(2002) 08 DEL CK 0095

In the Delhi High Court

Case No : CWP 1816/1883

Modi Rubbers Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 14-08-2002

Acts Referred:

Central Excise Rules, 1944 — Rule 8
Industries (Development and Regulation) Act, 1951 — Section 11, 11(1), 11(2), 13, 14
Registration and Licensing of Industrial Undertakings Rules, 1952 — Rule 11, 15(2), 16, 9

Citation : (2002) 150 ELT 52

Hon'ble Judges : S.B. Sinha, C.J;A.K. Sikri, J

Bench : Division Bench

Advocate : Ravinder Narain, Amit Bhagat and Kavita Dahiya, for the Appellant; Maninder Singh and N.K. Pandey, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, C.J.—Interpretation of a notification dated 14th July 1978 issued by the Central Government in exercise of its power conferred upon it by Rule 8 of the Central Excise Rules, 1944 is in question in this writ petition.

2. The petitioner is a company incorporated under the Companies Act. It carries on the business of manufacture and sale of tyres and tubes. On or about 30th March 1979, a notification was issued under Rule 8 of Central Excise Rules for the purpose of granting of an incentive to smaller tyre companies in terms whereof factories whose annual capacity did not exceed five lakh number of tyres and five lakh number of tubes were entitled to the benefit of remission of duty as specified therein. However, exemption of 25% of the duty livable was given in respect of smaller units which were new units and commenced production after 1st April 1976. Furthermore, concessional rate of duty not exceeding 75% of the licensed capacity of the factory for the financial year 1978-79 was also to be given subject to the fulfillment of the eligibility criteria thereof where for it was required to determine the licensed capacity as certified by the Development

Officer of the Directorate General of Technical Development.

3. The petitioner applied for grant of a license in terms of Section 11 of the Industries (Development and Regulation) Act, 1951 and Rule 15(2) of the Registration and Licensing of Industrial Undertaking Rules, 1952 which was granted subject to the following conditions:

"1. The industrial undertaking shall have an installed capacity as mentioned below against each item of manufacture on the basis of the maximum utilization of the Plant and Machinery. No Section of the industrial undertaking should have, except with the prior approval of the Government of India, capacity substantially in excess of that specified below :-

(a) Name of article Annual capacity Automobile tyres 400,000 (Four lakhs Nos)

(b) Automobile tubes 400,000 (Four lakhs Nos)

4. The petitioner has asserted, and which has not been denied or disputed that all such industries were permitted to raise their production by 25%. The assertion of the petitioner in this writ petition is that having regard to the fact that it had an installed capacity of 4 lakh number of tyres and tubes and further in view of the afore-mentioned general permission to manufacture quantities 25% in excess of the installed capacity, the petitioner had been manufacturing 5 lakh number of tyres and tubes and in that view of the matter in the year 1978-79, its licensed capacity became 5 lakh tyres and tubes.

5. It is also not in dispute that the petitioner had applied for substantial expansion in its capacity from 4 lakh to 5,75,000 in relation whereto, a letter dated 10th October 1979 was issued by the Assistant Development Officer to the Commissioner, Tax Research, Ministry of Finance, which is in the following terms:

"Sub:- Central Excise - Exemption of tyres and tubes in units with annual licensed capacity not exceeding 5 lakh Nos. of tyres and tubes.

Ref:- Copy of letter from Central Excise Collectorate, Kanpur C.No. V-16 (17) 41 -- VC / 79 dated 24.5.1979

Sir,

Kindly refer to a letter of Central Excise Collector, Kanpur referred above in connection with Central Excise exemption on tyres and tubes for the unit M/s. Modi Rubber Ltd., Modipuram of which a copy was endorsed to Rubber Dtd., DGTD with a request to review the licensed capacity of M/s. Modi Rubber Ltd.

It is confirmed that M/s. Modi Rubber Ltd.''s licensed capacity is 4 lakh nos. of tyres and tubes each per annum and they can produce up to 5 lakh nos. of tyres and tubes each per year within the ambit of present regulation.

M/s. Modi Rubber Ltd. have applied to the Ministry of Industry for substantial expansion in their capacity from 4 lakhs nos. to 5,75,000 nos. of auto tyres and tubes each. This is still under examination of Ministry of Industry."

6. It is not in dispute that the petitioner had taken clearance of 3,75,000 tyres and tubes. According to the respondents, having regard to the fact that they were only entitled to exemption of duty in relation to 75% of the tyres, clearance where for had been taken in terms of the provisions of the said notification, they could have claimed the benefit in terms thereof only in relation to 3 lakh tyres and tubes and thus they have taken clearance of 75,000 tyres and tubes in excess of the eligible quantity of concessional rates of duty which was not admissible, which is liable to be refunded.

