(2010) 01 DEL CK 0028

In the Delhi High Court

Case No : Writ Petition (C) 4594 of 1994

Prem G.S. International	APPELLANT
Vs	
Union of India (UOI) and Another	RESPONDENT

Date of Decision : 21-01-2010

Acts Referred:

Citation : (2010) 173 ECR 105

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : T.S. Sawhney and Party-in-Person, for the Appellant; Rajesh Rawal, for R-2, for the Respondent

Judgement

S. Muralidhar, J.—The prayer in this writ petition is for a mandamus to the Respondents "to pay a sum of Rs. 29,32,660/- to the Petitioner with interest @ 24% p.a. with quarterly rest till final realization of money".

2. Pursuant to the notification dated 31st August 1990 issued by the Joint Secretary to the Government of India, Ministry of Textiles regarding a scheme for export of the garments from India during the year 1991 the Petitioner was granted export licence (VISA) for export of 6000 dresses to M/s Ivory International, Miami, USA. Due to the change of fabric from cotton to rayon, the Petitioner applied for grant of extension of time to execute the order after depositing 30% bank guarantee with the Apparel Export Promotion Council (AEPC). Extension up to 10th May 1991 was granted by the AEPC. The goods were to be shipped from Madras.

3. According to the Petitioner in the meantime the Government granted General Extension to the validity of the certified Shipping Bills up to 31st May 1991. Accordingly the Petitioner''s Clearing Agent submitted documents to the office of the AEPC at Madras for grant of extension of the validity of the Shipping Bills pending 6000 dresses up to 31st May 1991. However, it was refused by order on the ground that the confirmation of the submission of the 30% bank guarantee

sent by the AEPC, Delhi had to be made available to the Madras office. Since the instructions were unable to be sent by the AEPC, Delhi to its Madras office, the Petitioner was denied the right to ship the garments against the licence granted by the AEPC. Ultimately AEPC forfeited 40% bank guarantee amount.

4. The Petitioner filed a complaint before the National Consumer Disputes Redressal Commission (NCDRC) against the Respondents challenging the forfeiture of 40% of the bank guarantee amount since the failure to export was for no fault of the Petitioner. According to the Petitioner, the Respondent submitted falsely before the NCDRC that the Petitioner had failed to execute the export orders within the extended time of 31st May 1991.

5. The Petitioner refers to Writ Petition (Civil) No. 1941 of 1994 filed by him in respect of 3000 dresses meant for export to the USA in respect of which also 40% bank guarantee was forfeited. By an order dated 5th October 2006, the learned Single Judge of this Court held categorically that the AEPC was in error in not endorsing the shipping documents because of which the extension till 31st May 1991 was not granted to the Petitioner. Therefore, the Petitioner could not be penalized for it. It was held that once a policy was applicable to a particular individual and the benefits of such policy are wrongly denied, then such person cannot be made to suffer for no fault of his. It was held that the non-release of the quota by the Petitioner could be attributed to the non-grant of time extension to which the Petitioner was otherwise entitled.

6. The precise prayer, therefore, in the present writ petition stems from the aforementioned claim which in para 10 has been split up as Rs. 22,820.75/- towards the refund of EMD, Rs. 1,80,092.72 towards interest at 24% thereon; Rs. 15,810/- towards refund of balance EMD and Rs. 46,367.13 towards interest at 24% thereon till 15th May 1994. In addition the Petitioner had claimed Rs. 94,762.52 regarding refund of EMD for surrender of quota and a further sum of Rs. 2,11,652.52 towards interest thereon. The Petitioner thereafter claims the refund towards loss against invoice No. 698 which might be ex parte and has computed it in US $ to be Rs. 16,64,000/-. He has claimed a duty drawback at 8% on the said amount as well as 30% exim scrip on the invoice value, 30% premium value thereon to be Rs. 1,49,760/-. It also claimed compensation on the basis of the aggregate gross benefits.

7. The Petitioner places reliance on the decisions in Old Village Industries Ltd. Vs. Union of India and others, ; Gajanan Visheshwar Birjur Vs. Union of India (UOI) and Others, and Union of India v. Metal Distributors Ltd. 1993 (45) ECR 343 (Bom).

8. The learned Counsel for the Respondent No. 2 AEPC points out that the present claim is not maintainable in a petition under Article 226 of the Constitution. He refers to the decision of the Supreme Court in Union of India and Others Vs. M/s. Orient Enterprises and Another, wherein it was held by the Supreme Court that in view of the law laid down in the earlier decision in

Suganmal Vs. State of Madhya Pradesh and Others, such a petition under Article 226 for payment of a claim of money with interest was not maintainable.

9. This Court finds that in a similar petition and arising out similar facts in relation to the export of 3000 dresses to the US, the Petitioner''s Writ Petition (Civil) No. 1941 of 1994 was allowed directing the Respondents to release the forfeited bank guarantee amount together with interest at 12%. That order was not appealed against and attained finality.

10. The stand of the Respondents as regards the present claim cannot be any different. As already held by a learned Single Judge of this Court in the said decision, the non-utilisation of the quota in the present case is attributable to the failure of the AEPC to inform its office in Madras of the submission of the bank guarantee by the Petitioner for extension of the time for making the export. The Petitioner cannot be made to suffer for the fault of the AEPC.

11. The Petitioner has pointed out that the APEC had issued an instruction to the Indian Bank dated 15th December 1994 that the Petitioner had made a payment of Rs. 1,25,039/- plus Rs. 4,62,678/- as penalty and therefore the bank guarantee executed to that extent should be discharged. The petitioner points out that as a result, Rs. 1,25,039/- was already refunded to it pursuant to the order passed by this Court on 5th October 2006. Consequently a sum of Rs. 46,627/- is therefore still payable to him and forms part of the claim in the present case. In the amended writ petition, the Petitioner does seem to have made a claim for this amount of EMD. There is no satisfactory reply by the Respondents to this part of the claim.

12. As regards the other sums of EMD which are claimed by the Petitioner, they pertain to transactions that took place in 1989 long before the writ petition was filed. There is a claim of Rs. 22,820.75 for a transaction of 1st January 1985, a claim of Rs. 15,810/- for which the Petitioner claims to have submitted proof of shipment dated 21st August 1989, claims of Rs. 34,737/- and Rs. 60,025/- for which the Petitioner claims to have surrendered his quota by letter dated 20th September 1989. These are of course disputed by the counsel for the Respondents. This Court finds that apart from the claims being belated, the entitlement of the Petitioner to such claims is a disputed question of fact which cannot possibly be examined in the present writ petition.

13. The Petitioner''s claim for damages and compensation is also vague. The pleadings in this regard are inadequate. Such claim also cannot be examined in a petition under Article 226 of the Constitution. No case has been made out for entertaining the claim of the Petitioner for Rs. 5,000/- being the costs imposed upon him by the NCDRC.

14. The writ petition is accordingly disposed of by directing that the Petitioner will be refunded the balance of the forfeited EMD in the sum of Rs. 46,627/- together with interest at 12 per cent per annum from the date of such forfeiture till the date of payment within four weeks from today.

