

(1994) 05 DEL CK 0014

In the Delhi High Court

Case No : Civil Writ Petition No. 4361 of 1993

Ashoka Produts

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 23-05-1994

Acts Referred:

Imports and Exports (Control) Act, 1947 — Section 4L

Citation : (1994) 3 AD 575 : (1994) 30 DRJ 228

Hon'ble Judges : M. Jagannadha Rao, J;A.D. Singh, J

Bench : Division Bench

Advocate : Geeta Mittal and Meera Bhatia, for the Appellant;

Judgement

Anil Dev Singh, J.

(1) Rule D.B.

(2) By this writ petition the petitioner challenges the order dated October 27, 1986 of the Additional Chief Controller of Imports and Exports imposing 9 fiscal penalty of Rs. 50,000.00 on the petitioner as well as directing debannet of the petitioner from receiving import licenses and allotment of imported goods from State Trading Corporation/Metal & Minerals Trading Corporation from 1986-87 to 1988-89 and the order of the Appellate Authority of January, 1993 (Annexure Ix to the petition) confirming the said order of the Primary Authority.

(3) The facts giving rise to this writ petition are as under: The petitioner is a small scale industry manufacturing printed/plain tin containers. Tin plate used for production of containers is procured from indigenous sources and/or through imports. On the basis of the statement of past consumption of raw material for the year 1979-80 furnished by the petitioner, an import license dated October 6, 1981 of the value of Rs.18,16,650.00 was issued by the Jt. Chief Controller of Imports and Exports, Ahmedabad. On February 3, 1983 an inspection of the petitioner's concern was carried out by the enforcement officials of the respondent No. 2. Thereafter on May 20, 1993 a show cause notice was served

upon the petitioner mainly on the ground that the petitioner had failed to produce complete documents relating to consumption of the imported raw material during the 1979-80 on the basis of which import license dated October 6, 1981 for Rs.18,16,650.00 was issued in its favor. Show cause notice also stated as follows:

"3.For the aforesaid reason, it is believed that the license in question has been obtained by misrepresentation and false declaration and the same will not server the purpose, for which the same had been issued. "4. It is, Therefore, proposed to cancel the above mentioned license under clause 9 (1) (a) and 9 (1) (d) of the Imports (Control) Order, 1955, as amended. "5. Now, Therefore, you or any bank or any other party/or your agent having interest in the said licenses are called upon to show cause within 15 days from the date of receipt of this notice as to why action, as proposed, should not be taken to cancel the licenses."

By another notice dated April 9, 1985 u/s 4L of Imports and Exports(Control)Act, 1947 (for short "Impex Act"), the Additional Chief Controller of Imports and Exports called upon the petitioner to show cause why action should not be taken against it for cancellation of the licenses, debarment from receiving import licenses/CCPs/allotment of imported goods from State Trading Corporation /Mineral & Metal Trading Corporation and any other similar agency and for imposition of penalty. This show cause notice was issued, inter alia, on the ground that proper record of imported material was not maintained by the petitioner which was in contravention of the provisions contained in Hand Book of Import-Export Procedures under which the license had been granted to it. In this regard the show cause notice stated as follows :

"4.It is, Therefore, alleged that proper record of consumption of imported material has not been maintained by you which is in contravention of provisions in Hand Book of Import-Export Procedures under which these licenses have been granted to you. I have, Therefore, reasons to believe that you have obtained the above mentioned licenses on the basis of incorrect part consumption of imported material and you have misutilised licenses/imported material. You have also failed to produce documentary evidence to show proper Utilisation of imported material. These attract the provisions of Clause 9 (1) (d) and Clause 8 (1) (b), (c) of Imports (Control) Order, 1955, as amended and Section 41 (1) (a) and (c) (i) of Impex Act, 1947 as amended."