7. On the said ground a notice to show cause had been issued to the petitioner as to why they should not be required to pay duty amounting to Rs. 77,38,663.31P in terms of the Rule 9 of the Central Excise Rules.

In the afore-mentioned premise, this writ petition has been field.

8. Mr. Ravinder Narain, the learned counsel appearing on behalf of the petitioner would submit that the expression ''licensed capacity'' having not been defined, the same should be given the dictionary meaning.

9. A ''license'' in terms of the provisions of the said Act and the Rules framed there under, as generally understood, the learned counsel would urge, would include permission, having regard to the undisputed fact that a general circular had been issued to the effect that all the manufacturers can manufacture 25% more of their installed capacity, the petitioner must be held to have the license/ permission to manufacture 5 lakh tyres and tubes and as a logical corollary thereof, it would be entitled to the benefit of the said notification.

10. Mr. Maninder Singh, learned counsel appearing on behalf of the respondents, on the other hand, would contend that the petitioner could not have claimed the benefit of the said notification as it did not fulfil the criteria therefore. The learned counsel, drawing our attention to the afore-mentioned letter dated 10th October 1979 submitted that the petitioner itself considered that its licensed capacity was 4 lakhs which it intended to increase to 5,75,000. Had the petitioner understood, as is now sought to be contended, that its licensed capacity was 5 lakhs, Mr. Maninder Singh would argue, in its application for substantial expansion, it would have mentioned that its licensed capacity was 5 lakhs. The words ''licensed capacity'' and ''installed capacity'' the learned counsel would contend, are not synonymous and thus, having regard to the factual matrix, as noticed hereinbefore, the show cause notice has rightly been issued.

11. The Industries (Development and Regulation) Act, 1951 (hereinafter called and referred for the sake of brevity as ''the said Act'') was enacted to provide for the development of certain industries. ''Industrial undertaking'' has been defined in Section 2(d) to mean any undertaking pertaining to a scheduled industry carried on in one or more factories by any person or authority, including Government.

12. Section 11 provides for licensing of new industrial undertakings in terms

whereof, after commencement of the said Act, no person or authority other than the Central Government is entitled to establish a new industrial undertaking except under and in accordance with a license issued in that behalf by the Central Government. Sub-section (2) of Section 11 is in the following terms:

11. Licensing of new industrial undertaking.--(1)... ...

(2) A license or permission under Sub-section (1) may contain such conditions including, in particular, conditions as to the location of the undertaking and the minimum standards in respect of size to be provided therein as the Central Government may deem fit to impose in accordance with the rules, if any, made u/s 30."

Section 13 of the said Act provides for further expansion of licensing of industrial undertakings in special cases. Section 13(1)(d) is in the following terms:

13. Further provision for licensing of industrial undertaking in special cases.-

(1) No owner of an industrial undertaking, other than the Central Government, shall -

(a) to (c) ... ...

(d) effect any substantial expansion of an industrial undertaking which has been registered or in respect of which a license or permission has been issued, or"

13. An Explanation has been appended thereto for defining the meaning of substantial expansion for the purpose of the said Section which reads thus:

Explanation: -- For the purposes of this section, ''substantial expansion'' means the expansion of an existing industrial undertaking which substantially increases the productive capacity of the undertaking or which is of a such a nature as to amount virtually to a new industrial undertaking, but does not include any such expansion as is normal to the undertaking having regard to its nature and the circumstances relating to such expansion."

Section 14 provides for grant of license or permission.

Section 24 is a penal provision, the relevant portion of which is in the following terms:

"24. Penalties. --(1) If any person contravenes or attempts to contravene or abets the contravention of-

(i) the provisions of Sub-section (1) or Sub-section (4) of Section 10 or of Sub-section (1), of Section 11 or Section 11A or of Sub-section (1) of Section 13 or of Sub-section (2), (2A), (2D), (2F) and (2G) of Section 29 29B, or

(ii) any direction issued u/s 16 or Sub-section (3) of Section 18B, or

(iii) any order made u/s 18B, or

(iv) any rule the contravention of which is made punishable under this section,

he shall be punishable with imprisonment which may extend to six months, or with fine which may extend to five thousand rupees, or with both, and, in the case of a continuing contravention, with an additional fine which may extend to five hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

(2) to (3) ... ..."

