

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 401 OF 2016

Pidilite Industries Limited

... Petitioner.

V/s.

The Controller of Rationing and Director of
Civil Supplies, Mumbai and Others.

... Respondents.

Mr. Prakash Shah i/by PDS Legal for the Petitioner.

Mr. V. V. Gangurde, APP for the State.

CORAM : RAVINDRA V.GHUGE,J.

DATE : 16 MARCH, 2017

P.C. :

1 The Petitioner is aggrieved by the judgment dated 25.03.2015 by which Criminal Appeal No. 209 of 2013 filed by Petitioner has been dismissed by the learned special Court for CBI at Greater Bombay.

2 I have heard the learned counsel for the Petitioner and the Respondents at length.

3 The Petitioner had preferred an appeal under section 6C of the Essential Commodities Act, 1955 (hereinafter referred to as "1955 Act"), for challenging the order of confiscation passed by Respondent No.1 herein. It was

contended that the Petitioner had a licence issued by the Maharashtra Solvent, Raffinate and Slop (Licensing) Order, 2007. The name of the petitioner, throughout, was mentioned in the Licence bearing No. 65 of 2007 by which the petitioner was permitted/authorized to acquire, store and consume solvent, raffinate and slop. The registered address of the petitioner was mentioned in the licence at Mumbai. The licence was issued, permitting the petitioner to utilize/use the same in the area mentioned in the licence which is Kamothe Unit, Plot No. 229, 232, 241, 242, Jawahar Co-operative Industrial Estate, Kamothe, Tal. Panvel, Dist. Raigad.

4 There is no dispute that the said licence is being renewed from time to time though there has been some space/gap between the date of the expiry of the licence and the actual order of issuance of the renewal order. Nevertheless the petitioner does possess the said licence from 27.08.1999 which had been continued as on the date of the cause of action in this case. The last renewal order is dated 21.01.2015, renewing the licence in continuation from 17.08.2014 and the validity of the said licence was up to 01.08.2016.

5 It appears from the record that the petitioner had entered into an agreement with M/s. Paramount Adhesive Tapes Private Ltd. (PATPL). The agreement was for outsourcing the job work to PATPL (hereinafter referred to as

“the outsourced unit”), which manufactures certain products. As per the said agreement, the petitioner was to supply raw materials, packing materials etc. to the said unit. There is no dispute that the outsourced unit was having its registered office at Savita Sadan, Subhash Lane, Daftary Road, Malad (E), Mumbai-400 097. It is equally undisputed that the said unit has an industrial establishment at Sarigam Industrial Estate, Sarigam, Tal. Umergaon, Dist. Valsad in the State of Gujarat. It is stated that the outsourced unit has the same licence like the petitioner, referred to hereinabove.

6 S.R.Roadlines is the transporter engaged by the Petitioner for transporting the “Hexane” from BPCL to the factory of the outsourced unit at Gujarat. On 11.07.2012, when the tanker filled with the said Hexane from BPCL proceeded for delivering the said product at Valsad, the authorities upon gathering information, intercepted the tanker bearing registration no. MH-43-Y-0559 by following the procedure under section 6 of the 1955 Act. The product being carried was confiscated and that led to the Appeal being filed by the petitioner.

7 The petitioner has canvassed a host of factors as regards the purported irregularities caused by the authorities while confiscating the product. It is informed that during the proceedings before the appellate court the said product has

been handed over to the petitioner, who has utilized the same on tendering the bank guarantee of Rs. 12 lakhs towards the value of the product.

8 It is undisputed that the petitioner, who used to purchase Hexane from the BPCL, had to follow a procedure of documentation. The copy of the licence is to be tendered after which BPCL would sell the said product. In short, after due verification of the holding of the proper licence, the product is sold.

9 Learned counsel for the petitioner, on instructions, submits that when the incident had occurred, the petitioner did not present a copy of its own licence. It had tendered a copy of the licence held by the outsourced unit. It was the licence issued by the particular licensing authority of the State of Gujarat to acquire and store the material at the Valsad Industrial Establishment. The Petitioner however has strenuously submitted that when it had the licence, the impugned order/judgment of the appellate court is rendered perverse since it has concluded that the petitioner did not have a licence and hence, it could not have purchased the confiscated material.

10 In the light of the strenuous submissions of the petitioner, I have gone through the record available. It is

obvious that the said confiscated product was purchased by the petitioner by tendering a copy of the licence of the outsourced unit. In my view, this act on the part of the petitioner could only be termed as being a fraudulent act. The Petitioner had tendered a copy of the licence of the outsourced unit and had apparently projected it before the BPCL that the material is being purchased by the licence holder.

11 There is no dispute that without a valid licence, any person or entity would not be authorized to purchase the said material. These facts are indicative that the petitioner has misled the BPCL and purchased the Hexane within the State of Maharashtra on the basis of the licence not held by the petitioner. There can be no doubt that the petitioner had a subsisting licence. However, if the said licence is not shown at the time of the purchasing of the product and if somebody else's licence is shown by the petitioner, then the consequence of such conduct of the petitioner would be evident.

12 The appellate court in the impugned order/judgment, though the petitioner had a valid licence, has concluded that it did not have a licence. These observations are with regard to the evidence which was before the appellate court for adjudication. It is inconsequential that the petitioner has the licence, if it does not tender the copy of the same

while purchasing the Hexane and instead presents the copy of the licence of the outsourced unit. Apparently the petitioner having not tendered its licence and having purchased the product on somebody else's licence would, therefore, indicate that at the time of the said transaction, the petitioner did not present its own licence.

13 Respondent No.1 authority had intercepted the transporter and it was revealed that 20 KL Hexane was being transported to the Valsad. The licence possessed by the petitioner was restricted to the particular unit within the area of operation. And beyond the said area, the petitioner could not have utilized or purchased the schedule product, keeping in view the restriction imposed.

14 In the light of the above, I do not find that the impugned judgment dated 25.03.2015 delivered by the appellate court could be termed as being perverse or erroneous, keeping in view the law laid down by the Hon'ble Apex Court in the matter of **Sayed Yakoob vs. K. S. Radhakrishnan & Ors. - AIR 1964 SC 477** and **Surya Dev Rai vs. Ram Chander Rai & Ors. - AIR 2003 SC 3044**.

15 The petition, being devoid of merits, is, therefore, dismissed.

(RAVINDRA V.GHUGE, J.)