

(2015) 02 BOM CK 0020
In the Bombay High Court
Case No : Writ Petition (Lodg) No. 436 of 2015

Lupin Limited

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 23-02-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 320 ELT 233

Hon'ble Judges : S.C. Dharmadhikari, J;S.P. Deshmukh, J

Bench : Division Bench

Advocate : R.V. Desai, Senior Counsel and R.B. Pardeshi i/b. Khaitan and Co., for the Appellant; Pradeep S. Jetly, B.B. Chatterjee, Senior Advocate and M.S. Bhardwaj, Advocates for the Respondent

Judgement

1. This writ petition under Article 226 of the Constitution of India, seeks the following two reliefs:

"(a) for a writ of certiorari or a writ in the nature of certiorari or any other writ direction or order under Article 226 of the Constitution of India calling for the records of the Petitioner's case and after considering the same quashing and/or setting aside the show cause notice dated 19th May 2014 (Exhibit "B" hereto) and show cause notice dated 19th December 2014 (Exhibit "D" hereto);

(b) for a writ of mandamus or a writ in the nature of mandamus or any other writ direction or order under Article 226 of the Constitution of India -

(i) directing the 2nd, 3rd and 5th Respondents to forthwith withdraw and/or cancel the show cause notice dated 19th May 2014 (Exhibit "B" hereto) and show cause notice dated 19th December 2014 (Exhibit "D" hereto) and further refrain from taking any action pursuant to or in implementation of the same;

(ii) directing the 2nd and 3rd Respondents to forthwith return the Petitioner all SHIS licenses belonging to the Petitioner, retained by it for further revalidation by the 4th Respondent;

(iii) directing the 4th Respondent to revalidate the SHIS licenses belonging to the Petitioner to the Petitioner even if the same have lapsed;

(iv) directing the Respondents to forthwith permit the Petitioner to clear goods by availing the benefits of the SHIS scheme and the zero duty EPCG scheme, in terms of the clarification dated 5th March 2014, issued by the 4th Respondent."

Mr. Desai, learned senior counsel for the petitioners submits that the petitioners are not seeking relief of quashing of a show cause notice dated 19th May, 2014 and 19th December, 2014, Annexures B and D to this writ petition.

2. In the circumstances the prayers in that behalf need not be considered.

3. Then the petitioner's senior counsel raises a grievance as to the further revalidation of the Status Holders Incentive Scrip (SHIS Scheme) and revalidate this licence even if it has lapsed.

4. Mr. Desai submits that the performance of the petitioner in the export sector has been highlighted at page 4 of the petition. The petitioner has been earning valuable foreign exchange for the country. Merely because a show cause notice is issued the benefits of SHIS Scheme and the Zero duty EPCG Scheme should not be denied and continued as such.

5. The petitioner's consignments have been held up and in relation thereto, our attention was invited to page 80 of the paper-book which is a request made by the petitioner to the Deputy Commissioner of Customs on 27th June, 2014.

6. We sought limited instructions and Mr. Jetly appearing on behalf of the Respondent Nos. 1, 2 and 3 states that despite the pending show cause notice and proceedings in pursuance thereof these respondents would clear the consignments of the petitioner provided the petitioner produces either SHIS or EPCG licences which are valid. He submits that the apprehension of the petitioner is taken care of by these statements which are made by Jetly on instructions.

7. Mr. Desai submits that these statements of Mr. Jetly would take care of a limited request of the petitioner, but there is an apprehension that in cases of future import and export clearances as well, the same stand will be adopted.

8. We are of the opinion that the writ petition can be disposed of by accepting the statements of Mr. Jetly as undertakings given to this Court. We would expect all the authorities to abide by these statements. Equally, we have no doubt that in future cases and particularly of the petitioner either of export or import, the consignments would be duly cleared in terms of the applicable policies and on production of the licences which the statements recorded above refer to. In the light of this development and post filing of the petition, we dispose of the matter. We clarify that all contentions of the petitioner in relation to the controversy and the contents of the show cause notice can be raised during the course of the proceedings and before the competent authority.