

(1994) 05 DEL CK 0010

In the Delhi High Court

Case No : Civil Writ Petition No. 848 of 1994

Sandeep Ojha

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 27-05-1994

Acts Referred:

Citation : (1994) 54 DLT 682 : (1994) 29 DRJ 444

Hon'ble Judges : K. Shivshankar Bhat, J

Bench : Single Bench

Advocate : R.K. Garg, Madan Lokur and Nandini Ramachandran, for the Appellant;

Judgement

K. Shivashankar Bhat, J.

(1) Petitioner seeks the nullification of the condition for revalidation of the license issued to him. An "Advance License" was issued to the petitioner on 3.3.1993. This Advance License enabling the import of goods specified in the license refers that the license is "Against Export Order". There is an abbreviation "Au (RE)". The letters "AU", it is stated, refers to the term "Actual User".

(2) Since Polypropylene, one of the specified goods was subsequently included in the sensitive list, its importation as to the quantity was affected. In C.W.P. 871 of 1994 (Hari Export vs. Director General of Foreign Trade And Another) I have held that the impugned Notifications would not affect the license issued to the petitioner therein, having regard to the particular facts. In the said case, it is held that the respondents have not proved that the Notifications of January 1994 were in public interest, Therefore, there was nothing to override the equity in favor of the petitioner under the doctrine of promissory estoppel. Further, it is held that the two Notifications impugned therein affected as unreasonable restriction on the fundamental right of the petitioner under Article 19(1)(g) of the Constitution. The entire decision is based on the particular facts and Therefore the Notifications were not invalidated, but they were held as inoperative on the

petitioner's license dated 6.7.1993 during its current period.

(3) The facts of the present case are different. Petitioner does not seek any relief for the current period of the license, which expired on 2.3.1994. According to the petitioner, he has a right to seek revalidation of the license and the application for revalidation has to be filed within a month prior to the expiry of the license period. Since the goods covered by the license has been added to the sensitive list during the period of license a condition for revalidation or the license was also inserted on 17.12.1993 by amending para 125 of Hand Book of Procedures (Vol. 1) 1992- 97 (edition: March 1993). As per this amendment "the license may be revalidated only once subject to actual users conditions". Earlier para 125 was as follows:-

"REQUEST for the revalidation of a license for a maximum period of six months from the original date of expiry may be considered on merits by the licensing authority concerned, provided the application for such a request has been made on the form given in Appendix V atleast one month before the expiry of the license. The license may be revalidated only once."

(4) Being a Merchant exporter, the petitioner contends, he cannot be an Actual User" and Therefore revalidation will be illusory in his case. According to the petitioner, the condition as to revalidation cannot be imposed as it is not "procedural" and by amending the "procedure", petitioners right to revalidation of the license cannot be affected.

(5) The learned counsel for the respondent pointed out that "Actual User" condition was there already in the original license dated 3.3.1993 denoted by the letters "AU(RE)" at the top of the right side of the license. Admittedly, the license was covered by Chapter Vii of the Hand Book of Procedure bearing the heading "Duty Exemption Scheme". Para 120 in this Chapter states that,

"THE license granted under this scheme shall be subject to Actual User condition till redemption of BG/LUT. The Advance License holder may however, transfer the duty "free imported materials to his supporting manufacturers whose names are entered in the Deed for the purpose of export production."

(6) The learned counsel for the respondent is fully justified in his contention. It is too late for the petitioner to contend that he cannot be subjected to actual users conditions while revalidating the license.

(7) Revalidation is not a matter of right, it is a matter for the consideration of the authorities on merits. If revalidation for a period of six months is a matter of right, no purpose is served by requiring an application for it; instead, original license itself may have been given for a period of 18 months. Since revalidation depended upon several factors, no right accrued to the petitioner under the license for its revalidation. If so, the respondents are competent to impose fresh conditions for the revalidation. The amendment came into force far earlier to the period when petitioner had to apply for revalidation. Hand Book of Procedure

prescribes several conditions as is clear from the reading of several chapters. The Authority competent to formulate the procedure is equally competent to amend the same.

(8) Petitioner has not pointed out any statutory provision to which the impugned amendment will be opposed. Revalidation, itself is sought by the licensee under the very Hand Book of Procedure.

(9) Prayers in the writ petition are confined to the challenge to the amendment made as per the above referred notice dated 17.12.1993 and for revalidation of his license. There is no challenge to the inclusion of any of the goods in the Sensitive List. Even otherwise, the petitioner has not pleaded any facts relevant to the plea of promissory estoppel or any plea relatable to a right under Article 19(l)(g) of the Constitution, against the inclusion of certain goods in the sensitive list.

(10) In the circumstances, I do not find any merit in this writ petition. The writ petition. is dismissed. No costs.