(1985) 12 DEL CK 0016

In the Delhi High Court

Case No : Civil Writ Petition No. 457/82

S.P. Verma APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 13-12-1985

Acts Referred:

Citation : AIR 1987 Delhi 7 : (1989) 42 ELT 518

Hon'ble Judges : Sunanda Bhandare, J

Bench : Single Bench

Judgement

Sunanda Bhandare, J.—The petitioner in the year 1962 obtained actual users license for import of certain components for manufacture of clocks and time-pieces. The petitioner had entered into a collaboration agreement with M/s. Favre Leuba & Co. Ltd., Bombay for obtaining financial and technical assistance for the manufacture of these clocks and time-pieces. On the arrival of the goods at Bombay on 13th November, 1962 the petitioner for some reason could not get the goods released. The petitioner wrote to the Directorate of Industries, Himachal Pradesh for permission to process the raw material and parts for manufacture of clocks and time-pieces outside the factory premises and also for exemption of demurrage charges. In view of the collaboration agreement of the petitioner with M/s. Favre Leuba & Co. Ltd. the petitioner wanted that the goods be released in Bombay to M/s. Favre Leuba & Co. Ltd., Bombay after which the actual manufacture of clocks and time-pieces could be done at Mandi, Himachal Pradesh. Since the clearance was refused by the Directorate of Industries, Himachal Pradesh the petitioner again wrote to the Joint Chief Controller of Imports & Exports that permission to process the goods outside the factory premises be granted. In the meanwhile the goods were cleared from Customs by M/s. Favre Leuba & Co. Ltd., Bombay. Since the petitioner had obtained actual users license for manufacture of clocks and time-pieces at Mandi, Himachal Pradesh he had to utilise the goods in his own factory. The Joint Controller of Imports & Exports on inquiries being made by the Directorate of Industries found that the petitioner not having installed any machinery in his factory was not in a position to start production within feasible period of time and thus issued a show cause notice to the petitioner on 24th June, 1968 under Clause 10-C of the Imports (Control) Order 1955. A similar show cause notice was sent by the Deputy Chief Controller of Imports & Exports to M/s. Favre Leuba & Co. Ltd., Bombay because these imported goods were lying with M/s. Favre Leuba & Co. Ltd., at Bombay. M/s. Favre Leuba & Co. Ltd., Bombay vide their letter dated 19th July, 1968 replied to the said show cause notice and stated that the goods imported by the petitioner were lying in the custody of Mr. Favre under instructions from the Superintendent of Police, C.B.I. It was further stated in this letter that a sum of Rs. 85,000/- was advanced by M/s. Favre Leuba & Co. Ltd., Bombay to the petitioner in pursuance of their agreement with M/s. Tarna Watch Co. It was further suggested by them that M/s. Favre Leuba & Co. Ltd., Bombay were ''Sole Selling Agents'' for M/s. Sifco Limited, Hyderabad and they could request M/s. Sifco Limited, Hyderabad to take delivery of these goods against payment for manufacture of alarms. As regards the petitioner, the notice issued to him was received back undelivered with the postal remark ''no such person in the beat''. On 10th December, 1968 an order was passed by the Deputy Chief Controller of Imports & Exports directing M/s. Farve Leuba & Co. Ltd., Bombay having possession and control of the said goods to sell the same of M/s. Sifco Limited, Hyderabad within a period of one month at a price of Rs. 83,036.89. On 25th September, 1969 another notice was issued by the Deputy Chief Controller of Imports & Exports to the petitioner under Clause 10 of the Imports (Control) Order, 1955 stating therein that the petitioner had obtained the license by misrepresentation and thus the provisions of Clause 8 of the Imports (Central) Order, 1955 were attracted and the petitioner was asked to show cause within 15 days as to why action be not taken under Clause 8 of the said Order to debar the petitioner from receiving import licenses, CCPs and/allotment of imported goods through STC/MMTC or any other similar agencies. The petitioner sent a reply to this notice. However, the Deputy Chief Controller of Imports & Exports not being satisfied by the reply passed an order on 27th/30th January, 1970 debarring the petitioner from receiving import license etc. for two years.

2. The petitioner in the present writ petition has challenged this order dated 27th/30th January, 1970 debarring the petitioner from obtaining any import license etc. for two years and also for restoring the goods imported by him under import license or in the alternative pay to the petitioner the sale proceeds calculated in the terms of Clause 10-C of the Imports (Control) Order, 1955.

