
(1996) 09 CAL CK 0008
In the Calcutta High Court
Case No : Writ Petition No. 2013 of 1995

Guru Ispat Ltd.

APPELLANT

Vs

Joint Director General of Foreign Trade

RESPONDENT

Date of Decision : 03-09-1996

Acts Referred:

Foreign Trade (Development and Regulation) Act, 1992 — Section 9(4)

Citation : (1996) 87 ELT 378

Hon'ble Judges : Samaresh Banerjee, J

Bench : Single Bench

Judgement

Samaresh Banerjee, J.—The petitioner company, who is a transferee of the Special Import Licence bearing No. P/W/1530312/C/XX/36, dated 25th August, 1995 issued in favour of the Respondent No. 3, has prayed for issue of a Writ in the nature of Mandamus commanding the Respondent No. 1 to issue a duplicate copy of the Special Import Licence. A prayer has also been made for a declaration that Paragraph 21 of the Handbook of Procedure (1992-97), so far as the same purports to provide that the duplicate copy of the freely transferable licence cannot be issued, is ultra vires The Constitution of India.

2. Admittedly, the aforesaid licence is a fully transferable licence and although the same was issued in favour of the Respondent No. 3, the same was transferred in favour of the petitioner company on payment of valuable consideration.

3. It is the case of the petitioner that after such licence was so transferred in favour of the petitioner in August 1995, the Petitioner No. 2, who is a Director of the Petitioner No. 1 company, had been to Bombay in the first week of October, 1995 taking alongwith him the aforesaid Special Import Licence for business purposes. But unfortunately the brief-case containing the said Special Import Licence was stolen on 7th October, 1995. Immediately thereafter the Petitioner No. 2 in his capacity as a Director of the Petitioner No. 1 company lodged a diary with the concerned police station in Bombay and also requested the respondents

concerned in writing not to permit any one to utilise the said Special Import Licence. It is the further case of the petitioner that on 17th October, 1995 a Director of the Company filed an application before the Joint Director General of Foreign Trade being the Respondent No. 1 praying before him to issue a duplicate licence. But no duplicate licence was issued by the respondent and the said Director was intimated orally that in view of Paragraph 21 of the Handbook of Procedure the said application has been rejected. Paragraph 21 of the Handbook of Procedure although inter alia provides where a licence is lost or misplaced, an application for grant of a duplicate copy thereof may be made to the licensing authority in the form prescribed and on being satisfied about the merits of the application, the licensing authority shall issue a duplicate copy of the licence after issuing an order for cancellation of the original licence and informing the Customs authority where the original licence was registered, it has also been provided that the duplicate copy of freely transferable import licence shall not be issued. It is the contention of the petitioner that the aforesaid prohibition for issue of duplicate copy of freely transferable import licence as contained in Paragraph 21 of the aforesaid Handbook of Procedure is wholly arbitrary and illegal. It is the further case of the petitioner that challenging the aforesaid action the petitioner filed a writ petition in this Court being Matter No. 1898 of 1995. But after filing of the said writ petition the petitioner having been served with an order passed by the respondent cancelling the said licence had withdrawn such application and has filed the present writ application also challenging the aforesaid order of cancellation. It is the grievance of the petitioner that the order of cancellation has been passed in gross violation of the principles of Natural justice as the petitioner was not given any hearing and in any event although the order of cancellation can be passed u/s 9(4) of the Foreign Trade (Development and Regulation) Act, 1992, reasons for such cancellation are to be recorded. The respondents in their Affidavit contended that the order of cancellation having been passed on the request of the petitioner himself because of loss of such licence, the question of giving any hearing did not and could not arise. It is the further contention of the respondents that the aforesaid provision contained in Paragraph 21 of the said Handbook of Procedure under which duplicate copy of the licence cannot be issued in case of freely transferable licence is quite valid and proper as such provision has been introduced for preventing abuse of such licence in case of loss.

