
(1993) 03 BOM CK 0085

In the Bombay High Court

Case No : Writ Petition No. 1312 of 1990

Athur Import Export Co.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 01-03-1993

Acts Referred:

Citation : (1993) 66 ELT 168

Hon'ble Judges : S.H. Kapadia, J;M.L. Pendse, J

Bench : Division Bench

Judgement

Pendse, J.—The petitioner No. 1 is a partnership firm and established an Industrial Undertaking in pursuance of licence granted under the Industrial Undertaking Rules, 1952. The petitioners have installed capacity for manufacturing of the mixed waste yarn. The manufacture of the yarn requires hard synthetic waste as raw material. The waste is hardly available indigenously as the available waste is used by the spinning mills in the reprocessing and is mixed with viscose, cotton, wool, etc. The petitioners are, therefore, required to import waste yarn.

2. In accordance with the provisions of Paragraph 82(1) of the Import Export Policy, the petitioners applied for issuance of supplementary licences to actual users and the application was recommended by the Textile Commissioner. The petitioner was granted supplementary licence on July 16, 1986 for import of hard synthetic waste of c. i. f. value of Rs. 50 Lacs. On issuance of the licence, the petitioners approached several foreign suppliers. However, the suppliers indicated their inability to supply material as required by the petitioners. Ultimately, the petitioners located the foreign supplier but as the validity period of the licence was coming to an end, the petitioners applied for issue of fresh supplementary licence or revalidation of the existing one on December 30, 1987. The application remained pending till the validity of the original licence expired on May 11, 1988.

On May 16, 1988, the petitioners filed fresh application for grant of supplementary licence in view of new Import and Export Policy for year 1988-91

which came into force with effect from April 1, 1988. The application was rejected on the ground that the waste yarn is indigenously available. Against the order of rejection dated August 11, 1988, the petitioners moved the Textile Commissioner pointing out the requirement of mixed waste yarn. On the representation made by the petitioner to the Textile Commissioner as well as the Government of India on October 31, 1989 the Ministry of Textile made a reference to SASMIRA enquiring about the availability of the synthetic waste in the country. On November 15, 1989, SASMIRA informed the Ministry that synthetic waste is hardly available in the country and the availability is only 2% of the total indigenous requirements. In spite of SASMIRA's recommendation for grant of licence in view of the fact that there are only five importers, the request made by the petitioners remained unheeded and that gave rise to the filing of this petition on April 23, 1990.

3. The learned Single Judge admitted the petition and directed the respondents to revalidate the licence till December 31, 1990. In pursuance of the revalidation, the petitioners placed order for import and registered the contract with Syndicate Bank. The respondents, in the meanwhile, preferred appeal on June 27, 1990 before the Division Bench against the order of the trial Judge directing revalidation of the licence. The appeal was admitted and the order was stayed. The appeal was disposed of on January 8, 1993 and the order of the Single Judge directing revalidation pending hearing of the petition was set aside and the petition was set down for hearing. Accordingly, the petition is placed for final hearing.

4. Shri Bulchandani, learned counsel appearing on behalf of the petitioners, submitted that the revalidation is denied because of cantankerous attitude taken by the Textile Commissioner and which is reflected in letter dated April 17, 1990 which is annexed as Ex. "B" to affidavit of Saktiparasad Chakrabarty, Deputy Director, sworn on March 1, 1993. The learned counsel submitted that in spite of the fact that the licence was issued in July 1986 and SASMIRA had recommended for issuance of such licence, the Textile Commissioner had made a point to ensure that the petitioners do not get the benefit of the licence. Shri Lokur, learned counsel appearing on behalf of the respondents, on the other hand, submitted that the Textile Commissioner has not raised obstruction for the purpose of revalidating the licence. Shri Lokur submitted that the letter written by Textile Commissioner to Government of India was merely recommendatory and the Government of India was not bound to act upon the same.

Shri Lokur further submitted that in any event, revalidation is not necessary in view of change of policy and under the new policy, mixed waste yarn can be imported under open general category and the grant of licence is not necessary.

Normally, we would not have entertained the Writ Petition and directed revalidation of the licence in view of the change of policy and the fact that import of mixed waste yarn falls under O. G. L. category. It is not in dispute that grant of supplementary licence in July 1986 was only for the purpose of import of

waste yarn and was non-transferable licence and could not have been used for import of any other item. We are inclined to direct the respondents to revalidate the licence in spite of the fact that the revalidation is not going to confer any advantage upon the petitioner or cause any disadvantage to the respondents only because we find that the Textile Commissioner had come in the way of the petitioners in revalidating the licence.

5. As mentioned hereinabove, on application made by the petitioners for revalidation of the licence, the Government of India made reference to SASMIRA to determine the availability of synthetic waste in the country. The reference was made because the application for revalidation was rejected only on the ground that waste yarn is available in the country and import is not necessary. The perusal of the report made by SASMIRA leaves no manner of doubt that the availability of the synthetic hard waste is hardly 2% of the total production of different fibres and yarns in the country. The report of the SASMIRA undoubtedly supports the claim of the petitioners that indigenous waste yarn is not available. In the face of the report of the SASMIRA, the Textile Commissioner addressed letter dated April 17, 1990. In paragraph 3 of the letter, it is claimed that in December 1983 and July 1984, the Textile Commissioner had informed the Government that mixed waste yarn is readily available and the petitioners had not made any serious efforts to procure the raw material to run their plant. The Textile Commissioner proceeded in making the same observation even after passage of more than six years and in face of (a) the grant of licence to the petitioners in July 1986, and (b) the report of SASMIRA about non-availability of waste yarn. This clearly indicates that the Textile Commissioner was holding to his view taken several years before and was obviously desirous that the petitioners do not get licence to import waste yarn or such licences are not revalidated. The Textile Commissioner gave one more reason as to why revalidation should be denied and that is that the petitioners had not utilised the licence till the expiry of the validity period. It is difficult to appreciate how this fact is at all relevant because in case the licence was utilised, then there was no question of seeking revalidation. The Textile Commissioner, therefore, informed the Government that the recommendation SASMIRA should be turned down. The Government of India, thereafter, did not take any decision on the request of the petitioners and, therefore, the present petition. In our judgment, it is obvious that the respondents are bound to revalidate the licence and the Textile Commissioner cannot be permitted to create obstacle in the way of the petitioners for revalidation. Shri Lokur submitted that the licence was granted in July 1986 on certain conditions. It hardly requires to be stated that revalidation will also be on the same condition. Shri Lokur very frankly stated that the revalidation is not going to cause any prejudice to the respondents, nor it will confer any additional benefit on the petitioners. In these circumstances, it is necessary to direct the respondents to revalidate the licence with a view to maintain the principles of justice and to ensure that the Departments of the respondents do not create problems for no reason in the relief sought by the

petitioners.

6. Accordingly, petition succeeds and the respondents are directed to revalidated supplementary licence No. P/A/1468756 dated July 16, 1986 for c. i. f. value of Rs. 50 Lacs in favour of the petitioners for a period of 12 months from the date of revalidation. The respondents shall pass the order of revalidation within four weeks from today. The respondents shall pay the costs of the petition.