

(2003) 04 MAD CK 0113

In the Madras High Court

Case No : Writ Petition No's. 6791, 6795 and 46550 of 2002

Leena Enterprises and Panama Hosieries

APPELLANT

Vs

The Chairman, Second Appellate Committee, Ministry of
Textile, The Textile Commissioner, The Director, Apparel
Export Promotion Council, The Second Appellate Committee,
The Senior Officer's Appellate Committee and Apparel Export
Promotion Council

RESPONDENT

Date of Decision : 29-04-2003

Acts Referred:

Constitution of India, 1950 — Article 109, 110, 226, 265, 266
Imports and Exports (Control) Act, 1947 — Section 3, 4

Citation : (2003) 3 BC 584 : (2003) 90 ECC 899 : (2003) 156 ELT 651 : (2003)
2 MLJ 664

Hon'ble Judges : P.D. Dinakaran, J

Bench : Single Bench

Advocate : K.M. Vijayan, S.C. for La and Law in WP Nos. 6791 and 6795/02 and
P. Muthukrishnan, in W.P. No.46550/02, for the Appellant; A. Kalaiselvan, ACGSC
for Respondents 1 and 2 in WP Nos. 6791 and 6795/02, S. Balaji and J.
Madanagopal Rao, SCGSC for Respondents 1 and 2 in W.P. No. 46550/02 and
K.S. Vasan, for Murthy and Vasan for Respondent 3 in all W.Ps., for the
Respondent

Final Decision : Dismissed

Judgement

P.D. Dinakaran, J.—By consent, the writ petitions themselves are taken for final hearing.

2. Aggrieved by the orders dated 3.12.2002, 23.11.2002 and 14.9.2002 of the first respondent, viz., the Second Appellate Committee, confirming the orders of the First Appellate Committee and the original authority for forfeiting the bank guarantee for a sum of Rs. 6,45,590/-, Rs. 8,83,360/- and Rs. 4,87,299/- respectively, for non fulfilment of export obligations, the petitioners have preferred the above writ petitions.

3. The only contention raised by the learned senior counsel appearing for the petitioners in W.P.Nos.6791 and 6795 of 2002 and the learned counsel appearing for the petitioner in W.P. No. 46550 of 2002, is that the impugned orders of forfeiting bank guarantee for an alleged non utilisation of the quota beyond the control, vitiates, inasmuch as it specifically provides in W.P. No. 6791 of 2002 that the amount forfeited would be sent to the Consolidated Fund of India and the said direction lacks legislative competency in view of Articles 109, 110, 265 and 266 of the Constitution of India, inasmuch as such direction cannot be given by executive orders.

4. However, it is not disputed that the liability of these petitioners with respect to the forfeiture of amount by invoking their respective bank guarantee and the corresponding rights of the Government, are governed by the commercial transactions agreed between the parties, based on the export policy of the Government. None of the petitioner has challenged either the liability of the petitioners or the corresponding right of the respondents in this regard, for forfeiting the amount by invoking the bank guarantee furnished by them for non fulfilment of export obligation during the relevant period.

