

(1987) 08 BOM CK 0019

In the Bombay High Court

Case No : Writ Petition No. 1010 of 1986

Hindustan Lever Ltd. and another

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 27-08-1987

Acts Referred:

Citation : (1988) 1 BomCR 36 : (1987) 31 ELT 907

Hon'ble Judges : H. Suresh, J

Bench : Single Bench

Judgement

1. In or about the month of January 1983, the first petitioner entered into an Export Contract with USSR for the export of 1,000 Metric Tonnes of Taj Toilet Soap. The export value was Rs. 1.30 crores. Having secured the said export contract, the petitioners were entitled to and applied for an advance licence in terms of the policy for the period AM-83 to enable the petitioners to import raw materials and packing materials for fulfilling the said export order. On the anticipation of the receipt of the said advance licence, the petitioners went ahead and took necessary steps for the manufacture and export of Toilet Soap to the Russian buyer. Between the period from May 31, 1983 to July 29, 1983 the actual exports of 975 metric tonnes were effected. The petitioners had to make arrangements for raw materials from its available stocks of imported inedible tallow because, in order to start exports from May 1983 the petitioners could not wait for the actual issue of the advance licence which was issued only on April 28, 1983. The advance licence dated April 27, 1983 bearing No. P/L/2993880 was issued to the petitioners permitting imports of eight specified items of the CIF value of Rs. 79,94,800/- subject to conditions attached thereto.

2. The petitioners, as per the terms of the said licence, had also executed a legal agreement with the Government of India. In other words, the petitioners completely fulfilled their export obligation by July 31, 1983 even without arranging for any export and thus satisfied the condition of the said legal undertaking as contained in the said agreement.

3. In or about the month of August/September 1983, the Government of India completely banned the import and clearance of Tallow, as a result of which the petitioners could not place any orders for the imports of Tallow under the said advance licence even though the said advance licence was valid upto April 1984.

4. Some time in December 1983 the petitioners received a formal letter dated December 8, 1983 from the office of the Joint Chief Controller of Imports and Exports, Bombay asking for production of the said advance licence along with DEEC book for making some amendments. Obviously, the amendments related to the deletion of import of Tallow.

5. The first petitioner company by its letter dated January 3, 1984 returned the advance licence and the DEEC book. However, they made following two specific requests :

(a) Since import of tallow had been banned by the Government, a request was made to permit the import of Palm Kernel Oil (PKO) in lieu of the inedible tallow subject to the original quantity and value limits.

(b) A request was made to amend the original advance licence to read export obligation for 1975 metric tonnes instead of 1000 metric tonnes as 25 tonnes was not exported since it was not commercially viable to do so.

6. By a letter dated January 12, 1984, the second respondent informed the petitioners that the said advance licence was being returned as amended deleting inedible tallow, but in respect of the request of allowing of the import of palm kernel oil instead of inedible tallow, the petitioners were asked to approach the third respondent i.e. the Chief Controller of Imports and Exports. It appears that since the licence was expiring some time in April 1984 the petitioners by their letter dated April 18/26, 1984 addressed to the second respondent requested him to revalidate the licence and DEEC as they could not finalise their imports of oil for want of clarification from CCIE, Delhi regarding substitute for tallow. On May 4, 1984 the second respondent turned down the petitioner's request for revalidation on the ground that there was no provision to extend the validity of import licences as per para 202 of Chapter VIII of Hand Book of Rules and Procedure, 1984-85.

7. On July 9, 1984 the petitioners made an application to the Advance Licensing Committee for revalidation of the licence by six months. On July 11, 1984 the petitioners made another representation to the Chief Controller of imports and exports with a request for the substitution of the items as set out in the said application. Further, representation were made, which continued till about December 1984.

8. On December 31, 1984, the third respondent informed the petitioners that their request for revalidation could not be agreed to as revalidation beyond eighteen months was not allowed as per the current import-export policy. The petitioners made another detailed representation to the third respondents but

third respondent would not agree and by a letter dated February 22, 1985, informed the petitioners that their request for revalidation was considered and it was regretted that the same cannot be agreed to as revalidation beyond eighteen months was not allowed under the current import-export policy.

9. The petitioners filed an appeal against the aforesaid order dated February 22, 1985 to the appellate authority but the Controller of imports and exports (i.e. the appellate authority) rejected the petitioners' appeal on December 31, 1985 without assigning any reason as such. The Petitioners had no choice but to file this petition on March 27, 1986.

