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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 18th January, 2023

\+ **W.P.(C) 3521/2021 & CM APPLs.10664/2021, 38417/2021, 38428/2021, 50490/2022**

PREMIER GUN HOUSE ..... Petitioner

Through: Mr. Manish Sharma and Mr. Ninad Dogra, Advocates (M:9810105226).

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr. Ajay Digpaul, CGSC with Mr. Kamal Digpaul, & Ms. Swati Kwatra, Advs. for UOI (M: 9811157265).
Mr. Santosh Kumar Tripathi, Standing Counsel with Mr. Tapesh Raghav, Mr. Utkarsh Singh, & Mr. Pradyuman Rao Advocates for GNCTD (M: 9818112250).

(2) AND

\+ **W.P.(C) 10930/2022& CM APPL.44354/2022**

PREMIER GUN HOUSE ..... Petitioner

Through: Mr. Manish Sharma and Mr. Ninad Dogra, Advocates (M:9810105226).

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr. Ajay Digpaul, CGSC with Mr. Kamal Digpaul, & Ms. Swati Kwatra, Advs. for UOI (M: 9811157265).
Mr. Santosh Kumar Tripathi, Standing Counsel with Mr. Tapesh Raghav, Mr. Utkarsh Singh, & Mr. Pradyuman Rao Advocates for GNCTD (M: 9818112250)

CORAM:
JUSTICE PRATHIBA M. SINGH

<u>Prathiba M. Singh, J.</u> (Oral)

1. This hearing has been done through hybrid mode.

2. These are two writ petitions filed by the Petitioner- Premier Gun House, Delhi seeking reliefs in respect of its licenses to import arms as also for release of consignment and other reliefs.

3. The Petitioner is a registered entity engaged in import and trading of arms and ammunition. On 2nd August, 2019 it applied to the DGFT seeking a composite license for import and trading of restricted items and had paid the requisite fee for the same. An import license was granted in favour of the Petitioner on 25th September, 2020 which was valid for a period of 18th months i.e., 25th September, 2020 till 24th March, 2022.

4. The import license which was granted was subject to an 'actual user condition' meaning that the Petitioner could import but not trade in the said arms and ammunition. It is the case of the Petitioner that the Petitioner had in November, 2020 imported certain weapons which were cleared and released by the customs authority after inspection. However, thereafter the impugned show cause notice was issued to the Petitioner on 25th February, 2021 calling upon the Petitioner to explain as to how it had sold the arms which were imported subject to 'actual user condition'. The said show cause notice reads as under:

> *"Subject: SCN under the Foreign Trade (Development and Registration) Act, 1992.*
>
> *While an Import Licence No. 0519240593 dated 25.9.2020 was Issued for import of Arms & Ammunition with actual user condition.*
>
> *And whereas it has been replaced that you have sold arms imported against the above said Import License in the market, which is violation of the Actual User condition of the import license.*
>
> *Accordingly, under the provisions of the Foreign Trade (Development and Regulation) Act, 1992, as amended, you are hereby called upon to show cause to the undersigned as*

to why action should not be taken for violating the actual user condition imposed on the licence.

Reply to this notice should reach the undersigned within 10 days hereof; if the firm wants to be heard in person, they may appear before the undersigned within 15 days of receipt of this SCN, with prior appointment between 2 to 5 pm on any working day, failing which it would be deemed that they have no defence to make in writing or orally in person or through an authorized person, and the matter would be decided ex-parte on merits.

This is issued without prejudice to any other action that may be taken against you under any other law as applicable."

5. The Petitioner had on 26th February, 2021 again imported certain arms and ammunition. The Petitioner approached the custom authorities for clearance and release of the said consignment. However, the Petitioner learnt that DGFT had advised the custom authorities to not to clear any consignment of the Petitioner against import license No.015924-593 dated 25th September, 2020 till further orders. The show cause notice was replied to by the Petitioner vide a detailed reply on 08th March, 2021.

