(1987) 02 BOM CK 0010

In the Bombay High Court

Case No : Writ Petition No. 1738 of 1986

Eagle Flasks Pvt. Ltd. and another APPELLANT

Vs

Union of India and others RESPONDENT

Date of Decision : 11-02-1987

Acts Referred:

Citation : (1987) 29 ELT 850

Hon'ble Judges : S.M. Daud, J

Bench : Single Bench

Judgement

1. This petition is aimed at the quashing of Ex. ''G'', getting a mandate calling upon the respondents to make the licences figuring in this petition to the extent of unutilised portion thereof transferable and to revalidate the licences wherever the period of their validity has expired. These reliefs are sought under the terms of Import and Export Policy for the period April, 1985 to March, 1988.

2. Petitioners are in the business of manufacturer-exporter and were registered-exporters under Import Policy 1985-88. They had secured REP licences which are at Exs. ''A'' to ''E''. These licences are valid for a period of 18 months from the date of issue thereof, which ranged from May to October 1985. 25% of the c.i.f. value had been utilised by petitioners. On 30-3-1986, petitioners applied for the making of an endorsement on the licences enabling them to transfer the remaining or unutilised value thereof. This was turned down under Ex. ''G'' which reads as follows :-

".... your request cannot be considered for the following reason - since you have already availed facility of para 204 it is now not possible to make the said licences transferable."

3. Petitioners contend that Para 204 of the Policy had been misconstrued by the respondents. In fact, sub-clause (viii) of sub-para (1) of Para 204 did not come into picture at all. Under Para 225, a REP licence was transferable in full or part except for the cases covered by various paragraphs including Para 204. But the

non-transferability in sub-clause (viii) was limited to the extent of the facility availed of and not that remaining unutilised or not availed of. This contention is disputed by the respondents a case covered by Para 204. There is no merit in the submission advanced on behalf of the respondents, and, I allow the petition with costs for the reasons given below :-

4. To decide the question, it will be necessary to take into consideration certain provisions of the Policy. First, is para 188 which specifies the object of a REP licence. Para 188 states that the object is to provide to the Registered Exporters, by way of import replenishment, the materials (all or some) required in the manufacture of the products exported. Para 204 runs into several sub-paragraphs. To the extent relevant, it is worded thus :-

"(1) A manufacturer-exporter holding a valid REP licence issued in his own name against exports of select products manufactured by him will be eligible to import within the overall value of REP licence items of raw materials, components consumables spares and packing materials which are related to select products exported or manufactured by him either in the same factory as the one from which the goods were exported against the REP licence concerned or in some other factory of the same name of the manufacturer. However, in respect of items covered by sub-para (2) below, import will be subject to the value restrictions indicated against the different categories of licence holders. The special facility will be subject to the following conditions :-

(vii) The imports when made will be subject to Actual User conditions.

(viii) REP licences to be used for the facility under this para shall be ''non-transferable'' and shall be endorsed accordingly.

(4) In the case of sub-para (2) above where the items in Appendix 3 or Appendix...., if any, laid down in Appendix 17 or to the extent permitted under sub-para (2) above, whichever is more favourable to him.

(5) The facility available in sub-para (1) above will also be available to manufactures who are not registered exporters but whose select export products are exported by other manufacturer-exporters or merchant exporters.... This provisions is, however, not available (i) for issue of licences to other manufactures of the same or similar products or (ii) manufacturer of packing materials of the select products concerned or (iii) to export/trading houses.

(7) For availing of the facilities under this para, an endorsement on the REP licence is required from the licensing authority concerned. The licensing authorities will work out separately the c.i.f. values of import of items permissible under sub-para (2) of this para and specify such value limitations while making these endorsements..."

Properly read, the facility under Para 204 is rendered non-transferable only to the extent of facility contemplated by the said para. Then comes Para 225, which except for cases covered by Paras 195(2), 204, 263(2) and 265(1), entitles the licence holder to transfer the licence in full or in part in favour of another person.

5. For the respondents, the argument is that Para 204(viii) fully prohibits a transfer of the REP licence. The facility under that licence had been availed of by the petitioners. However unreasonable the condition of non-transferability may be, the petitioners cannot make a grievance thereof, having regard to Para 225. But when the clause afore-mentioned speaks of non-transferability the extent thereof is limited to the value of the facility already utilised. This interpretation alone can given meaning to sub-paras (4), (5) and (7) of Para 204. Sub-para (4) speaks of the manufacture-exporter being eligible to import to the extent permitted in the table given under Columns 4 and 5 Appendix 17 or sub-para (2) whichever be more favourable. Sub-para (7) requires the licensing authorities to make an endorsement upon the licences. Therefore, it cannot be said that Para 225 fully excludes transferability of a licence which has been partly availed of under Para 204. To the extent of unutilised value of the licence, the holder has a right to transfer, as provided by Para 225. The result of the foregoing discussion is that Ex. ''G'' will have to be quashed. Hence the order.

ORDER

The decision embodied in Ex. ''G'' is hereby quashed. Respondents do endorse upon the licences at Exs. ''A'' to ''E'', the transferability there of to the extent of the unutilised value of each licence. They shall also revalidate the licences at Exs. ''A'' to ''E'', wherever the duration thereof has expired. The above directions be carried out within a period of eight weeks as from the date when the licences are tendered by the petitioners for the aforesaid purpose. Rule in the above terms, made absolute with costs.