5. Both the original as well as the appellate authorities, in their respective orders, concurrently held that the country had lost precious foreign exchange due to the lapse on the part of the respective petitioners. Highlighting the above views and placing reference on the decision of this Court in M/S. MERIDIAN APPARELS LTD. REP. BY ITS DIRECTOR Vs. THE SECOND APPELLATE COMMITTEE, MINISTRY OF TEXTILES, REP. BY ITS CHAIRMAN AND OTHERS IN W.P. No. 37838 of 2002 (order dated 7.10.2002), M/s. DIVYAR GARMENTS, REP. BY ITS PROPRIETOR S.NAGARAJAN Vs. THE MEMBER SECRETARY, APPELLATE AUTHORITY & OTHERS in W.P.Nos.37135 and 37160 of 2002 (order dated 14.1.2003), R.A.KNITTINGS REP. BY ITS MANAGING PARTNER A.SELVARAJ Vs. THE SECOND APPELLATE COMMITTEE, REP. BY ITS CHAIRMAN & OTHERS in W.P. No. 1356 of 2003 (order dated 5.2.2003) and M/s. FRENDI FASHIONS PVT. LTD. REP. BY ITS MANAGING DIRECTOR DIPAK RAJ Vs. THE JOINT DIRECTOR, APPAREL EXPORT PROMOTION COUNCIL AND OTHERS in W.P. No. 41519 of 2002 (order dated 27.3.2003) as well as the decision of a Division Bench of this Court in M/s. SAMY PRODUCTS REP. BY ITS AUTHORISED SIGNATORY P.BALASUBRAMANIAN Vs. THE INSPECTOR OF FACTORIES, OFFICE OF THE INSPECTOR OF FACTORIES, TIRUPPUR & OTHERS in W.A.Nos.3 to 22 of 1999 (order dated 19.6.2000), and the decision of other High Courts, viz., Bombay High Court in M/s. BURLINGTONS" EXPORTS THROUGH ITS CONSTITUTED ATTORNEY MR. ELLIS C. NAZARETH Vs. UNION OF INDIA THROUGH THE SECRETARY, AYAKAR BHAVAN, NEW MARINE LINES, MUMBAI AND OTHERS in W.P. No. 4578 of 2001 (order dated 8.10.2001) and Delhi High Court in M/s. MOHAN EXPORTS (INDIA) (P) LTD. & ORS. Vs. UNION OF INDIA & OTHERS in Civil Writ Petition No. 1690 of 1982 (order dated 11.5.1983), learned counsel for the respondents contend that there is no justification in interfering with the orders of the original and appellate authorities in the matters relating to the non

fulfilment of export obligations which has resulted a loss of revenue to the Government shaking the economy of the country.

6. After giving careful consideration to the submissions of both sides, I find no grievance on the part of the petitioners that they have not been given any opportunity to put forth their case before the original and appellate authorities.

7. A Division Bench of this Court in M/s. SAMY PRODUCTS REP. BY ITS AUTHORISED SIGNATORY P.BALASUBRAMANIAN Vs. THE INSPECTOR OF FACTORIES, OFFICE OF THE INSPECTOR OF FACTORIES, TIRUPPUR & OTHERS in W.A.Nos.3 to 22 of 1999 (order dated 19.6.2000), held that the forfeiture of bank guarantee for non fulfilment of the export obligation cannot be considered as a punishment at all. The forfeiture of amount, by invoking bank guarantee of the respective petitioners, is a simple transaction, which is of commercial nature and the petitioners had, with their open eyes, entered into such commercial transactions and they were well aware of what would happen for their bank guarantee, if they fail to honour their commitments by non fulfilling their export obligations. Therefore, once such power of the respondents to forfeit the bank guarantee is held to be valid and cannot be interfered with, as the same falls within the powers and jurisdiction of the respondents, I do not find any force to appreciate the contention of the petitioners that the direction to send the amount forfeited to the Consolidated Fund is illegal, as the same is only consequential and flows from the powers conferred under Sections 3 and 4 of the Import and Export Control Act, 1947, and such power is traceable in Clause 128 of the Garment Export Entitlement Policy 2000-2004, agreed by the petitioners.

8. The further contention advanced by the learned senior counsel for the petitioners that the forfeiture of amount by invoking bank guarantee vitiates, inasmuch as it provides for a direction to send the amount forfeited to the Consolidated Fund, which lacks the legislative competency, in my considered opinion, is not tenable, as the same is nothing but a consequence of the forfeiture which is agreed between the parties and it is for the respondents to divert the funds forfeited statutorily and the petitioners have no locus standi to challenge the same.

9. In any event, it may not be proper for this Court to interfere with the powers and authority of the respondents to forfeit the amount by invoking bank guarantee, particularly, when the petitioners fail to honour the export obligation specifically agreed under the policy, by invoking Article 226 of the Constitution of India, which would otherwise affect the very economy of the country.

Finding no merit, these writ petitions are dismissed. No costs. Consequently, W.M.P.Nos.8746, 8751 and 67679 of 2002 are also dismissed.