6. The Petitioner, thereafter, on 11th March, 2021 received an email from the DGFT asking it to surrender the import license which was issued to it which led to the filing of the present petition. The prayer in this petition are as under:

"A. Issue an appropriate Writ, Order, Directions especially in the nature of Mandamus thereby quashing Show Cause Notice bearing Ref No. F.NO.01/53/B/AM20/P-49/MC/1103 dated 25 February, 2021 issued by Dy. Director General of Foreign Trade under the Foreign Trade [Development and Regulation] Act, 1992and all consequential proceedings arising therefrom;

AND

B. Issue an appropriate Writ, Order, Directions especially in the nature of Mandamus thereby quashing the email dated 11.03.2021 received by the petitioner from DGFT and all consequential proceedings arising therefrom;

AND

C. Issue an appropriate Writ, Order, Directions especially in the nature of Mandamus, thereby, directing DGFT, Respondent No. 2 to dispense with the Actual User Condition' stipulated in the import License No. 0519240593 dated 25.09.2020 for import of 350 weapons issued in favour of m/s premier Gun House, the petitioner

AND

D. Issue an appropriate Writ, Order, Directions, thereby, declaring that Import License No. 0519740593 dated 25.09.2020 for import of 350 weapons has been granted by DGFT for the purpose of trading viz. sale & purchase of arms/weapons irrespective of the 'Actual User Condition' stipulated in the Import License;

AND

E. Issue an appropriate Writ, Order, Directions especially in the nature of Mandamus, thereby, directing DGFT, Respondent No. 2 to withdraw the instructions given to the Principal Commissioner of Customs, ACC (Import), Respondent no. 3 for not clearing the consignment of the arms imported by the petitioner against Import License No. 0519240593 dated 25.09.2020;

AND

F. Issue an appropriate Writ, Order, Directions especially in the nature of Mandamus directing the Principal Commissioner of Customs, ACC (Import), Respondent no. 3 for releasing the consignment of 28 weapons/arms imported by M/s Premier Gun House from SLOVAK REPUBLIC against Import License No. 0519240593 dated 25.09.2020 vide Invoice No. 00002-2021 dated 22.01.2021 under Bill of Entry BE No. 2926205 dated 26.02.2021 without charging demurrage/warehouse charges upon payment of requisite Duties and completion of all other compliances by the Petitioner

AND

G. In the interim, during the pendency of the present

Petition, pass necessary orders and directions, thereby staying operation of the impugned show Cause Notice bearing Ref No. f.NO.01/53/8/AM20/P-49/1C/1103 dated 25th February, 2021 and the email dated 11.03.2021 received by the petitioner from DGFT and no coercive action be taken by the Respondents against the petitioner till disposal of the present petition

AND

H. Grant any other relief as this Hon'ble Court may deem fit and proper in view of the facts and circumstances of the present case."

7. Notice was issued in this petition on 19th March, 2021 on which date, this Court had directed that no coercive steps shall be taken against the Petitioner. Relevant portion of the said order reads as under:

> *"8. Since ld. Counsel for the Respondent wishes to seek instructions in the matter, list on 6th April, 2021. <u>In the meantime, no coercive action shall be taken against the Petitioner.</u> The Petitioner may file its reply to the show-cause notice before the authority concerned, which shall be without prejudice to the rights and contentions of the Petitioner in the present writ petition."*

8. On 6th April, 2021, after hearing ld. Counsel for the Petitioner and the Union of India, the following directions were issued:

> *"4. Considering the nature of the matter, the authorities of the Respondents shall afford a hearing to the Petitioner and would take a decision on the prayer for clearance of the goods of the Petitioner, as well as on the show cause notice, within a period of two weeks, as the Petitioner is incurring huge demurrage charges. The issue in respect of interpretation of the "actual user conditions" would also be considered. <u>The order shall be passed, by the authorities on or before 25th April, 2021.</u>"*

9. In the meantime, the Petitioner also sought permission by way of ***CM 18002/2021*** to get the 28 weapons which stood imported and lying in the

customs, released. The said application was considered by the Court on 2nd June, 2021 and the ld. Single Judge directed that the decision shall be taken by the Respondent within ten days. The Authorities then took a decision in respect of the show cause notice vide order dated 16th June, 2021. The operative portion of the said order reads as under:

> *"8. And whereas considering the above facts and as per directions of the Hon'ble High Court of Delhi to decide the matter within 10 days of Hon'ble Court's Order dated 2/6/2021, I am of the opinion that justice will be met in this case, if 28 weapons stated to have already been imported against Invoice no. 00002-2021 dated 22/1/2021 before date of issue of Show Cause Notice and lying on the Port are permitted to be released under import authorisation No. 0519240593 dated 25/9/2020 for the purpose mentioned in the original application. I hereby order accordingly.*
> *9. Further with the clearance of 28 weapons lying at the port Premier Gun House is directed to surrender the import authorisation No. 0519240593 dated 25.9.2020 to this office within 15 days of receipt of this Order."*

10. The order came to be passed on 16th June, 2021 by the Deputy Director General of Foreign Trade. Thereafter, vide order dated 16th August, 2021 this Court after perusing the direction issued on 16th June, 2021, for surrender of license, had stayed the said direction. Since then, the writ petition has been pending for adjudication.

