

# SUPREME COURT OF INDIA

Sandip Exports Ltd.

Vs.

Union of India (Uoi)

(R.C. Lahoti and A.K. Bhan JJ.)

15.01.2004

## ORDER

**Ashok Bhan, J.**

1. Leave granted.

2. Appellant No. 1 is an "Export House" and is a small scale industrial unit. It carries on the business, inter alia, of manufacturing, importing and exporting of garments and other textile products. In connection with the said business the appellant has to import diverse quantities and qualities of fabrics and yarn from outside India which fabrics and yarn upon due processing are exported. It is not disputed that import of fabric and yarn into India is controlled by the respondent authority by issuance of annual advance licence.

3. On 17.3.2001 the appellant applied to the respondent authorities for issuance of the annual licence in the requisite form. Annual advance licence No. 0210021075 dated 28.3.2001 was issued to the appellant firm in terms of Para 7.54 of the Hand Book of Procedure with a condition that the licence shall be valid for 12 months for imports and 18 months for exports from the date of issue of licence. However, the licence was made inoperative till completion of some investigation by the enforcement Division of the Respondent regarding the export performance of the previous years. And ultimately on verification of the documents submitted by the appellant the said licence was made operative w.e.f. 12.4.2001, as it appears from the endorsement made in the said licence itself.

4. On 22.3.2002 the appellant made representation to the Joint Director General of Foreign Trade to the effect that since during the verification period the appellant could not plan for imports and make import bookings before 12.4.2001, i.e., the date when the licence became operative, the validity of the licence may be extended for further 12 days, i.e., till 12.4.2002. Since this request of the appellant was not accepted, the appellant being aggrieved, filed the writ petition in the High Court. Contention raised in the writ petition was that although the issuance of the licence was 28.3.2001 for all practical purposes the date of issue should be treated as 12.4.2001 when the licence became operative.

5. The learned Single Judge disposed of the writ petition on 11.4.2002. It was held by him that the validity period of the licence in question is required to be extended till 12.4.2002. In directing such extension of the licence period the learned Single Judge applied the principle of 'promissory estoppel'.

6. Relying upon Clause 4.15 (b) of Hand Book of Procedure Vol. I which is to the following effect:

"4.15 (a) The validity of import licence from the date of issue of licence shall be as follows:

xxx xxxx

(b) Where the date of expiry of the licence falls before the last day of the month, the licence shall be deemed to be valid until the last day of the month." the appellant filed writ appeal seeking extension of period till 30.4.2002 in view of the aforesaid provisions of the Hand Book. The respondent did not file any appeal against the order of the learned single Judge.

7. Division Bench observed that as per the provisions of the Hand Book the validity of the licence was to be for 12 months from the date of issue of licence and therefore, the licence having been issued on 28.3.2001 the validity period of licence because of the aforesaid clause contained in the Hand Book would be the last day of the said month, i.e. 31.3.2001. That the appellant did not file a representation to the authorities for extension of period immediately after the issuance of licence or within a reasonable time thereafter and the same was filed belatedly on 22.3.2002. In spite of making such observation the Division Bench refused to interfere with the order of the learned Single Judge presumably because the respondents had not filed any appeal against the said order. It was further observed that since the writ appeal was being disposed of on 26.4.2003 and, even if, the prayer of the appellant is to be allowed the effect would be that for all practical purposes such extension will be only for 3 days including Saturday and Sunday intervening.

8. Be that as it may, the fact remains that the order of the learned Single Judge extending the period of licence till 12.4.2002 stands as the same has not been set aside by the Division Bench. The only point to be decided is: Whether the appellant should be given the extension of time to complete his obligations under the licence? Clause 4.16 of the Hand Book of Procedure Vol. I provides:

"4.16 The licence may be revalidated on merits by the licensing authority concerned, which has issued the licence, for a period of six months at a time but not beyond a period of 12 months reckoned from the date of expiry of the validity period. However revalidation of freely transferable licences and stock and sale licence shall not be permitted.

An application for revalidation may be made to the licensing authority concerned in the form given in Appendix-12. However in such cases where invalidation of the licences is to be considered by DGFT, the original application along with TR/Demand Draft shall be submitted to the regional licensing authorities concerned and copy of the same shall be submitted to DGFT."

9. Under Clause 4.16, quoted above, the licensing authority is vested with the power to revalidate the licence for a period of six months at a time but not beyond a period of 12 months reckoned from the date of expiry of the validity period. The appellant had not asked for a fresh licence or prayed for indefinite extension of period. The prayer made in the writ petition was only for getting the date extended for nearly 2 weeks for which none of the respondents was to suffer any loss or damage.

10. On the other hand, the extension as prayed for was essential because of the fact that for importing the goods the appellant had already negotiated with foreign suppliers with substantial financial involvement and unless the goods under the orders placed for were permitted to be imported the appellant was to suffer serious loss and prejudice in the business. The orders under the import licence were placed where after goods were made ready for dispatch and some of them had already, been dispatched while bulk of goods are still lying in supplier's warehouse in packed condition waiting for a signal from the appellant about clearance for importing the same on the basis of the valid licence. Goods already made ready for dispatch are also lying in supplier's warehouses. They are lying uncared because of the continued period of delay in dispatch and clearance. The entire goods would be damaged resulting in claim against the appellant for substantial compensation. Question of such compensation would also arise because of the failure to make the shipment of goods to the overseas buyers against the firm orders placed on the appellant.

11. The learned Single Judge had granted extension on 11.4.2002 for 12 days making the expiry date to be 12.4.2002 which was illusory. During the course of the arguments learned senior counsel appearing for the appellant asked for extension of the licence period of 3 weeks only. In the instant case, if the licence period is extended, as prayed for, no one would suffer any loss and injury whereas the appellant would suffer huge financial loss as well as injury to his reputation and good-will in the foreign market.

12. Keeping in view the peculiar facts and circumstances of the present case and without creating any precedent and to do complete justice between the parties, we deem it appropriate to direct the authority to extend the period of licence for a period of 3 weeks from the date of the revalidation of the licence. The same be done immediately on receipt/production of a certified copy of this order.

13. For the reasons stated above, we allow the appeal with no order as to costs.