3. Since by the time the writ petition came up for the hearing two years period during which the bar was to operate had expired, the only point urged by the learned counsel for the petitioner was regarding the requirement of notice to the petitioner before passing an order under Clause 10-C of the Imports (Control) Order, 1955. Learned counsel contended that the petitioner was not given any notice under Clause 10-C of the Imports (Control) Order, 1955 and the petitioner learn about the order dated 10th Dec., 1968 passed by the respondent only when the respondent filed the counter-affidavit to the petitioner. It was

submitted that under Clause 10 of the Imports (Control) Order, 1955 whenever the Chief Controller of Imports & Exports decides to sell the goods to any other person he has first to be satisfied after giving a reasonable opportunity to the license of being heard in the matter, that the goods cannot be utilised for the purpose for which they were imported. It was submitted that if the petitioner had been given the opportunity of hearing he would have satisfied the Chief Controller of Imports & Exports that the petitioner was in a position to utilise the goods in his own factory. It was further contended that an order passed under Clause 10 of the Imports (Control) Order, 1955 is a quasi-judicial order and principles of natural justice required that the petitioner should have been given an opportunity to explain before such order was passed. It was further submitted that if an opportunity had been given to the petitioner even if the petitioner had not been able to show that he was in a position to utilise the goods in his own factory he would have been able to indicate the price at which the goods ought to have been sold or the person to whom the goods could be sold under the circumstances. Learned counsel referred to certain questions asked in Parliament and the replies given by the Minister thereto in order to show that all-throughout the respondents knew that the factory was functioning at Mandi and it was wrong on their part to state that the notice could not be serve on the petitioner or that the factory was closed down. It was contended that if the notice sent to the factory had been returned unserved it was incumbent upon the respondents to sent a notice to the residential address of the petitioner.

4. On behalf of the respondents it was admitted that before taking action under Clause 10-C of the Imports (Control) Order, 1955 notice to the license was necessary, however it was contended that notice was in fact sent to the petitioner which was received back unserved with the postal remark ''no such person in the beat''. It was further contended that though notice was not served on the petitioner, after the notice was issued two persons called on the Deputy Chief Controller of Imports & Exports in his office and again requested that permission to get the goods processed in another factory and utilise the goods so processed in their own factory at Mandi be given. It was further submitted that a show cause notice was also sent to M/s. Favre Leuba & Co. Ltd., Bombay under Clause 10-C of the Imports (Control) Order, 1955 and M/s. Favre Leuba & Co. Ltd., Bombay wrote back to the Chief Controller of Imports & Exports that the goods were lying in the custody of Mr. Favre, Managing Director of M/s. Favre Leuba & Co. Ltd., Bombay on instructions issued by the Superintendent of Police C.B.I. M/s. Favre Leuba & Co. Ltd., Bombay further wrote that in terms of the Sole Selling Agency Agreement between M/s. Tarna Watch Co. and M/s. Favre Leuba & Co. Ltd., Bombay sum of Rs. 85,000/- was advanced to M/s. Tarna Watch Co. and the value of the goods including the customs duty, demurrage, clearing charges etc. was Rs. 83,036.89. M/s. Favre Leuba & Co. Ltd., Bombay further communicated that these goods could be utilised by M/s. Sifco Limited, Hyderabad in their factory at Hyderabad. Taking into account the representation made by M/s. Favre Leuba & Co. Ltd. and the representation made by two

persons who had called on the office of the Deputy Chief Controller of Imports & Exports and other apparent circumstances the respondent was satisfied that the license was not in a position to utilise the imported goods in his own factory and having thus satisfied directed M/s. Favre Leuba & Co. Ltd., Bombay to sell the goods to M/s. Sifco Limited, Hyderabad for Rs. 83,036.89 within one month from the date of issue of the order. Learned counsel contended that the petitioner was fully aware of the notice and in fact had come to the office of the respondent with a request that permission to process the goods outside be given. It was further contended that the petitioner never communicated their change of address to the respondent. It was further submitted that the questions and answers in Parliament also indicated that the petitioner was all throughout requesting that he be permitted to process the goods outside his factory which itself showed that he was not in a position to utilise the goods in his factory. Learned counsel submitted that though notice under Clause 10-C of the Imports (Control) Order, 1955 is mandatory, respondent No. 2 was not called upon to chase the petitioner to ensure his appearance.

5. Clause 10-C of the Imports (Control) Order, 1955 reads as follows :-

"10-C Power to make direction for the sale of imported goods in certain cases. (1) Where, on the importation of any goods or at any time thereafter the Chief Controller of Imports & Exports is satisfied, after giving a reasonable opportunity to the license of being heard in the matter, that such goods cannot be utilised for the purpose for which they were imported, he may, by order, direct the license or any other person having possession or control of such goods to sell such goods to such person, within such time, at such price and in such manner as may be specified in their direction.

(2) ...

(2-A) ....

(3) ...."

