

(1994) 05 DEL CK 0042
In the Delhi High Court
Case No : Case No. CW/2112/94

Shree Ganesh Rolling Mills Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 30-05-1994

Acts Referred:

Citation : (1995) 77 ELT 532

Hon'ble Judges : Y.K. Sabharwal, J;Devinder Gupta, J

Bench : Division Bench

Advocate : Shri G.L. Rawal and Mr. Kuljeet Rawal, for the Appellant; Ms. Barkha Babbar, for the Respondent

Judgement

1. The petitioner by this stay application seeks stay of operation of sub-para (iii) of Para 2 of Circular No. 7/94, dated 19-4-1994 issued by Deputy Director General of Foreign Trade, Ministry of Commerce regarding transferable facility in terms of Para 127 of the Handbook of Procedures (Volume 1) 1992-97, (Revised Edition : March, 1994). Briefly the facts are these :

2. On 28th April, 1993 advance/duty free license was issued in favor of Tata Iron and Steel Company Limited. That license became transferable by issue of letter dated 6-9-1993 (Annexure P-2). Annexure P-2 states that the license has been made transferable in terms of Para 127 of current Handbook read with Para 67 of current policy. The license was transferred by Tata and Steel Company Ltd. in favor of M/s. Mohan Ferro Alloys Pvt. Ltd. on 17th December, 1993. On 10-2-1994, M/s. Mohan Ferro Alloys Pvt. Ltd. intimated to TISCO for transfer of license in favor of the petitioner. It was transferred in favor of the petitioner on 11-2-1994. These facts are not in dispute.

3. Paragraph 127(v) of the Hand Book provides that "All licenses on the date of transfer shall be valid for the balance period of their validity or six months, whichever is more". We may also notice that in some parts of Para 127, the term transferability has been used. Prima facie it seems clear to us that para 127 has

the statutory force. By the impugned circular dated 19-4-1994 in particular sub-clause (iii) of Para 2 with which we are concerned at present, the date of transfer seems to be substituted by the date of transferability, Para 2 of Circular dated 19-4-1994 reads as under :

"The matter has been considered and it is clarified in this connection that :

(i) the revalidated duty free license can also be allowed transferable facility provided such revalidation has not been permitted with AU condition and such transferred licenses shall have the validity as available on them or permitted by the competent authority and they will not be eligible for automatic extension in validity of a months.

(ii) the facility of automatic extension of six months in terms of Para 127(v) of the Handbook will be available only on those duty free licenses which are endorsed with transferability by the licensing authority during their original validity and revalidated licenses will not be permitted this facility of six months automatic extension under Para 127(v) of the Handbook of Procedures, and

(iii) the automatic extension in validity shall be available with reference to the date on which the transferability is endorsed by the Licensing Authority."

4. The effect of aforesaid clause would be to calculate the period of six months from the date of transferability, in this case it is 6th September, 1993 and not from the date of transfer. The six months period of calculated from first date of transfer would expire in June, 1994 and if taken from the second date of transfer, which is in favor of petitioner, it would expire in August, 1994. If six months are calculated from date of transferability, it would have expired in March, 1994.

5. Prima facie it seems that the term date of transfer used in Para 127(v) has to be a date subsequent to the date of transferability. The word date of transfer as used in statutory document cannot be substituted by any other mode except by amendment of the said clause in accordance with the law, more especially when it was the effect of curtailing the period of the validity of the licenses.

6. Having regard to the aforesaid facts and circumstances, we stay the operation of sub-clause (iii) of Para 2 of impugned circular dated 19-4-1994.

7. The application is allowed in the above terms. The view expressed in this order is only prima facie for the purpose of disposal of the stay application.