

(2012) 11 DEL CK 0004
In the Delhi High Court
Case No : LPA 645 of 2011

Cotton Textiles Export Promotion Council	APPELLANT
Vs	
Surya Cotton Fabrics and Others	RESPONDENT

Date of Decision : 21-11-2012

Acts Referred:

Citation : (2013) 1 AD 198 : (2013) 133 DRJ 155

Hon'ble Judges : Siddharth Mridul, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Baddi Ranganathan, with Mr. Shiv K. Suri and Mr. Saswat Patnaik, for the Appellant; V. Mohana, for R-1 and Mr. Ashwani Bhardwaj, with Mr. Jitender Choudhary, for R-2 to 4, for the Respondent

Final Decision : Dismissed

Judgement

Badar Durrez Ahmed, J.—This Letters Patent Appeal is directed against the order dated 20.05.2011 passed by a learned Single Judge of this court in W.P. (C) No. 6252/2004. The factual background has been set out in the impugned order itself and we need not re-phrase the same. Consequently, the following paragraphs 1 to 6 of the impugned order are set out herein below:-

1. The petitioner, a proprietary concern carrying on the business of manufacturing and exports of textiles, located in Tirupur in Tamil Nadu, seeks the quashing of an order dated 14th July 2003 passed by the Second Appellate Committee ("SAC") in the Ministry of Textile ("MoT") (Export III Section), Government of India rejecting the Petitioner's appeal against an order dated 10th April 2003 passed by the Senior Officers Appellate Committee ("SOAC") in the Office of the Textile Commissioner, Mumbai on the ground of delay as well as on merits.
2. By the order dated 10th April 2003 the SOAC rejected the Petitioner's appeal against an order dated 4th April 2002 passed by the Cotton Textiles Exports Promotion Council("TEXPROCIL") forfeiting the earnest money deposit ("EMD").

By the said forfeiture order dated 4th April 2002, the TEXPROCIL had required the petitioner to forward it a cheque/bank's demand draft in the sum of Rs. 1,69,315/- as compensation towards non-utilisation for the quota extended during October-December 1999 within 15 days thereafter.

3. The petitioner states that it has been exporting textiles, powerloom grey and bleached fabrics, and is recognized as having the status of an export house by the Government of India ("GOI"). Under the policy concerning export textiles, quotas were allotted by the GOI in the MoT through the SAC based on past performance as well as on "first come first serve basis". The exporters could from January to September of a given year use the quotas without any restrictions. However, from October to December, the exporters were required to give a guarantee to the Textile Commissioner assuring that the quantities available on hand would be totally utilized. The guarantee was in the form of a bond backed by a post dated cheque. If the exporters did not have sufficient orders, they were permitted to surrender whatever quantity they were not sure of utilizing by the end of September. Ninety per cent or more utilization of the quota allotted would be treated as "full utilization" for which no penalty was levied. If the utilization was between 75% to 90 % penalty would be payable on the unutilized quantity. If the utilization was less than 75% penalty would be payable on the whole quantity. The penalty amount was calculated at Rs. 10 per kg for the total extended quantity and the GOI was entitled to change the rate of penalty from time to time. The authorities, however, had the discretion to waive the penalty in the event of force majeure and other such circumstances.

4. On 4th March 1999 the petitioner obtained Quota Certificates ("QCs") for export of textiles for the year 1999. The petitioner got an extended quo for shipments between October and December 1999. The relevant clauses of the Performance Bond dated 30th September 1999 executed by the petitioner read as under:-

6. (i)...

(ii) That if the obligors shall fail to observe, perform and carry out all the terms and conditions of the extension of quota within the prescribed period or in respect of which evidence shall not have been produced on or before 31.12.1999 the obligor shall pay to Texprocil on demand the performance guarantee amount as compensation for non-fulfilment of export entitlement as calculated by Texprocil at the specified rate as per the Quota policy.

(iii) That if the obligors shall commit any breach or default in fulfillment of the terms and conditions of the said Notification/extension of quota, Texprocil shall be entitled to encash the said DD/Post dated cheque deposited with Texprocil to the extent of the compensation amount payable. In case Texprocil faces any problem in realizing the proceed of a Post Dated Cheque towards compensation payable, the Texprocil shall debit equivalent quantities from the entitlements allotted to the obligor and debar them from exporting till the time the obligor

furnishes an amount equivalent to the unrealized amount to Texprocil.

7. And that it is declared that the above written bond shall remain in full force and effect upto 31.12.2000. Texprocil shall lodge a claim here under against the obligor on or before 31.12.2000 and the obligor shall undertake to keep the cheque and performance bond valid till the final determination of the case.

5. On 24th January 2001 TEXPROCIL issued to the petitioner a show cause notice stating that the petitioner should pay Rs. 1,69,315/- as compensation for non-utilisation of the QCs extended for shipments during October-December 1999. It was stated that if no reply was received within 10 days "action will be taken to forfeit the amount" in accordance with the Quota Policy.

6. This was followed by the impugned order dated 4th April 2002 passed by TEXPROCIL asking the petitioner to forward the cheque/bank draft in the sum of Rs. 1,69,315/- towards penalty for non-utilisation of the QCs during October-December 1999.

The learned counsel for the appellant pointed out that the only question before the learned single Judge as noticed in paragraph 9 of the impugned order itself was whether the show cause notice dated 24.01.2001 was itself time barred in terms of clause 7 of the performance bond. Clause 7 of the performance bond reads as under:-

And that it is declared that the above written bond shall remain in full force and effect upto 31.12.2000. Texprocil shall lodge a claim here under against the obligor on or before 31.12.2000 and the obligor shall undertake to keep the cheque and the performance bond valid till the final determination of the case.

2. A plain reading of the above clause indicates that the bond was to remain in force up to 31.12.2000. The appellant could lodge a claim under the bond against the respondent on or before 31.12.2000 and the respondent in that eventuality was required to keep the cheque/performance bond valid till the final determination of the case.

3. It is an admitted position that Notification No. 1/17/96-EP(T&J) I dated 14.10.1996, issued by the Ministry of Textiles, Government of India, would be applicable in the present case. As per the said Notification the aspect of forfeiture of Earnest Money Deposit/Bank Guarantee/Post dated cheques are dealt with under clause 13 thereof. However, sub-clause (vi) of the said clause 13 requires that before any such forfeiture a show cause notice is to be issued.

4. In the present case the show cause notice was issued on 24.01.2001. It is evident that at that point of time the performance bond was no longer alive inasmuch as the performance bond was valid and in force till 31.12.2000 in view of clause 7 of the said bond, which we have already extracted above. It is in this light that the learned single Judge answered the question raised in paragraph 9 of the impugned decision in the affirmative. In other words, the learned single Judge held the show cause notice dated 24.01.2001 to be time barred in terms

of clause 7 of the performance bond. It is abundantly clear that once the performance bond had ceased to have any effect after 31.12.2000, there could be no forfeiture under the said bond. Therefore, we confirm the decision of the learned Single Judge on this aspect of the matter. This is, however, without prejudice to any remedy that the appellant may otherwise have in law, if any. The appeal is, accordingly, dismissed.