
(2013) 05 BOM CK 0082

In the Bombay High Court

Case No : Writ Petition No. 1884 of 2012

Karan Monomers Pvt. Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 09-05-2013

Acts Referred:

Citation : (2013) 298 ELT 496

Hon'ble Judges : D.Y. Chandrachud, J;A.A. Sayed, J

Bench : Division Bench

Advocate : Jitendra Motwani instructed by Madhur R. Baya, for the Appellant; H.V. Mehta with Advait M. Sethna, Rui A. Rodrigues and Pradeep S. Jetly, for the Respondent

Judgement

1. The petitioner has sought a direction from this Court to the respondent for revalidation of two Duty Free Replenishment Certificates (DFRCs) dated 16 July, 2003 and 21 July, 2003. The request of the petitioner for revalidation was rejected by the Joint Director General of Foreign Trade on 25 May, 2005, 15 May, 2006 and 27 October, 2006. The request was re-examined and was once again rejected by the Norms Committee under intimation to the petitioner on 9 April, 2007. Finally on 20 February, 2011, the petitioner was informed that the Policy Relaxation Committee has also rejected the request. Under the DFRC scheme of the Exim Policy for 2003-04 such certificates were issued to a merchant-exporter or manufacturer-exporter for the import of inputs used in the manufacture of goods duty free. Para 2.12.2 of the Handbook of Procedures (Vol. I 2003-04) stipulates that the validity of an import licence/certificate is decided with reference to the date of shipment/dispatch of the goods from the supplying country. Paragraph 2.13 of the Handbook provides as follows:

Paragraph 2.13 Handbook of Procedures Vol. I:

The licence/certificate/permission may be revalidated on merits by the licensing authority concerned, which has issued the licence/certificate/permission, for a period of six months at a time but not beyond a period of 12 months reckoned

from the date of expiry of the validity period. However, revalidation of freely transferable licence/certificate/permissions and stock and sale licence/certificate/permission shall not be permitted. In cases where freely transferable licence/certificates/permissions have expired while in custody with Customs authority, revalidation shall be permitted by the RLAs on the basis of the certificate to be furnished by Customs in this behalf and for a period for which the Licence/Certificate/Permission has remained in Custody with the Customs.

2. In the present case, in the affidavit in reply, the relevant dates and events have been adverted to. The DFRCs were issued on 16 July, 2003 and 21 July, 2003 with a validity period of eighteen months which was to expire on 31 January, 2005. A request was made for the deletion of two shipping bills on 21 October, 2004 which amendment was allowed by the Joint DGFT on 29 October, 2004. A request for enhancement was submitted on 27 December, 2004 which was issued on 17 January, 2005. The petitioner approached the Customs authorities at JNPT for a Telegraphic Release Advice (TRA) on 17 January, 2005. The TRAs were issued respectively on 17 January, 2005 and 24 January, 2005 and were despatched on 31 January, 2005. The TRAs reached the Customs authority at Kandla on 3 February, 2005. In the present case, we find merit in the defence of the respondents that it was open to the petitioner to have utilized the DFRCs for cleanse of imported goods provided they were despatched or shipped on or before 31 January, 2005. This is evident from Paragraph 2.12.2 of Handbook of Procedures. As a matter of fact, no shipment was made in terms of Para 9.11 of the Handbook of Procedures before 31 January 2005. The petitioner failed to utilize the DFRCs before the expiry date. The petitioner has furnished no justification for its own delay. The narration of dates in the affidavit in reply does not indicate that there was any delay on the part of the Customs authorities or the DGFT in processing the request of the Petitioner. In this view of the matter and particularly having regard to the fact that the DFRCs have expired as far back as in January, 2005, it would not be appropriate for the Court to entertain the petition, particularly when even on merits, the grievance is lacking in substance. The petition is accordingly dismissed. There shall be no order as to costs.