale proceeds, received after the 5th day of June 1966 in India in according with the Foreign Exchange Regulation Act, 1947 (VII of 1947) and the rules
F made thereunder".

This amendment had the effect of disentitling an exporter to tax-credit certificate in respect of goods or merchandise exported by him in all cases where sale proceeds or part thereof were received in India after 5th June, 1966. The necessity for making this amendment in the Scheme arose on account of devaluation of the Indian rupee which
G was made by the Central Government, as it was felt that in view of the devaluation it was not necessary to give any further incentive for export. But it was soon realised that this amendment of the Scheme might work hardship in those cases where goods or merchandise were exported before 5th June 1966 on the faith of the Scheme but for some reason or the other, the sale proceeds were not received until after that date and, therefore, a second notification dated 8th
H August, 1966 was issued by the Central Government further amending the scheme in exercise of the powers conferred under Section 280 ZE read with Section 280 ZC by deleting sub-paragraph (2) and instead, adding a proviso which provided for grant of tax credit certifi-

cate in respect of goods or merchandise exported on or before 5th June 1966 even if the said proceeds were received after that date and declared that in case of goods exported after 5th June 1966 the rate specified in column 3 of the Table shall be deemed to be nil and no certificate shall be granted in respect of such goods or merchandise. The exports of jute carpet backing cloth made by the appellant were admittedly after 5th June, 1966 and hence both the notifications adversely affected the appellant by disentitling it to tax credit certificates in respect of these exports. The appellant, therefore, filed a Writ Petition in the High Court of Calcutta for a writ of *mandamus* for quashing and setting aside both the Notifications and directing the Central Government to consider the application of the appellant for tax credit certificates in respect of the exports without taking into account the two Notifications. Though there were several grounds on which the validity of these two Notifications was challenged in the Writ Petition before the High Court, only one ground was pressed before us on behalf of the appellant and we shall, therefore, refer only to that ground. That ground was that both the Notifications were outside the power conferred on the Central Government under Section 260 ZE read with Section 280 ZC, since the Central Government had no power under these Sections to make a scheme providing that no tax credit certificate shall be granted in case of any goods or merchandise at all. This ground found favour with the single Judge of the High Court but on appeal under clause 15 of the Letters Patent, a Division Bench of the High Court took a different view and negatived the challenge. Since the writ petition was dismissed by the Division Bench, the appellant preferred the present appeal after obtaining a certificate of fitness from the High Court.

The Indian Income Tax Act 1922 as originally enacted, did not contain the fasciculus of Sections under Chapter XXII providing for grant of tax credit certificates. This Chapter comprising Sections 280 ZC and 280 ZE was inserted by the Finance Act 1965 with effect from 1st April 1965 with a view to providing incentive for export purpose of which Section 280 ZC and 280 ZE are material, reads as follows :—

> "280 ZC. (1) Subject to the provisions of this Section, a person who exports any goods or merchandise out of India after the 28th day of February, 1965 and receives the sale proceeds thereon in India in according with the Foreign Exchange Regulation Act, 1947 (VII of 1947) and the rules made thereunder shall be granted a tax credit certificate for an amount calculated at a rate not exceeding fifteen per cent, on the amount of such sale proceeds.
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> (2) The goods or merchandise in respect of which a tax credit certificate shall be granted under sub-section (1) (including the destination of their export) and the rate at which the amount of such certificate shall be calculated shall be such as may be specified in the Scheme :
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> Provided that different rates may be specified in respect of different goods or merchandise.

A (3) In specifying the goods or merchandise (including the destination of their export) and the rates, the Central Government shall have regard to the following factors, namely :

(a) the cost of manufacture or production of such goods or merchandise and prices of similar goods in the B foreign markets;

(b) the need to develop foreign markets for such goods or merchandise;

(c) the need to earn foreign exchange;

(d) any other relevant factor".

C Section 280 ZE conferred power on the Central Government to frame one or more scheme or schemes to be called tax credit certificate scheme or schemes in the following words :

"(1) The Central Government shall, by notification in the Official Gazette, frame one or more scheme or schemes to be called tax credit certificate scheme or schemes in rela- D tion to tax credit certificates to be granted under this Chapter.

(2) A scheme framed under sub-section (1) may provide for :—

(a) the form and manner in which, and the authority to which, applications for the grant of tax credit certi- E ficates shall be made;

(b) the form in which, and the intervals at which, and the authority by which, such certificates shall be issued;

(c) the verification of any information or particulars fur- F nished, or contained in any application made, by or on behalf of any person entitled to tax credit certificates;

(d) the determination of the rights and obligations of a person to whom such certificate has been granted and the circumstances in which any right in or title G to the said certificate may be transferred to or devolve on any other person by succession or otherwise;

(e) the determination of the rights and obligation of prsons who joinly subscribe to an eligible issue of capital;

H (f) the determination of the rights and obligation of persons who subscribe to an eligible Issue of capital, on behalf, or for the benefit, of any other person;

(g) the appointment of any officer of Government or of the Reserve Bank of India to exercise any rights or perform any duties in connection with the grant of the said certificates;

(h) the goods or merchandise and the rate or rates for the purposes of section 280 ZC and section 280 ZD and the destination of the export of such goods or merchandise for the purposes of section 280 ZC;

(i) any other matter which may be necessary or proper for the effective implementation of the provisions of this Chapter or the scheme.

