(1982) 06 P&H CK 0006

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 4621 of 1980

Oswal Woollen Mills (Export Wing) Ltd. APPELLANT

Vs

The Assistant Collector, Central Excise and Another RESPONDENT

Date of Decision : 01-06-1982

Acts Referred:

Constitution of India, 1950 — Article 14
Customs Act, 1962 — Section 58, 58(2)
General Clauses Act, 1897 — Section 14(1)

Citation : (1983) 1 ILR (P&H) 309

Hon'ble Judges : Madan Mohan Punchhi, J

Bench : Single Bench

Advocate : Laxmi Grover and H.S. Sawhney, for the Appellant; Amarjit Chowdhry, for the Respondent

Final Decision : Dismissed

Judgement

Madan Mohan Punchhi, J.—This order will dispose of Civil Writ Petitions Nos. 4621 of 1980 and No. 832 of 1981, which have been preferred by M/s. Oswal Woollen Mills (Export Wing) Limited, Ludhiana, as also Civil Writ petition No, 4656 of 1980 preferred by M/s. Oswal Spinning and Weaving Mills Limited, Ludhiana. Since the points raised therein are common, they can conveniently be disposed of by this common order.

2. Shorn of all details,, the Petitioner in each case was granted a private warehouse licence which was kept renewed from time to time. The licence in respect of each Petitioner was initially to expire on 31st December, 1980, but, so far as M/s. Oswal Woollen Mills, (Export Wing) Limited is concerned, it was renewed for a subsequent term burdened with some conditions. The renewed licence gets involved in Civil Writ Petition No. 832 of 1981. The Assistant Collector (Customs) passed the impugned orders in the respective cases, conveying to the Petitioners that in view of the opening of the Public Bonded Warehouses under the control of Central Warehousing Corporation, the private

Bonded--Warehouse licence granted in favour of the Petitioner will not be renewed when the validity of the licence of the Petitioner expires. The respective Petitioners were, therefore, advised to clear the stocks in hand after payment of duty before the expiry of their licences and, in case they were unable to do so, all the goods in balance in the private warehouses will have to be transferred to the Public Bonded Warehouses which stood already appointed for the purpose. The Petitioners have come up in these petitions to challenge that order on the ground that the same is illegal, arbitrary and is tantamount to cancellation of their licences, which course is not permitted u/s 58 of the Customs Act, 1962 (hereinafter referred to as the Act). They also challenged that Section 58(2)(a) of the Act was ultra vires, being violative of Article 14 of the Constitution on the premises that if a notice is given under Clause (a) of the Section 58(2) of the Act for cancellation of a licence, in that case an opportunity of being heard is not given whereas if the notice is to be given under Clause (b) thereof, in that case no order can be passed without the licensee having been given a reasonable opportunity of being heard. In addition thereto the Petitioners claim that the Assistant Collector having once granted licence u/s 58 of the Act should be taken to have granted the licence for ever and that the said section did not authorize imposition of any conditions curtailing the period of licence.

3. The matter directly arose in an identical case in Vardman Spinning and General Mills Limited v. Union of India and Anr. C.W. 4575 of 1980 decided on 4th September, 1981, wherein identical contentions raised by the Petitioner were repelled, by B.S. Dhillon J. The learned Counsel for the Petitioners being tally aware of the decision aforesaid, concedes that but for the last, point raised, these petitions are covered against them by the aforesaid judgment. Accordingly, the contentions raised now by the Petitioners are repelled except the one which is being dealt with in the succeeding paragraph.

4. The precise contention of the learned Counsel for the Petitioners is that a licence is granted to a private warehouse u/s 58 of the Act, which is in these terms:

At any, warehousing station, the Assistant Collector of Customs may license private warehouses wherein dutiable goods imported by or on behalf of the licensee, or any other imported goods in respect of which facilities for deposit in a public warehouse are not available, may be deposited without payment of duty.

From this, it is spelled out that there is no time factor involved and the Assistant Collector of Customs exercises his powers only once and that for good. In other, words, the contention is that the Assistant Collector of Customs has no power to grant a licence bound for a period or to impose any conditions thereto. The argument pales into insignificance in view of Section 14(1) of the General Clauses Act, 1897, which is in the following terms:

Where by any Central Act or Regulation made after the commencement of this Act, any power is conferred, then, unless a different intention appears, that power may be exercised from time to time as occasion requires.

5. The exercise of power thus in the nature of things is periodic and the Assistant Collector of Customs can well fix the period of the licence for which it is operative as also to impose conditions under which the licensee would be allowed to operate the licence. Thus, this contention raised by the learned Counsel for the Petitioners is also repelled. In addition, thereto, it is contended that since there is no power conferred under the Act for renewal, the only deduction possible is that time factor does not govern licences. The mere fact that there is no specific power of renewal, does not impinge on the power u/s 58 of the Act as I have spelled out above. The periodic grant of licence presupposes regrant and, for that matter, renewal of the licence in a loose sense. There is no merit in this contention either.

6. For the foregoing reasons, these petitions fail and are hereby dismissed, but without any order as to costs.