14. In exercise of its power conferred upon it u/s 30, the Central Government made Rules known as "Registration and Licensing Industrial Undertakings Rules, 1952. Rules 15 and 16 of the said Rules read thus:

"15. Grant of license or permission. --(1) The Ministry of Industrial Development shall consider the report submitted to it under Rule 11, and where it decides that a license or permission, as the case may be, should be granted it shall inform the applicant accordingly, not later than three months from the date of receipt of the application, or the date on which additional information under Rule 9 is furnished, whichever is later.

(2) Where the Ministry of Industrial Development considers that certain conditions shall be attached to the license or permission, or that the license or permission should be refused, it shall not later than three months from the date of receipt of the application or the date on which additional information under Rule 9 is furnished, whichever is later, give an opportunity to the applicant to state his case, before reaching a decision.

(3) Where a license or permission has been refused the applicant shall be informed of the reasons for such refusal.

(4) licenses or permissions shall be in Form F appended to these rules.

"16. Variation or amendment of licenses. --(1) Any owner of an Industrial undertaking in respect of which a license has been granted, who desires any variation or amendment in his license shall apply to the Ministry of Industrial Development giving the reasons for the variation of amendment.

(2) The Ministry of Industrial Development after carrying out such investigation, as it may consider necessary, may vary or amend the license. The Ministry of Commerce and Industry may also consult the Licensing Committee before coming to a decision."

15. It is not in dispute that the expression ''licensed capacity'' has not been defined in the said Act. As noticed hereinbefore, in the license granted to the petitioner dated 4th March 1972, it was required to have an installed capacity against each item of manufacture on the basis of maximum utilisation of plant and machinery to the extent of 4 lakh automobile tyres and 4 lakh automobile tubes. However, in terms of the said conditions, industrial undertaking could not have installed capacity substantially in excess of what was specified Therefore

except with the prior approval of the Government of India.

"What would be the meaning of the licensed capacity?" is thus the core question involved in this writ petition.

''license'' has been defined to mean as per Stroud''s Judicial Dictionary of Words and Phrases, Fifth Edition as under:

(2) A license "is an authority to do something which would otherwise be wrongful or illegal or inoperative" (per Latham C.J., in Federal Commissioner of Taxation v. United Aircraft Corporation 68 C.L.R. 525

According to Webster''s Third New International Dictionary of the English Language, Unabridged, it means as under:

b. to permit or authorize especially be formal license (patented processes were freely licensed in a general effort to do everything and anything to help win the war --Marquis James)

Black''s Law Dictionary, Fifth Edition gives it the meaning as:

License: The permission by competent authority to do an act which, without such permission, would be illegal, a trespass, or a tort. People v. Henderson, 391 Mich. 612 218, N.W. 2. Certificate or the document itself which gives permission. Leave to do thing which licensor could prevent. Western Electric Co. v. Pacent Reproducer Corporation, C.C.A. N.Y., 42 F. 116. Permission to do a particular thing, to exercise a certain privilege or to carry on a particular business or to pursue a certain occupation. Blatz Brewing Co. v. Collins, 88 CA. 438. Permission to do something which without the license would not be allowable. Great Atlantic & Pacific Tea Co. v. City of Lexington, 256 Ky. 595, 76 S.W. 894. Privilege from state or sovereign. M. Itzkowitz & Sons v. Gerahty, 139 Misc. 163, 247 N.Y.S. 703; Alabama Power Co. v. Federal Power Commission, 75 U.S. 315, 128 F. 280 .

A permit, granted by an appropriate governmental body, generally for a consideration, to a person, firm, or corporation to pursue some occupation or to carry on some business subject to regulation under the police power. A license is not a contract between the state and the licensee, but is a mere personal permit. Rosenblatt v. California State Board of Pharmacy, 69 CA 69. Neither is it property or a property right. American States Water Service Co. of California v. Johnson, 31 CA. 606; Asbury Hospital v. Cass County, 72 N.D. 359, 7 N.W. 438.

License with respect to real property is a privilege to go on premises for a certain purpose, but does not operate to confer on, or vest in, licensee any title, interest, or estate in such property. Timmons v. Cropper, 40 Del. Ch. 29, 172 A 757.

license in terms of the provisions of the ''said Act'' and the ''Rules'' is granted in Form ''F'',

"Any prospectus or other document by which the public is invited to subscribe capital for this undertaking shall contain the following statement:

"A license/Permission has been obtained from the Central Government for... ... ...of which a copy is open to public inspection at the Head Office of the Company. It must be distinctly understood that in granting this.... license / permission... ... ...the Government of India do not take any responsibility of the financial soundness of this undertaking or for the correctness of any of the statements made or opinions expressed in regard to."

