

(1997) 02 DEL CK 0009

In the Delhi High Court

Case No : Civil Writ Petition No. 3813 of 1996

Goel Enterprise

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 14-02-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 2 AD 378 : (1997) 66 DLT 577 : (1997) 40 DRJ 751 : (2003) 151 ELT 283

Hon'ble Judges : Y.K. Sabharwal, J

Bench : Single Bench

Advocate : G.L.Rawal and Gaurav Duggal, for the Appellant;

Judgement

Y.K. Sabharwal, J.

(1) Rule D.B.

(2) The facts of the case lie in a very narrow compass and the point involved is very short.

(3) Petitioner is stated to have purchased from Vishakhapatnam Steel Plant duty free import licence. That license has been endorsed in favor of the petitioner. According to petitioner it could not fully use and exhaust the license during its validity period for the reason that there were certain disputes between the licencing authority on the one hand and Vishakhapatnam Steel Plant on the other. The petitioner, accordingly, made representation to the licencing authority to extend the period of validity of the licence. By impugned communication dated 16th August 1996 petitioner was informed that his request for grant of extension of period cannot be accepted as there is no provision in the Exim Policy for revalidation or extension in respect of transferable licence. On these facts the question is whether the licencing authority has power to extend the validity of the license or not.

(4) Para 21 of the current Exim Policy, inter alia, provides that any request for

relaxation of the provision of the policy or of any procedure on the ground that there is genuine hardship to the applicant can be made to Director General of Foreign Trade for such a relief as may be necessary. It also provides that Director General may pass such orders for granting such relaxation or reliefs as he may deem fit or proper, Para 21 of the Exim Policy reads as under:-

"ANY request for relaxation of the provision of the policy or of any procedure, on the ground that there is genuine hardship to the applicant or that a strict application of the Policy or the procedure is likely to have an adverse impact on trade, may be made to the Director General of Foreign Trade or such relief as may be necessary. The Director General of Foreign Trade may pass such orders or grant such relaxation or relief as he may deem fit and proper. The Director General of Foreign Trade may, in public interest exempt any person or class or category of person from any provision of this Policy or any procedure and may, while granting such exemption, impose such conditions as he may deem fit."

(5) This court in C.W. 1172 of 1995 decided on 27th March 1996 has held that power to extend validity period exists to remove genuine hardship. Though that case was where the license had been lost but the principle was about existence of power. Reference may also be made to a decision of Bombay High Court in Kavita Exports Private Limited Vs. Union of India, relied upon by learned counsel for the petitioner in support of the contention that the power to revalidate or extend the period vests in the licencing authority. In the said decision the court was concerned with Clause 37 of the Policy for the years April 1985 - March 1988. Para 21 reproduced above seems to be wider in scope than Clause 37. There are various other decisions of this court on the question of the power of the licencing authority on this aspect (See : Handicrafts and Textiles Industries and Another Vs. The Chief Controller of Imports and Exports and Others, , G.F. Kellner & Company Ltd. Vs. Director General of Foreign Trade and another, C.W. 931/95 decided on 8th November 1995 and Cosmique Exports Pvt. Ltd and another Vs. Union of India and others, C.W.P. 2486/89 decided on 9th July, 1990).

(6) The sole ground for refusing extension/revalidation is lack of power. In view of our conclusion that such a power exists, we make the rule absolute, quash the impugned letter dated 16th August 1996 and direct the Respondent No. 2 to forthwith and in any case not later than four weeks from today consider and decide the representation of the petitioner on merit seeking revalidation/extension of the period of the validity of the licence, after affording an opportunity of hearing to the petitioner. The writ petition is disposed of accordingly. No costs.