Thus there is no doubt that under Clause 10-C of the Imports (Control) Order, 1955 before any action is taken by the Chief Controller of Imports & Exports he has to be satisfied after giving a reasonable opportunity to the license of being heard in the matter, that the goods cannot be utilised for the purpose for which they were imported.

6. Annexure R1 to the counter-affidavit is the notice issued by the respondent under Clause 10(1)C of the Imports (Control) Order, 1955. Annexure R3 is the order dated 10th December, 1968. The order itself indicated the reasons why the decision had to be taken in the absence of the petitioner. Excepting alleging legal infirmity of non-service of notice there is no allegation made by the petitioner that the order was passed by the respondent for any mala fide reason for to favor anyone else.

7. During the course of the hearing certain doubts were raised regarding the

identity of the two persons who had appeared in the office of the respondent after notice was issued. I, Therefore, summoned the record which the respondents produced in Court. On perusal of the record it appears that one Shri S. P. Dhir appeared before the respondent and made a request that he may be permitted to process the goods out-side the factory. This was after the notice under Clause 10-C was issued. A doubt was, Therefore, raised whether this Shri S. P. Dhir and the petitioner were the same person. Learned counsel for the respondents stated that the petitioner had been misrepresenting by changing his name whereas he appeared before the respondent as Shri S. P. Dhir, the petition is filed by him as Shri S. P. Verma. The petitioner admitted that he had changed his name from Verma to Dhir on the advice of a numerologist in the year 1973. He however submitted that whenever his signatures were required in connection with the instance case he always signed in the name of S. P. Verma. It appears that petitioner has sometimes been representing himself to be S. P. Dhir and sometimes as S. P. Verma. In the affidavit filed in the Court on 20th September, 1985 he has stated that the changed his name in the year 1973. But from the record it appears that as early as in 1969 he had represented himself to be S. P. Dhir. This is evident form the notice dated 25th September, 1969 under Clause 10 for action under Clause 8 of Imports (Control) Order, 1955 which was addressed to M/s. Tarna Watch Co. C/o. Shri Satpal Dhir and also order dated 27th/30th January, 1970 (impugned order Annexure-A). The bar for receiving licenses for two years was imposed on Shri S. P. Dhir, proprietor of M/s. Tarna Watch Co. This shows that the petitioner was in fact calling himself as S. P. Dhir as early as in the year 1969 and had not changed his name in 1973 as stated by him in his affidavit which he filed on 20th September, 1985 in this Court. The present petition was filed by the petitioner in April 1972 but the affidavit in support of the same is signed by the petitioner as S. P. Verma. Thus it appears that the petitioner had created some confusion regarding his identity because of his change of name.

8. The contention that the respondent knew the residential address of the petitioner at Malgodown Road Dhari Punjab, Himachal Pradesh and, Therefore, the notice under Clause 10C should have been sent to his residential address is also without any force. The address given by the petitioner while obtaining the license was the Mandi address. If there was any change in address the petitioner should have intimated the same to the respondent officially which it appears he never did. The fact that subsequently notice was issued at the residential address of Shri S. P. Dhir does not improve the situation. Thus though the respondents were required to give notice to the license, the petitioner having failed to notify the change of address to the respondent the non-service of notice on the petitioner by the respondents cannot vitiate the order.

9. Now the next question is whether there was enough material before the Chief Controller of Imports & Exports to come to a conclusion that the petitioner was not in a position to utilise the goods in his own factory. The goods were imported as early as in the year 1962 and had been lying unused for almost over 5 years.

It appears that anticipating that action to sell the goods to a third party may be taken the petitioner made representation that he be permitted to process the goods elsewhere. When he came to know that a notice under Clause 10-C of the Import (Control) Order, 1955 was issued he went and appeared before the respondent. The questions which were asked in Parliament were also after the order was passed. Thus even if the petitioner had appeared before the Chief Controller of Imports & Exports in pursuance of the notice all the circumstances narrated herein above indicate that he would not have been able to show that he was in a position to utilise the goods in his own factory. The fact that the goods were cleared from Customs by M/s. Favre Leuba & Co. Ltd., Bombay and the same were all the time in the custody of Mr. Favre, the various representation made by the petitioner for permission to process the goods out side were sufficient for arriving at such a conclusion.

10. Having failed in all his attempts the petitioner is not trying to take advantage of non-service of the notice. Needless to say that it was sufficient for the respondent to take reasonable steps to serve the notice and it was not necessary to compel the petitioner to appear in pursuance of the notice particularly when the change of address was not communicated to the respondents by the petitioner at any time. If the petitioner had any grievance regarding the payment of the price to M/s. Favre Leuba & Co. Ltd., Bombay he himself has to be blamed for that. Moreover it was always open to the petitioner to recover the amount by filing a civil suit.

11. In the circumstances the petition is dismissed. There will be no order as to costs.