4. Having heard the learned Advocates for both the parties and considering the facts of this application, it appears to me that it is not at all necessary for this Court to go into the question whether the prohibition to issue a duplicate copy of the licence in case of loss of freely transferable licence is arbitrary or not. Although the petitioners after loss of such licence applied for issue of a duplicate copy of the same, it appears from the copy of the letter dated 20th/27th October, 1995 being Reference No. GIL/AL/PP/95/4377 written by the petitioner company to the Joint Director General of Foreign Trade that in the said letter a specific request was made that the original licence issued in favour of India Foils Ltd.,

Respondent No. 3 be cancelled. A further prayer was made in the said letter for issue of a fresh licence. It appears that even if there might have been a prayer for issue of a duplicate licence in the aforesaid letter, in no uncertain term the petitioners themselves prayed for cancellation of the licence because of loss of the same and grant of a fresh licence. Under such circumstances, no wrong has been committed by the respondent by cancelling the licence of the petitioners. Such order of cancellation having been passed on the specific prayer of the petitioners, the question of giving any hearing therefore does not arise. The contention of the petitioners to such extent is wholly misconceived and is rejected. Since admittedly such licence was cancelled on the prayer of the petitioners, the question of grant of any duplicate licence also does not and cannot arise. It is not, therefore, necessary at all for this Court to decide the question, whether such prohibition to issue a duplicate licence in case of freely transferable licence is arbitrary and illegal. The learned Advocate for the petitioners further submitted that since the aforesaid licence was lost for the reasons stated above and all precautions were also taken by the petitioners as also the respondents against misuse of the same and it is also not the case of the respondents that such lost licence has been used by anybody else, fresh licence may be issued in favour of the petitioners.

5. It has, however, been contended by the respondents that for grant of a fresh licence the petitioners have to make an application and the same will be considered by the respondents. The relevant provisions of the Act, Export and Import policies and the Handbook of Procedure have been referred to for the purpose of showing in what manner an application is to be made. After considering the respective submissions of the parties it appears that since admittedly the licence in question was a freely transferable licence and it is also not the case of the respondents that such licence, after it was lost, has been misused by any one, justice and equity will demand that the petitioner should be permitted to utilise the licence for the unspent period of the same. It appears that admittedly the licence was valid till August, 1996 and during the pendency of the writ application such period has expired. Under such circumstances, in my view, since the said period has expired during the pendency of the writ application, the petitioner may be granted a licence for the period of 9 months from the date of issue, as it appears that after issue of licence in August, 1995 it was lost in October, 1995.

6. Under such circumstances, I dispose of this application by directing that on an application of the petitioners the respondents will issue a fresh licence with the same terms and conditions as contained in the original licence issued in favour of India Foils Ltd. for the same valuation, but for a period of 9 months from the date of issue.

7. It is sought to be contended on behalf of the petitioners that since the relevant documents in respect of the original licence, which is lost, are already lying with the respondents and they are available to the respondents, the

respondents may issue a fresh licence without further application from the petitioners. It is made clear that the petitioner will make an application before the respondents for the aforesaid licence and the respondents for the purpose of issuing such licence will rely on the documents, which were submitted for the licence issued in favour of India Foils Ltd., but they may also ask for from the petitioners any other relevant documents, which may be necessary for issue of the aforesaid licence. Needless to mention, such licence is to be issued in accordance with law, but the same shall be done as expeditiously as possible, preferably within a fortnight from the date of making of such application.

8. It is further made clear that if in producing any document or materials before the respondents any difficulty is faced by the petitioners and the documents are in possession of the Respondent No. 3, India Foils Ltd., on request of the petitioners the Respondent No. 3 shall make available copies of such documents to the petitioners for production of the same, before the respondents.

9. There will be no order as to costs.

10. All parties will act on a signed copy of the minutes of the operative part of the judgment on the usual undertaking.