(3) The Central Government may, by notification in the Official Gazette, and to, amend, vary or rescind any scheme made under this section".

It was in exercise of the power conferred on the Central Government under Section 280 ZE read with section 280 ZC that the Central Government made the Tax Credit Certificate (Exports) Scheme, 1965. The first Notification dated 6th June 1966 amended paragraph 3 of the Scheme by providing that no tax credit certificate shall be granted in respect of exports where the sale proceeds were received after 5th June, 1966. This provision was relaxed by the second Notification dated 8th August 1966 by providing that in case of exports made on or before 5th June 1966 tax credit certificate shall be granted according to the provisions of the Scheme even if the sale proceeds were received after that date, but in respect of exports made after 5th June, 1966, the rate specified in column 3 of Table A shall be nil and no tax credit certificate shall be granted in respect of such exports.

The argument urged on behalf of the appellant was that it was not competent to the Central Government to provide in the Scheme framed under Section 280 ZE read with Section 280 ZC that no tax credit certificate shall be granted in respect of exports of any goods or merchandise. The only power, which, according to the appellant, the Central Government had under these two Sections, was to frame a Scheme specifying some goods or merchandise the export of which would entitle an exporter to tax credit certificate. The appellant conceded that the Central Government was not bound to specify any particular category of goods or merchandise in the Scheme framed by it but the limited contention was that some goods or merchandise must be specified in the Scheme and since in the present case the Scheme as amended provided that tax credit certificates shall not be granted in respect of exports of any goods or merchandise, the two Notifications making this amendment in the Scheme were *ultra vires* the power of the Central Government under Sections 280 ZE and 280 ZC. This contention, though it found favour with the single Judge of the Calcutta High Court who heard the Writ Petition in the first

A instance, is in our opinion wholly without force and cannot be sustained. A mere look at the scheme of the provisions of Section 280 ZC and 280 ZE is sufficient to expose the invalidity of this contention.

Sub-section (1) of Section 280 ZC undoubtedly provides that a person who exports any goods or merchandise out of India after 28th B February 1965 and receives the sale proceeds thereof in India in accordance with the Foreign Exchange Regulation Act, 1947 and the rules made thereunder, shall be granted a tax credit certificate for an amount calculated at a rate not exceeding 15 per cent of the amount of such sale proceeds. But this right conferred on an exporter is subject to the other provisions of Section ZC and these other provisions include sub-sections (2) & (3). Sub-section (2) provides in C so many terms that the goods or merchandise in respect of which a tax credit certificate shall be granted under sub-section (1) and the rate at which the amount of such certificate shall be calculated, shall be such as may be specified in the Scheme. It is, thus, left to the Scheme to be framed by the Central Government to specify the goods or merchandise in respect of which an exporter shall be entitled to tax credit certificate as also the rate at which the amount of such D certificate shall be calculated. It is not in respect of every category of goods or merchandise that an exporter can claim to be entitled to tax credit certificate but it is only in respect of such goods or merchandise as are specified in the Scheme. The policy and the principle which would guide the Central Government in selecting the goods or merchandise for this purpose are set out in sub-section (3) which provides that in specifying the goods or merchandise as also the rates, E the Central Government shall have regard to the various factors set out in that sub-section. These are the factors which would influence the choice of the Central Government in selecting the goods or merchandise for the purpose of grant of tax credit certificate and also in determining the rates at which tax credit certificate should be given. Section 280 ZE, sub-section (1) confers power on the Central Government to frame one or more Schemes in relation to tax credit certi- F ficate to be granted under Section 280 ZC and under sub-section (2), such scheme or schemes may provide *inter alia* for the goods or merchandise and the rate or rates for the purposes of Section 280 ZC. We fail to see how any obligation can be spelt out from these provisions requiring the Central Government to frame a scheme specifying the goods or merchandise in respect of which tax credit certificate shall be granted. It would indeed be absurd to suggest that the Central G Government is under an obligation to make a scheme and the requirement of the statute would be satisfied so long as the Central Government specifies some goods or merchandise in the Scheme. There is no reason why the Central Government should not be entitled to say that having regard to the factors set out in sub-section (3) of section 280 ZC, it does not think it desirable that tax credit certificate should be granted in respect of any goods or merchandise for the time being. H Sub-section (3) of Section 280 ZC confers power on the Central Government in so many terms to rescind a Scheme made by it and that also supports the view that the Central Government may keeping in view the factors set out in sub-section (3) of Section 280 ZC,

decline to make a scheme or provide in the scheme that there shall be no goods or merchandise in respect of which tax credit certificate shall be granted. In the circumstances we think that the Division Bench of the High Court was right in holding that the Central Government was entitled to issue the two impugned Notifications directing that no tax credit certificates shall be granted in respect of goods or merchandise exported on or after 5th June, 1966. A B

We accordingly dismiss the appeal with costs.

S.R. *Appeal dismissed.*