To the above show cause notice, the petitioner submitted its reply. Thereafter, the petitioner was given as opportunity of personal hearing on November 22, 1985 when heard by the Additional Chief Controller of Imports and Exports. The petitioner also filed written submissions/additional grounds on November 16, 1988. Upon hearing the petitioner the Additional Chief Controller of Imports and Exports came to the conclusion that the petitioner failed to maintain proper records of consumption of imported material which was in contravention of the provisions of the Handbook of Import and Export Procedure under which the import licenses were granted to it. According to the impugned order, it was

further established that the firm had obtained the licenses on the basis of incorrect part consumption statement of imported material. The Additional Chief Controller of Imports and exports also found that the Explanation offered by the petitioner was vague and evasive. In view of the facts established on record he was of the opinion that the petitioner violated the provisions of Section 9(i)(d) and Clause 8(i)(b)(c) of Imports (Control) Order, 1955 and Section 4L (i) (a) and (c) of Impex Act. Consequently, the petitioner firm, its proprietors/partners were debarred from receiving import licenses/CCPs and allotment of imported goods from State Trading Corporation/Minerals & Metal Trading Corporation and other similar agencies for three licensing periods, namely, 86-87 to 88-89. Besides, a penalty of Rs.50,000.00 was imposed on the petitioner for the violation of the Imports (Control) Order, 1955 and Impex Act, Aggrieved by the order of the Additional Chief Controller of Imports & Exports, the petitioner filed an appeal before the Appellate Committee Cell of the Government of India, Ministry of Commerce. The Appellate Authority after going through the record and considering the arguments advanced by the parties upheld the order passed by the Additional Chief Controller of Imports and Export. The petitioner not satisfied with the order of the Appellate Authority has come up before us by way of this writ petition challenging the order in original of the Additional Chief challenging the order in original of the Additional Chief Controller of Imports and Exports and the order of the Appellate Authority.

(4) Learned counsel appearing for the petitioner has taken a short point. She submitted that by the order dated October 27, 1986 of the primary authority the petitioner was debarred from receiving import licenses/CCPs/allotment of imported goods from State Trading Corporation/Metal & Mineral Trading Corporation and other similar agencies for a period of three years but actually debarment for all intents and purposes was for a period of six years as three years prior to the passing of the impugned order the petitioner was not granted any import licenses and the Appellate Authority without considering this aspect of the matter confirmed the penalty imposed on the petitioner by the Additional Chief Controller of Imports and Exports. Learned counsel further submitted that if the Appellate Authority had considered this aspect of the matter, the penalty of Rs.50,000.00 may have been waived or at least reduced.

(5) We find from the order of the Appellate Authority that it has not considered this aspect of the matter which has been highlighted before us by the learned counsel for the petitioner. We are of the opinion that the Appellate Authority should have considered the fact that the petitioner had not been granted import licenses for a total period of six years including the period of three years with regard to which there was no order debarring the petitioner from receiving import licenses/CCPs etc. from the various authorities in view of the pending proceedings. We also find that the Additional Chief Controller of Imports and Exports had considered this aspect of the matter but the Appellate Authority has not addressed itself to the question and Therefore the impact of same on the on the quantum of penalty imposed on the petitioner needs to be considered by the

Appellate Authority. What weight the Appellate Authority attaches to (the fact that the petitioner was also not granted any import license during the three years period immediately preceding the order of the Additional Chief Controller of Imports and Exports for determining the quantum of penalty is a matter which entirely lies .in the domain of the. Appellate Authority and it is not for us to judge. In this view of the matter, we set aside the order of the Appellate Authority only to the extent of the confirmation of the penalty of Rs.50,000.00 imposed by the Additional Chief Controller of Imports and Exports on the petitioner and direct the Appellate Authority to address itself to the above aspect of the matter and reconsider the question of imposition, including the quantum, of cash penalty on the petitioner.

(6) Accordingly, the writ petition is allowed to the extent indicated above and the matter is remanded to the Appellate Authority with a direction to pass a fresh order keeping in view the observations made above.