11. In the meantime, ***W.P.(C) 10930/2022*** has also been filed by the Petitioner seeking inspection of the consignment of arms imported by it and release of the said consignment as also challenging the orders dated 16th June, 2021 & 11th October, 2021. The prayer in the said writ petition is as under:

> *"A. Issue an appropriate Writ, Order, Directions especially in the nature of Mandamus thereby directing the*

Respondent no. 3 to <u>carry out inspection of the import consignment of fire arms thereby directing the Respondent no. 4 to release the import consignment</u>;

AND

B. Issue an appropriate Writ, Order, Directions especially in the nature of Mandamus thereby <u>setting aside the Order-in-Original dated 16.06.2021 passed by passed by Ms. Suminder Kaur, Deputy Director General of Foreign Trade and Order-in-Appeal dated 11.10.2021 passed by the Appellant Authority i.e. Joint Director General of Foreign Trade,</u> thereby, declaring that Import License No. 0519240593 dated 25.09.2020 for import of 350 weapons has been granted by Respondent no. 2 for the purpose mentioned in the original application i.e. Trading (Stock & Sale/Purchase) of firearms/weapons;

AND

C. In the interim, during the pendency of the present Petition, pass necessary orders and directions, thereby directing the Respondent no. 3 & 4 for not refusing to carry out inspection and release of import consignment;

AND

D. Grant any other relief as this Hon'ble Court may deem fit and proper in view of the facts and circumstances of the present case."

12. It is submitted by ld. Counsels for the parties that as of today, the position in ***W.P.(C) 10930/2022*** is that the arms have been released as of September, 2022, pursuant to the order dated 30th August, 2022 passed by this Court which reads as under:

"In the meanwhile and without prejudice to the rights and contentions of respective parties, bearing in mind the fact that the principal dispute which the Delhi Police has referred to in its affidavit is the previous litigation which ensued inter partes, let the imported consignment be duly inspected and a further affidavit filed. This would also be in consonance with the interim directions which were passed by the Court on 20 December 2021 in W.P.(C) 3521/2021 and the statement of learned counsels for the respondents

which stood recorded in that order."

13. Parallelly, the Petitioner has also availed of its remedies *qua* order dated 16th June 2022 and has filed an appeal under Section 15(1)(b) of the Foreign Trade (Development and Regulation) Act, 1992 before the Joint Director General of Foreign Trade which has been dismissed on 11th October, 2021. Para 7 of the said order reads as under:-

> *"7. I therefore in exercise of the power vested in me under Section 15 of the Foreign Trade (Development & Regulation) Act, 1992 read with Notification No. 101(RE-2013) 2009-2014 dated 5th December, 2014, pass the following order.*
>
> *The Appellant is directed to surrender the import authorisation No. 0519240593 dated 25.9.2020 within 30 days of issue of this Order."*

14. In the meantime, a meeting of the Policy Relaxation Committee of the DGFT was held on 4th October, 2022 and the Petitioner's case was considered. The minutes of the said meeting are as under:

> **"Subject: Amendment of purpose of imports under imports Authorization No.0519240593 dated 25.09.2020 from Actual user condition to Trading (Stock & Sale).**
> *The applicant stated that an import authorization No.0519240593 dated 25.09.2020 was issued to M/s Premier Gun House for import of 350 Nos. of Arms under ITC(HS) Code No. 93030000 on actual user basis condition subject to other usual condition of import authorization. Applicant had submitted the application for import of arms against their Arms Dealer License (Form VIII) issued by Delhi Police. The quantity applied by the firm was within the overall quantity mentioned in the Arms License. The validity of the license is 18 months. The validity of import authorization No. 0519240593 dated 25.09.2020 had expired on 24.03.2022. DGFT has passed an order-in-original dated 16.06.2021 in respect of the Show Cause Notice dated 25.02.2021 issued to them to surrender the*

import authorization No.0519240593 dated 25.09.2022 within 15 days. Thereafter, they had filed an appeal dated 27.07.2021, under Section 15(1)(B) of the Foreign Trade (Dev. & Regulation) Act 1992 against the Order-in-Original dated 16.06.2021 passed in respect of the Show Cause Notice dated 25.02.2021. However, they have filed the Writ Petition(C) no. 3521/2021 before the Hon'ble High Court, Delhi. By the order dated 19/03/21 passed by Hon'ble High Court, Delhi directed them to file its reply to Show Cause Notice dated 25.02.2021 before the Authority concerned. They have once again approached the Delhi HC vide W.P. 10930/2022 for clearance of additional consignments imported in March 2022 and held up at examination at Delhi (Air Cargo) Customs. In the meantime, firm has submitted an online application vide F.No. HQRXIMI AMFND00000252AM23 dated 06.05.2022 for Deletion or Amendment of actual user Condition from their import Authorization. Firm has stated that they have been granted Arms Dealership License in form VIII which is for Trading (Stock & Sale). And at the time of filling the Application, they have chosen the purpose of import as Trading (stock & Sale). Accordingly, the firm has requested for Amendment of purpose of imports under subject import Authorization from actual user condition to Trading (Stock & Sale) by relaxing of Para 2.10 of FTP.