10. Mr. Desai appearing for the petitioners submitted that the respondents had acted in a manner which could be considered as arbitrary and without application of mind. The only ground as can be seen from the cryptic order is that the current import/export policy did not permit revalidation beyond eighteen months. If one has regards for AM-83 policy and also the subsequent policy of AM-84 it is not that the authorities have no power whatsoever to revalidate even beyond a period of six months after its initial extension. The relevant passage in this behalf is as follows :

"200(2) Requests for extension of period of validity of advance and imprest licences issued under import policy for Registered Exports may be considered by the licensing authorities concerned, on merits and revalidation allowed upto a period not exceeding 6 months. Requests for revalidation for a period longer than this may also be considered with approval of the Chief Controller of Imports & Exports, New Delhi."

11. In the affidavit-in-reply no ground whatsoever has been set out as to why revalidation of licence could not be done and as to why the discretion was not exercised in favour of the petitioners. The only ground as set out in the affidavit-in-reply again was that there was no provision to revalidate the licence in the AM-85 policy. The petitioners were governed by the licence which was issued in the policy AM-83. I cannot understand as to how the respondents could come to a conclusion which is patently untenable.

12. Here, I must mention that the petitioners have complied with all the requirements of the licence. They have completed their export obligation. They were entitled to the import. They did not insist on the import of the item which was banned. They are only seeking a substitution in respect of the item which is banned. There is no prohibition or ban with regard to the import of the substitute item. It is expected of public authorities, that a reasonable request reasonably made is not rejected unreasonably. That is why they are imbued with such powers that they shall not exercise the same arbitrarily or capriciously. In the present case nowhere, either in the cryptic orders that came to be passed or in the affidavit-in-reply, the respondents have been able to set out as to why the substitute as asked for could not be granted to the petitioners. All that is said is that the current policy does not empower the revalidation of the licence. This is

per se untenable. In my view the petitioners are entitled to the relief as asked for.

13. The petitioners also contend that it is a settled principle of equity and law that where public authorities make an express or unequivocal promise or representation, they are bound to carry out their representations/promises and are estopped from retracting or from acting inconsistently. Appendix-19 of the import-export policy represented a Governmental promise for inducement to the manufactures/exporters by way of allowing then duty-free import or replenishment of input materials required for the manufacture of export goods in order to maximise the country's exports and foreign exchange earnings. Such a right and benefit of duty-free import/replenishment of the specified materials cannot be lawfully denied by the Government to an exporter if he while acting on the faith of such promise and representation, has fulfilled his stipulated export obligation as per terms of the advance licence. In the present case the petitioners had entered into a contract with foreign buyers and exported 975 metric tonnes of Soap on the basis of the aforesaid Governmental promise/representation as contained in Appendix-19. It is now not open to the Government to back out from the policy as contained in Appendix-19.

14. I am more than convinced that the action in denying the revalidation as also in not giving the substitute item which they had asked for, respondents have acted totally arbitrarily and without any reason at all.

15. Mr. Desai has drawn my attention to condition No. 17 under Appendix-19 of import-export policy of AM 82-83 and he in particular pointed out that exports made from the date of receipt of the advance licence application by the licensing authority will be accepted towards discharge of the export obligation. In the present case the petitioner have complied with the requirements of condition No. 17 and, therefore, since their export obligation has been fulfilled the petitioners are entitled to the import as per Appendix-19.

16. I may also mention that there is no dispute as to the quantum exported or required to be imported. In fact Mr. Desai points out that under the licence as revalidated, the petitioners would be entitled to import 175.5 metric tonnes of Palm Kernel Oil and 702 metric tonnes of Palm Stearine. This has been mentioned in fact in the correspondents particularly in the letter dated July 11, 1984.

17. In the result, the petitioners must succeed, I, therefore, pass the following order :

Rule is made absolute in terms of prayer (a). There would also be an order in terms of prayer (b) with following modifications, that is to say, that the petitioners would be entitled to import 175.5 metric tonnes of Palm Kernel Oil and 702 metric tonnes of Palm Stearine under the revalidated licence instead of inedible tallow from the said licence.

I direct that the respondents should revalidate the licence in accordance with the

order passed herein within a period of two weeks from today.

18. However, in the circumstances of the case, there will be no order as to costs.