
(1994) 02 DEL CK 0009

In the Delhi High Court

Case No : Civil Writ Petition No. 1837 of 1991

Handicrafts and Textiles Industries and Another

APPELLANT

Vs

The Chief Controller of Imports and Exports and Others

RESPONDENT

Date of Decision : 25-02-1994

Acts Referred:

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

Citation : (1994) 1 AD 906 : (1994) 54 DLT 5 : (1994) 28 DRJ 590

Hon'ble Judges : K. Shivshankar Bhat, J

Bench : Single Bench

Advocate : L. Rawal, Kuljit Rawal and B. Babbar, for the Appellant;

Judgement

K. Shivashankar Bhat, J.

(1) The petitioner is engaged in the business of import and export and as such petitioner was entitled to the grant of export house certificate. In lieu of the export made, export house like the petitioner will be entitled to certain rebates like grant of additional and Rep import license amongst other benefits. The petitioner was accordingly issued additional license No-3043601 dated 25.1.1995 for Rs.3,30,220.00 entitling the importation of various items referred in the license. As per the policy, license is issued in duplicate. One copy is referred as "Customs Copy" and the other is referred as "Exchange Control Copy". The present writ petition involves the subject of "Exchange Control Copy". It is the case of the petitioner that certain auto parts were imported under two consignments referred in the writ petition. They were discharged on or about 19.10.1985 and 9.11.1985. The payment had to be made through the bankers and accordingly the suppliers issued, bills/invoices etc. on the petitioner; they had to be paid through the Bank of Rajasthan Limited having its foreign exchange branch at New Delhi. The Customs Copy of the import license was tendered by the petitioner to obtain the clearance of the goods. However, for the due payment of the bills the petitioner had to send the "Exchange Control Copy" to the third respondent bank referred above, on 4.11.1985. The bank was

requested to remit foreign exchange equivalent to Singapore \$ 21,512.70 as per the then conversion rate. The equivalent was a sum of Rs. 1,23,992.50 which was remitted. In fact an endorsement also was made on the Exchange Control Copy of the license. However, the said copy of the license was kept with the third respondent bank since further remittances shall have to be made with regard to the subsequent shipments. The petitioner was entitled to a balance sum of Rs-2,06,207.50 against the said license copy (Exchange Control Copy of the license is referred hereafter as the license copy). At my instance Ms. Barkha Babbar, Advocate appeared and accepted notice on behalf of respondents 1 & 2.

(2) It is unnecessary to refer to various statements made by the petitioner in the writ petition. The license copy was misplaced by the bank and Therefore the petitioner sought a duplicate copy from the second respondent. The petitioner wrote several letters in this regard. One of the earlier letters is marked Ex.P-7 dated 6.4.1987, wherein the petitioner pointed out that the bank had misplaced the license copy and in fact the bank had earlier sent the said license copy to the Reserve Bank of India for extension of time. Thereafter the petitioner pursued the matter; since there was no response from the second respondent I find that several letters were being addressed by the petitioner and only in the year 1990 as per letter dated 3.1.1990 the petitioner was told that the petitioner's letter had been received and the matter is being looked into in consultation with the appropriate regional authority. Again the petitioner addressed a letter to the second respondent on 28.4.1990 reminding of his request. The petitioner also sought a personal hearing. It is unnecessary to refer to other letters addressed by the petitioner. But the fact remains that in spite of the acknowledgement dated 3.1.1990 stating that the petitioner's grievance would be considered nothing came out of this acknowledgement and accordingly the petitioner approached this court by filing the present writ petition in May, 1991.

(3) In the counter affidavit the respondents 1 & 2 contended that the petitioner has an alternative remedy of approaching the appropriate authority. But nowhere the counter affidavit pointed out the designation of such an appellate authority; a mere pica is not sufficient. The respondent should have pointed out as to which authority could be approached by the petitioner. This apart, this is a case where the alleged original authority had not made any order. Inaction on the part of the original authority has compelled the petitioner to approach this court. To approach the Appellate Authority there should be some order which could be challenged before the Appellate Authority. There is also another aspect to be considered. This matter has been pending before respondents 1 & 2 since about the year 1987. They have not taken any steps even casually to consider the grievances of the petitioner. The writ petition was filed in May, 1991, and a Bench of this court issued notice to the respondent to show cause as to why Rule Nisi not be issued. If the petitioner should be non-suited, it was the most appropriate stage when the respondents should have persuaded the Bench from issuing the Rule thereafter. I do not think this is a case where this court should decline to exercise its writ jurisdiction only on the ground of the alleged appellate remedy.

(4) While considering the merits of the case it is necessary to note that admittedly the license copy was with the third respondent bank. The third respondent bank seems to have thought that the remittance period was over and did not take sufficient care to preserve the license copy. The fact that the license copy was with the third respondent bank is not disputed by the contesting respondent. The fact that the petitioner had a current license copy cannot be disputed and is not disputed because a part of the remittance was remitted through the third respondent bank by approaching the Reserve Bank. Therefore, it is clear that the license copy was lost by the bank either due to its negligence or due to the ignorance of the third respondent bank. The question is whether the petitioner is entitled to have a duplicate copy?

(5) The respondent seems to contend that the license period had expired or at any rate the period for remitting the amount expired long back and Therefore the petitioner is not entitled to have the duplicate copy. No legal provision is brought to my notice in support of this proposition. On the other hand learned counsel for the petitioner has cited a decision of this court having a bearing on this question indicating that if the relevant license is lost for no fault of the petitioner or the licensee the licensee should be furnished with a duplicate copy and the remittance period could be extended by the authorities. In *Rajjab Ali and Sons and Others Vs. Union of India and Others*, , an almost similar case came up before learned Judge of this court. It was a case where the licensee sought a duplicate copy of the Customs Copy (as already noted Customs Copy is nothing but another personality of the same license). This court held that the authorities may have to be satisfied to the effect that no duplication is done in case the duplicate license is to be issued and that no additional license or any part thereof has been issued, and has not been put to use, and if so then a copy shall be furnished. In the said case the respondents were also directed to extend the validity of the additional license in case there was a decision to issue the duplicate license. The learned Judge referred to earlier two decisions of this court. It is necessary to note the the customs copy is usually in the custody of the licensee. But in the case of "Exchange Control Copy" the same need not be in the custody of the licensee but would normally be with the concerned bank. In the instant case, as I have already noted, the relevant license copy was with the third respondent bank. The third respondent bank admittedly misplaced the same. In the circumstances there was no impediment for the issuance of a duplicate copy to the petitioner and accordingly I direct the second respondent to issue a duplicate copy within 4 weeks from the receipt of this order. The license shall be validated for a period of six months thereafter.

(6) The petitioner also has raised the question of exchange rate that should govern the license to be issued. The goods were imported in November 1985. The petitioner sought the duplicate copy of the license somewhere in the year 1987 and Therefore the exchange rate to be permitted shall be as prevalent in or about October,1987. This shall be noted by the second respondent. But this direction is further clarified that the exchange rate is for the purpose of

calculating the balance amount of remittance which the petitioner is entitled to under the license in question. No costs.

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