Decision: *The Committee went through the justification submitted by the applicant and discussed the matter at length, and carefully went through Orders of the Hon'ble High Court, Delhi.* ***Accordingly, it was decided to allow amendment of import Authorization No. 0519240593 dated 25.09.2020 from actual user condition to Trading. The firm shall approach concerned RA within 30 days of the uploading of minutes of the meeting."***

15. From the above minutes of the Relaxation Committee, it is clear that the import authorisation has been amended from 'actual user condition' to 'trading'. Thus, the Petitioner's sale of the imported arms and ammunition would no longer be violative of the provisions of the Act and the allegation

of violation would no longer stand.

16. In both these writ petitions, in the opinion of the Court, the following are the only two outstanding issues:

i) The case of the Petitioner is that during the period when the license was valid, the Petitioner was having a license to import 350 guns. However, due to the various issues including the show cause notice and the order to surrender, the Petitioner has been able to import only 221 guns. The Petitioner thus prays for permission to import and avail of the remaining guns which could not be imported, by way of an extension of the license by for a period of one year at least. It is submitted by ld. Counsel for the Petitioner, that in respect of this extension, the Petitioner has made a representation to the DGFT on 25th July, 2022 which is yet to be decided by the DGFT. Mr. Digpaul, ld. Counsel on the other hand submits that the Petitioner, apart from making a representation, has to apply as per the prescribed procedure and has in fact filed an application for extension of the licence on 22nd December, 2022.

ii) The second issue is in respect of the demurrage which the Petitioner incurred during the period of late inspection and release of the consignment. The Petitioner is stated to have paid a sum of more than Rs.15,00,000/- as demurrage charges to the customs authority. The Petitioner seeks refund of the same.

17. On the first outstanding issue, considering the fact that the reliefs sought in both the writ petitions, when they were filed, have almost being satisfied and the outstanding issues relating to extension of license are

pending before the DGFT, it is deemed appropriate to direct the DGFT to take a decision on the said application for extension of the licence within a period of two months from today. The DGFT may afford the Petitioner a hearing and pass a reasoned order in accordance with the Act and Rules.

18. On the second outstanding issue, in so far as the demurrage charges are concerned, the allegation of the Petitioner is that the Delhi police did not inspect the consignment despite the import having been made during the period of the validity of the license. This led to the Petitioner incurring substantial demurrage charges.

19. In any event, the Petitioner has already deposited the demurrage charges and has got the consignment released. The Petitioner can seek refund of the demurrage charges in terms of the Rule 88(5) and 88 (6) of the Arms Rules 2016 which read as under:

> *"(5) The dealer or manufacturer shall within seventy-two hours of the arrival of the firearms or ammunition in India-*
>
> *(a) arrange with the licensing authority of the port of entry to physically inspect the firearms or ammunition; and*
>
> *(b) on finalisation of the physical inspection, certify in writing to the licensing authority, who issued the import licence, that the imported firearm or ammunition corresponding with the import licence, have arrived in India.*
>
> *(6) <u>Any delay in carrying out the inspection referred to in sub-rule (5) within seventy-two hours resulting in any additional charges or demurrage shall be attributed to the licensing authority at the port of entry and the customs authority and not the importer licensee</u>."*

20. The submission of ld. Counsel for the Petitioner is that though the customs authorities had cleared the consignment, however, the same could not be released due to the inspection not being carried out by the police

authority.

21. Considering the fact that if there is a delay in inspection, as per Rule 88(6), the additional charge or demurrage incurred by the Petitioner would be attributable to the licensing authority, the Petitioner is permitted to seek refund of the demurrage charges in accordance with law. The said application may be filed within a period of two weeks and, if preferred, shall be decided within a period of four weeks.

22. In view of the directions passed above, nothing survives in these two petitions. Accordingly, the present petitions along with all pending applications are disposed of in the above terms. All remedies are left open.

PRATHIBA M. SINGH
JUDGE

JANUARY 18, 2023/*MR/SK*