
(1995) 11 DEL CK 0021

In the Delhi High Court

Case No : Civil Writ Petition No. 931 of 1995 and CM 1652/95

G.F. Kellner and Company Ltd.

APPELLANT

Vs

Director General of Foreign Trade

RESPONDENT

Date of Decision : 08-11-1995

Acts Referred:

Citation : (1996) 81 ELT 437

Hon'ble Judges : Dr. M.K. Sharma, J;Devinder Gupta, J

Bench : Division Bench

Advocate : Shri G.L. Rawal and Mr. Kuljeet Rawal, for the Appellant; Ms. Barkha Babbar, for the Respondent

Judgement

Devinder Gupta, J.

Rule D. B.

1. Learned counsel for the parties submit that since pleadings are complete, matter may be heard was disposed of.

2. Petitioner's grievance is that he has not been granted Duplicate of the REP license and has sought quashing of the orders passed by respondents 1 & 2 conveyed to the petitioner through letters dated 9-12-1994 and 7-7-1994 and has prayed for directions against the respondents to issue Duplicate license in regard to his licenses No. P/L/3260040/C and P/L/3260041/C.

3. Petitioner claims that it is one of the leading house engaged in the business of marine products and export of sea products. It has exported sea products worth crores of rupees annually. Export house certificate is granted only if the export is made of a particular target, which at present is to the tune of Rs. 10 crores during the last three years. The import licenses as were being issued during the policy period of 1990-93 are styled as REP license which are issued in lieu of export carried out. Since the petitioner was held entitled to such licenses, it was directed from the office of respondents 3 & 4 for issuance of 2 REP licenses for

an amount of Rs. 8,60,400/- and Rs. 2,14,900/-. Practice in the office of respondents 3 & 4 has been to send these licenses by registered post. It is the petitioner's case that on or about 21-9-1990 petitioner was in receipt of a registered envelope. On opening, it was found that it contained blank papers. Immediately by letter on the same date, namely, 21-9-1990 office of respondent No. 3 was informed that through a registered letter blank papers had been received by the petitioner but envelope contained the following endorsement outside it.

"REP/B/006714/LIC/OD/88/AM89/Fish/142

MP/0004295/C AS 89/V/376"

Along with the letter the petitioner sent the registered envelope received by it Along with the blank papers. On 25-9-1990 Deputy Chief Controller of Import and Export, New Delhi passed an order suspending the operation of the two licenses with immediate effect. This apparently was done to safeguard the misuse of the licenses. It is the petitioner's case that thereafter despite number of representations, the petitioner was not obliged by issuing Duplicate licenses. Request for Duplicate licenses was turned down and the statutory first and second appeals were also dismissed by respondents 1 & 2 through the impugned orders.

4. Respondents in their counter affidavit have not specifically controverted the petitioner's stand but have stated that the two licenses were duly dispatched to the petitioner in an envelope by registered post, which was received by the petitioner. It is also not in dispute that the petitioner's complaint dated 21-9-1990 was received and consequently Deputy Chief Controller of Import and Export through letter dated 25-9-1990, in exercise of powers under Clause 9(3) of the Import Control Order, 1995, suspended the operation of the licenses, thus, rendering the licenses ineffective. It is also stated that the petitioner's request for issuance of Duplicate licenses was duly considered but it was found that Duplicate licenses in the facts and circumstances could not be issued, since petitioner's case was not strictly covered by REP Circular No. 24/91, dated 30-6-1991 annexure. P-7.

5. We have heard learned counsel for the parties and our attention has been drawn to the Circular, Annexure P-7, on the basis of which, according to the respondents, the petitioner's case is not covered for grant of Duplicate licenses. It will be necessary to refer to some of the conditions which are required to be fulfilled as per the guidelines contained in Annexure P-7 before Duplicate license is issued. The same are :

"1. The original REP license/Exam Scrip reported to have been lost should have been issued on or after 1-4-1990.

2. The loss of the REP license/Exam Scrip should have been reported to the Licensing Authority concerned on or before 11-9-1991 (the date on which new

arrangements were made for the exporters to collect the REP license/Exam Scrip through an authorised person only.

3. The REP license/Exam Scrip should have been lost either in the post offices or during postal transit or in the Customs Department.

4.

5. ".

6. One of the grounds on which Duplicate REP license can be issued is the loss of original license, either in post office or during postal transit or in customs department. In case the guidelines state that it can be issued in the case of loss in post office or during postal transit or in Customs Department, we see no reason why in the case of the petitioner, in whose case admittedly licenses had been issued and are alleged to have been dispatched through post, which are stated not to have been received by the petitioner's the same guidelines would not apply. Petitioner's case is that it received only blank papers and on the same day a report was lodged to avoid any misuse of the same. Promptly the licenses were suspended by the appropriate authority. It is not the case of the respondents that licenses have been misused. Keeping in view the facts, as have come on record, possibility cannot be ruled out of some accidental slip or inadvertence due to which licenses might not have actually been dispatched to the petitioner or that in case the same were actually dispatched, the same did not reach the petitioner. In other words, it might be termed as case of loss in transit. The appropriate authority ought to have taken note of the facts and circumstances by liberally construing the guidelines. Neither the petitioner received the licenses, nor the same have been misutilized, their operation was suspended on the petitioner's complaint. In these circumstances, guidelines, if construed liberally, would definitely entitled the petitioner to the issuance of Duplicate licenses.

7. Consequently, we find it to be a fit case where relief must be granted to the petitioner by quashing the impugned orders.

8. Writ petition is allowed. Impugned orders are quashed and set aside and directions are issued to the respondents to issue Duplicate licenses in accordance with law in lieu of licenses No. P/L/3260040/C and P/L/3260041/C. The Duplicate licenses will be issued within a period of four weeks from the date of receipt of writ order.

9. Rule is made absolute.