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(2003) 03 MAD CK 0064

In the Madras High Court

Case No : Writ Petition No. 41519 of 2002

Frendi Fashions Pvt. Ltd. APPELLANT

Vs

The Joint Director, Apparel Export Promotion Council, The Appellate Committee O/o The Textile Commissioner and The Second Appellate Committee Ministry of Textiles Exports RESPONDENT

Date of Decision : 27-03-2003

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2003) 03 MAD CK 0064

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : P. Subba Reddy, for the Appellant; V. Balasubramanian, SCGSC for R1 and K.S. Vasan, for Murthi and Vasan for RR 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

P. Sathasivam, J.—By consent of both the parties, the main writ petition itself is taken up for disposal.

2. Aggrieved by the order of the Second Appellate Committee, Ministry of Textiles, Exports III Section, New Delhi, dated 27.9.2002 dismissing

the appeal, the petitioner-firm has preferred the above writ petition to quash the same.

3. Heard the learned counsel for petitioner as well as the respondents.

4. It is seen that the petitioner is engaged in the business of export of garments and fabrics and governed by the Export and Import policy for

export of readymade garments and knitwear to U.S.A., Canada, European Union and Norway. The Apparel of Export Promotion Council issues

the Garment Export Entitlement Policy. The petitioner is concerned with the policy for 1994-96. The Ministry of Textiles, New Delhi, issued a

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Notification No.1/29/93 EP (T&J)/1 dated 4.9.93 laying down the condition applicable for the period 1996-98 for export in respect of garments

and knitwear to countries where such exports are governed by restraint under the provisions of the agreement on textiles and clothing. Clause 4 of

the notification sets out the past performance entitlement. The first respondent has allotted the revalidated quantity of 97249 pieces of garments of

various types under the PP/PT quota during the period from 1.10.96 to 31.12.96 against which the petitioner shipped 78166 pieces and the

balance quantity of 19083 pieces could not be shipped due to natural calamity. Due to failure on the part of the petitioner to fully utilise the

revalidated quantity within the prescribed period, the first respondent issued a show cause notice dated 11.9.97 and demanded a sum of

Rs.6,10,656/-. A reply was sent to the show cause notice and the first respondent passed an order dated 19.12.97 directing the petitioner to

deposit the said amount within ninety days. Questioning the said order, the petitioner preferred an appeal before the second respondent. After

hearing both the parties, the second respondent confirmed the order of the first respondent. Not satisfied with the order, the petitioner preferred

the third appeal to the third respondent, the Second Appellate Committee. Since the third respondent also confirmed the order of the respondents

1 and 2 and dismissed the appeal, the petitioner has preferred the above writ petition.

5. The only reason pleaded before all the three authorities for non fulfilment of the quota within the prescribed period is ""force majeure"". The said

aspect was considered by all the three authorities. Though it was represented before the said authorities that the delay in receipt of fabric was due

to heavy rains in Erode and Salem, the fact remains and the material shows that the heavy rain occurred only for few days. In the absence of any

acceptable evidence to show that because of continuous and heavy rain which resulted in short utilisation, the said plea has rightly been rejected by

all the three authorities. In the absence of any other material and in view of the fact that even the only objection was duly considered by all the three

authorities, I am of the view that the said factual findings cannot be lightly interfered with while exercising the jurisdiction under Article 226 of the

Constitution of India. The Second Appellate Committee has also pointed out that due to omission of the petitioner firm, the country had lost

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valuable foreign exchange.

6. In the light of what is stated above, I do not find any merit in the claim made by the petitioner. Accordingly, the writ petition fails and the same is

dismissed. No costs. Consequently, W.P.M.P.No.61439 of 2002 is also dismissed.

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