

(1984) 07 DEL CK 0005
In the Delhi High Court
Case No : Civil Writ No. 399 of 1980

Gujarat Oxygen Limited

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 12-07-1984

Acts Referred:

Constitution of India, 1950 — Article 226

Hand Book on Import Trade Control Rules — Rule 255, 255(1), 255(2)

Citation : (1989) 42 ELT 572

Hon'ble Judges : R.N. Aggarwal, J

Bench : Single Bench

Advocate : T.U. Mehta and Vimal Dave, for the Appellant; None, for the Respondent

Judgement

R.N. Aggarwal, J.—This petition under Article 226 of the Constitution of India by Gujarat Oxygen Ltd. challenges the legality and validity of the order dated 16th August 1978 passed by the Chief Controller of Imports & Exports refusing to revalidate the license granted to the petitioner on 8th May 1974 for import of 1575 cylinders of gas. The petitioner company was originally owned by Poly gas Limited, Bhavnagar, but it changed hands. The company was originally located at Bhavnagar but the new management shifted the company from Bhavnagar to Limdi. The afore-mentioned license for import of 1575 cylinders was valid up to 14th January 1978. On 27th December 1977 the new management applied for revalidation of the license. The Chief Controller of Imports & Exports wrote to the petitioner company inquiring about the date of the valid contract signed by the company for the import of the cylinders to enable them to consider the request for the revalidation of the license. The petitioner company on 5th May 1978 wrote to the Controller of Imports and Exports informing that M/s. Pannonia Foreign Trading Company, Budapest (Hungary) had accepted their order for 1575 oxygen cylinders vide their letter dated 12th May 1977 and the period of delivery quoted by them was four months after their opening the letter of credit which they hoped to open with Bank of Baroda, Ahmedabad as soon as the license is

revalidated. The company requested for revalidation of the license till 14th January 1979. On 20th June 1978 the Controller of Imports and Exports wrote to the petitioner for, sending a copy of the contract signed by it with the foreign supplier. On 7th July 1978 the petitioner sent to the Chief Controller of Imports & Exports a photostat copy of the order and confirmation of the said order from the supplier. On 16th August 1978 the Controller of Imports & Exports refused the request for revalidation.

2. After the above refusal the petitioner company took up the matter with the Minister of Commerce. The Minister of Commerce vide letter dated 9th July 1979 informed Mr. Viren J. Shah, Member of Parliament, that the import of gas cylinders is not being allowed on account of the availability of indigenous cylinders with M/s. Bharat Pumps & Compressors Ltd. and, Therefore, regretted that the license could not be revalidated. On 25th August 1979, the petitioner served a notice on the Chief Controller of Imports & Exports for reconsideration of the case for revalidation of the license failing which the respondent No. 2 was told that legal action shall be taken.

3. On 7th April 1980, the Petitioner company filed the present petition for a writ of mandamus requiring the respondents to revalidate the license up to a reasonable date to enable the petitioner to import 1575 gas cylinders covered by the license.

4. The respondents in their reply have stated that revalidation of the license was refused for the reason that the petitioner had not shown any progress in the utilisation of the import license in question during its validity of 38 months and secondly that the Capital Goods Main Committee had decided that import licenses, where there was no change involved (change in the matter of source of supply or value etc.) should not be revalidated. The respondents have further stated that the request for revalidation on 21st July 1979 was rejected in view of the availability of indigenous gas cylinders with M/s. B.P.C.L.

5. The petitioners in their rejoinder affidavit have stated that there were compelling reasons for the petitioner company not to import cylinders within the period mentioned in the license. The compelling circumstances mentioned in the petition are that the financial institutions and the Bank of Baroda were approached for financial help and they took lot of time in appraising the project and the final grant of loan for financing the cylinders was conveyed to the petitioner company by the Bank of Baroda only in October, 1978. The petitioner company further stated that a number of companies were granted licenses for import of cylinders before and after the alleged decision to stop the import of cylinders in view of their indigenous manufacture by M/s. B.P.C.L.

