(2005) 01 DEL CK 0066

In the Delhi High Court

Case No : WP (C) 10325 of 2004

Exim Concept APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 19-01-2005

Acts Referred:

Citation : (2005) 117 DLT 288 : (2005) 80 DRJ 32 : (2005) 99 ECC 477 : (2005) 192 ELT 157

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : P. Manish, for the Appellant; Gaurav Duggal, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Sarin, J.—Rule.

With the consent of the parties, writ petition is taken up for disposal.

2. Petitioner is aggrieved by the order passed by respondent No. 2 cancelling Duty Free Replenishment Certificate (in short `DFRC'') license No. -510071078 and 0510071176. Petitioner is stated to have purchased these DFRC licenses from M/s Alpha Overseas and M/s Gunja Impex in the month of November, 2002, for consideration. Petitioner submits that these licenses have been cancelled by respondent No. 2, without giving any show cause notice to the petitioner. Petitioner also submits that licenses could not have been cancelled as petitioner was a bonafide purchaser for valuable consideration. The licenses on the face of it carried the legend "Transferable". Petitioner thus bonafide purchased these licenses from the above two concerns and was Therefore entitled to use them for import.

3. Notice to show cause had been issued. Counter-affidavit has been filed on record. It transpires that original license holders did not surrender the licenses. M/s Alpha Overseas and M/s Gunja Impex informed the Joint Director General of Foreign Trade that licenses had been sold and would have been utilized by the

importer to whom it was sold and as such, they were not in a position to surrender DFRC licenses. Respondents thereupon issued show cause notice dated 27.12.2002 to M/s Alpha Overseas and show cause notice dated 30.4.2003 to M/s Gunja Impex. There was no response to show cause notice and as such impugned cancellation order was passed.

4. Learned counsel for the petitioner submits that licenses carried in bold letters the words `Transferable''. Petitioner, Therefore, had bonafide purchased the licenses for valuable consideration. Petitioner cannot be made to suffer for the fault of the respondents and the endorsement thereon which led it to purchase the same. The above submission though appears to be attractive on the first flush, would not stand judicial scrutiny. The licenses have another endorsement which is as under:-

"This license is granted under the Foreign Trade (Development and Regulation) act, 1992 (No. 22 of 1992) and is without prejudice to the application of any other prohibition or regulation affecting the Import/Export of the goods which may be in force at the time of their arrival/dispatch."

5. It is not disputed before me that Textile material in respect of which DFRC licenses were issued, falls in Sr. No. J-288 i.e between J-270 to J-297. It is also not disputed that licenses issued under SION J-288 were subject to "Actual User" condition. Petitioner not being the "Actual User" cannot have benefit of said licenses for import. Note No. 14 of the "GENERAL NOTE FOR TEXTILES" appearing at Hand Book of Procedures Vol-II reads as under"-

"licenses issued as per the norms at Sl. Nos. J270 to J 297 shall be with "Actual User" Condition and materials imported there against even after the fulfillment of the stipulated export obligation shall not be transferred and the same shall be utilised only for further export production. Custom would accept certification of licensing authority to the effect that input output norms have been met and would not link clearance of export cargo with the measurement norms of garment being exported. Items allowed in the norms covered by Sl. Nos. J270 to J 297 are for fabrics other than Silk Fabrics."

6. Mr. Gaurav Duggal appearing on behalf of the respondents submits that import under the licenses are governed by the prevailing policy. In the instant case, petitioner not being the actual user cannot be entitled for their utilization. Petitioner admittedly is not an actual user and the licenses cannot be utilized for import otherwise than by the Actual user. Any such sale would contravene the terms and conditions of the policy and was not permissible. The remedy of the petitioner would lie against the concerns persons from whom it had purchased the licenses. Even if the petitioner could have been misled by the use of the standard printing form carrying the legend "Transferable" yet there can be no escape from the fact that licenses were issued further subject to import and export conditions which prohibited such a transfer to other than the actual user. Ignorance of law would not be of any avail in such a situation.

7. It appears that petitioner has himself transferred the license to M/s Remo Impex and hence its claim even on equitable grounds would get diluted. Respondents cannot be faulted for not issuing show cause notice to the petitioner since it was issued to the license holders on account of non surrender of DFRC licenses. The license holders also mentioned the factum of having sold the license without giving particulars of the petitioner. It is only when the alert was issued and imports against DFRC licenses were not permissible that the petitioner came forward to seek transfer in its favor. At this stage, it is noted that petitioner has been heard by Advance Licensing Committee on 15.1.2004. Respondents concluded that as per policy, no relaxation can be given in respect of these items. Hence even if the petitioner was taken to be bonafide purchaser not being an actual user, transfer was not permissible and its remedy would remain against the parties from whom it had purchased the licenses.

Petitioner is not entitled to any relief sought. Petition has no merit and is dismissed.