

2013 (3) ECS (3) (Guj-HC)

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 12746OF 2012

LAXMI MARINE – Petitioner (s)
Versus
UNION OF INDIA & 4 – Respondent (s)

Appearance :

Mr. Nirupam D Nanavati, Senior Advocate assisted by Mr S N Thakkar for the Petitioner

Mr. P S Champaneri, Addl. Solicitor General for Respondent No. 1

Mr. R J Oza, Senior Advocate assisted by Ms. V D Nanavati for Respondent Nos. 2 & 3

Mr P K Jani, Government Pleader with Ms Shruti Pathak for Respondent Nos. 4 & 5

CORAM:

HONOURABLE MR. JUSTICE AKIL KURESHI
AND
HONOURABLE MS. JUSTICE HARSHA DEVANI

Date : 25/09/2012

“Suffice it to notice that in view of major discrepancy in the registered stock and the physical stock prima – facie found by the customs authorities during the early investigation, the competent authority had every right to suspend the licence of the petitioner in terms of Section 58 (3) of the Act.”

ORAL ORDER

(Per: HONOURABLE JUSTICE AKIL KURESHI)

The petitioner has challenged an order dated 17th September 2012 as at Annexure – J to the petition in the following factual background:

The petitioner is a proprietary concern and is engaged in the business of operating a bonded ware house situated at Industrial Area, Gandhidham, Kachchh. The petitioner has necessary licences under the Customs Act, 1962 (‘the Act’, for short) and the Rules made thereunder for operating such a private bonded warehouse for storage of bonded provisions. In such warehouse the petitioner stores cigarettes, soft drinks, toilet items, alcoholic beverages etc. The petitioner, as per law, is permitted to store

such items without payment of duty on the first importation thereof subject to certain conditions of the licence. Such goods so warehoused by the petitioner are being supplied to foreign going vessels as per the orders that the petitioner may receive.

On 14th August 2012, the customs authorities carried out a surprise visit of the warehouse of the petitioner. A panchnama of such a visit was drawn on the same day. Finding discrepancy in the declared stock and the physical stock, the customs authorities sealed the godown. On 16th August 2012, further enquiry was carried out with respect to actual physical stock. The petitioner was directed not to clear any goods from the godown.

On 15th September 2012 the Superintendent of Customs, Kandla handed over for safe custody to the petitioner certain goods seized under the panchnama dated 15th August 2012 and directed the petitioner to look after the said goods and not to sell, transfer or deal with them in any manner. The petitioner was instructed to maintain the goods in the same condition till further instructions of the customs authorities.

On 17th September 2012 the Assistant Commissioner (Bonded Section), Customs House, Kandla passed the impugned order to the following effect:

“Ongoing investigation has revealed certain discrepancies therefore the Bonded Warehouse having License No. 358/98 is suspended under Sub – section (3) of Section 58 of Customs Act 1962 with immediate effect till further order.”

It is this order that the petitioner has challenged in the present petition on various grounds including the ground that the customs authorities were under pressure from the police authorities to take such action and, in any case, the petitioner has not breached any provision of the Act or the Rules made thereunder or the conditions of the licence.

Having heard learned counsel for the parties, we notice that the customs authorities have prima – facie found a huge stock of foreign made alcohol, which was in excess of the declared stock as per the registers maintained by the petitioner. Prima facie, the authorities have shown that during the preliminary investigation more than 79,000 bottles of different brands of foreign made liquor was found in excess of the registered stock maintained by the petitioner. Value of such excess stock runs into crores of rupees. It is also possible, as contended by the learned counsel for the petitioner, that some of these discrepancies may, later on, get reconciled. However, the question is in the face of such facts and serious allegations against the petitioner should the order of the suspension of licence be quashed.

Section 58 of the Act pertains to the licensing of private warehouses. Sub-section (1) thereof empowers the Assistant Commissioner or Deputy Commissioner of Customs to grant licence to private warehouses wherein dutiable goods imported may be deposited. Subsection (2) of Section 58 empowers the said authorities to cancel the licence granted under subsection (1) by giving one month's notice or if the licensee is found to have contravened any of the provisions of the Act or Rules, committed any breach of conditions of licence, of course, after giving a reasonable opportunity to the licensee of being heard. Subsection (3) of Section 58 permits the said authorities pending an enquiry whether the licence should be cancelled under clause (b) of subsection (2), to suspend such a licence. Section 58 (3) reads as under:

“58. Licensing of private warehouses.

(3) Pending an enquiry whether a licence granted under sub – section (1) should be cancelled under clause (b) of sub – section (2) the Assistant Commissioner of Customs may suspend the licence.”

Thus, the Assistant Commissioner of Customs so also the Deputy Commissioner of Customs has power to suspend the licence pending enquiry whether such licence should be cancelled on the ground envisaged under clause (b) of subsection (2) of Section 58, namely, that the licensee has contravened any provision of the Act or the Rules or Regulations or committed breach of any of the conditions of the licence.

It is not even the case of the petitioner that if stock far in excess of the registered stock is found from the warehouse, the same may not amounting to breach of conditions of the licence. We are, however, not at this stage required to comment on any possible action that the customs authorities may finally take in terms of subsection (2) of Section 58. Suffice is to notice that in view of major discrepancy in the registered stock and the physical stock prima – facie found by the customs authorities during the early investigation, the competent authority had every right to suspend the licence of the petitioner in terms of Section 58 (3) of the Act.

Having said that, the customs authorities must also, in our view, complete the investigation so as to put an end to the ongoing suspense. Learned counsel for the petitioner stated that the petitioner will cooperate with the ongoing investigation. The authorities are, therefore, given outer time – limit of six weeks from now on to complete the enquiry and thereafter to proceed on the basis of such materials that maybe collected during such enquiry. Upon completion of such investigation, the competent authority shall review the situation and take a fresh decision whether the suspension of

licence of the petitioner is required to be continued or not. He shall pass an order in this respect and communicate the same to the petitioner as soon as such decision is taken.

If the decision of the authorities in this regard is adverse to the petitioner, it will be open for the petitioner to take such recourse under law as may be available.

In the petition there are allegations against the police authorities regarding what petitioner believes as highhanded and unauthorized action. Such authorities have filed detailed reply. However, in view of our above conclusions, we do not go into such aspects.

With the above directions, the petition is disposed of.