6. Rule 255 in Chapter XI in the Hand Book on Import Trade Control Rules and Procedure lays down the procedure for revalidation of the licenses. Sub-rules (1) and (2) are important and they read as under :

(1) Application for revalidation. - A form of application for revalidation of licenses

has been introduced. The prescribed form appears in Appendix 3 to this book. All requests for revalidation of licenses from actual users, established importers or others should be made in the prescribed form. While applying for revalidation, the applicants should specifically indicate the amount for which firm and irrevocable commitment has been made and the amount which has been utilised during the initial period of validity including period of revalidation already availed of, if any, in the appropriate columns of the prescribed application form. It is not necessary for an importer to get his import license revalidated merely for the purpose of remittances against the imports already made. In such cases the importer may approach the authorised dealers in foreign exchange with the relevant documentary evidence showing that the goods were imported within the validity period of the license. The authorised dealers in foreign exchange will consider such cases in accordance with the relevant rules.

(2) Actual users. - Requests for revalidation of actual user licenses will be considered on merits by a licensing authority where such authority is satisfied that the request for revalidation is based on genuine difficulty and the refusal to grant extension will cause hardship or loss to the license holder. In deserving cases, licenses may be extended by a period not exceeding six months, provided such revalidation is otherwise allowed in terms of the relevant import policy.

3. xxx xxx xxx"

Sub-rule (1) clearly shows that the application for revalidation has to be made in a prescribed form and the applicant is to state specifically the amount for which firm and irrevocable commitment has been made and the amount which has been utilised during the initial period of validity including the period of revalidation already availed of. Sub-rule (2) lays down the guidelines in dealing with applications for revalidation made by actual users.

7. The undisputed facts are that the license for the import of 1575 cylinders was granted to the petitioner company on 8th May 1974. The management changed hands in or about July 1976. The license was valid up to 14th January 1978. The license remained unutilised. On 27th December 1977 a request was made for revalidation. The petitioner company was required to send a copy of the contract signed by it with the foreign supplier to enable the respondent No. 2 to consider the request for revalidation. On 16th August 1978, respondent No. 2 took a decision not to revalidate the license. The letter dated 16th August 1978 refusing to revalidate the license does not specify the reason for the refusal to revalidate but in the counter affidavit the respondents have stated that since the petitioner company had not shown any progress in the utilisation of the import license during its validity of 38 months the request for revalidation was rejected.

8. Shri T.U. Mehta, learned advocate for the petitioner, has contended that an order for import of the cylinders was placed with a firm at Budapest (Hungary) in May 1977 and the said firm had accepted the order and the delivery was to be effected within four months of the opening of the letter of credit. Shri Mehta

contended that the petitioner could not open the letter of credit for financial reasons and that in October 1978 the Bank of Baroda had granted a loan of Rs. 21 lakhs to the petitioner and if the license was revalidated the petitioner company would have been able to import the cylinders. Shri Mehta contends that the respondent No. 2 in refusing to revalidate the license has failed to consider the genuine financial problems of the petitioner and further the fact that the refusal to revalidate the license would cause great hardship and loss to the license-holder. The contention of Shri Mehta is that respondent No. 2 while refusing to revalidate the license has overlooked the guidelines given in Sub-rule (2) of rule 255.

9. I have carefully gone through the record and I find that beyond the fact that there was some correspondence between the petitioner and the firm at Budapest regarding the supply of 1575 cylinders at no stage there was any firm and irrevocable commitment between the parties regarding the supply of the cylinders. The petitioner had no financial arrangements for the purchase of the cylinders at least till October 1978. There is no clear material on the record to show that even in October 1978 the petitioner had necessary funds to purchase cylinders. The letter dated 20th June 1978 written by respondent No. 2 to the petitioner clearly states that it wanted to know if the petitioner had entered into a contract with the foreign supplier for the supply of the cylinders. The material placed on the record does not show that there was any firm commitment with the firm at Budapest regarding the supply of cylinders. As already stated, the license was granted on 8th May 1974 and it was not utilised till December 1977 when an application for revalidation was made. On the facts stated it cannot be said that the reason given by the respondents that the petitioner had not shown any progress in the utilisation of the import license was wrong. In any case, it was for the authority concerned to take a decision on the material placed before it to revalidate the license or not. This court cannot substitute its opinion for the opinion formed by the competent authority.

10. In my opinion no case has been made out for interference. The petition is dismissed. As there has been no appearance on behalf of the respondents, I leave the parties to bear their own costs.