16. The provisions of Sub-section (2) of Section 11, Rule 15, Form ''F'' as also the dictionary meanings of the word ''license'', as noticed hereinbefore, in no uncertain terms show that the words ''license'' and ''permission'' are inter-changeable.

17. By reason of the license dated 4th March 1972, the petitioner herein became entitled to manufacture 4 lakh of automobile tyres and 4 lakh automobile tubes. It also, having regard to the general circular, became entitled to manufacture 25% in excess of its installed capacity which has been accepted by the respondents in their counter-affidavit in the following terms:

"7. Para 7 of the petition as stated above is not admitted. In accordance with the Government communication allowing increase in the production of the articles for which the industries are licensed or registered by 25% without obtaining substantial expansion of the license it is submitted that this is only flexibility of which undertakings can use all plant and machine if they so like, but the licensed capacity of the undertakings is not automatically changed and it remains unchanged unless specifically modification in the license in made to this effect."

18. It has not been controverter that pursuant to the afore-mentioned general permission granted to all the manufacturers to manufacture 25% in excess of its licensed/installed capacity, no penal action could be taken in the event the said circular had been acted upon. Can it, in the afore-mentioned situation, be said that although it law the petitioners were entitled to manufacture 5 lakh tyres and tubes where for no prosecution would be maintainable, still then they would not have licensed capacity to the extent of 5 lakhs? Answer to the said question must be rendered in the negative.

19. It is one thing to say that for amendment in a license, an application has to be filed in terms of Section 13 of the Act but it is another thing to say that the factory did not have the licensed capacity of producing 5 lakhs of tyres and tubes. In fact, the Assistant Development Commissioner''s letter dated 10th October 1979 categorically admitted that the petitioner could produce up to 5 lakh number of tyres and tubes which were within the ambit of present regulation.

20. The said notification in question is beneficent in nature. Relevant portion of the notification reads thus:

"(b) Seventy five per cent of such duty, if produced in any factory which commenced production of the specified goods for the first time on or after the 1st day of April 1976.

Subject to the conditions that-

(i) where the specified goods are produced in a factory whose annual licensed capacity, or annual installed capacity is the same, such licensed capacity or installed capacity, as certified by the Development Officer of the Directorate General of Technical Development does not exceed five lakh numbers of tyres and five lakh numbers of tubes, or

(ii) where the specified gods are produced in a factory whose annual licensed capacity is different from the annual installed capacity, whichever is lower, as certified by the Development Officer of the Directorate General of Technical Development, does not exceed five lakh numbers of tyres and five lakh numbers of tubes:-

(b) Clearances of the specified goods for home consumption not exceeding seventy five per cent of the licensed capacity for the financial year 1978-79 shall not be entitled for exemption under this notification."

It is not in dispute that the petitioner has fulfilled the eligibility criteria as contained in condition (a) thereof.

21. It is also not in dispute, as noticed hereinbefore, that the petitioners have manufactured 5 lakhs of automobile tyres and tubes. In the event of clearance of specified group for whom consumption not exceeding 75% of the licensed capacity for the same year, they would be entitled for the exemption as specified in the notification. If, thus, by reason of a general permission, the petitioner had become entitled to increase its manufacturing capacity to be extent of 25% higher than its installed capacity, in our opinion, the petitioner must be held to have the licensed capacity to manufacture 5 lakhs of tyres and tubes. An exemption notification, as is well known, must be construed liberally.

22. We have arrived at the afore-mentioned conclusion inasmuch as there does not exist any distinction between license and permission.

23. The general license had been granted to the petitioner to manufacture 4 lakh automobile tyres and tubes whereas 25% in excess Therefore had been permitted to be manufactured by reason of a general circular. In view of the fact that the expressions ''license'' and ''permission'' are synonymous and are inter-changeable and having regard to the provisions as noticed hereinbefore, we are of the opinion that the petitioners would get the benefit of the afore-mentioned exemption notification.

24. We cannot accept the submission of Mr. Maninder Singh to the effect that although the petitioner could manufacture 5 lakh automobile tyres without incurring the wrath of the penal provisions, it would be deprived of the benefit of the afore-mentioned notification as in its license, installed capacity had been

mentioned at 4 lakh tyres and tubes.

25. For the reasons afore-mentioned, this writ petition is allowed and the impugned show cause notice dated 28th August 1980 is set aside.

26. No order as to costs.

