(2004) 10 MAD CK 0144

In the Madras High Court

Case No : Writ Petition No''s. 12892 to 13894 of 2001

Romar Fashions	APPELLANT
Vs	
The Joint Director, Apparel Export Promotion Council, The Appellate Committee, The Second Appellate Committee, Ministry of Textiles, Exports HI Section and State Bank of India	RESPONDENT

Date of Decision : 18-10-2004

Acts Referred:

Citation : (2004) 10 MAD CK 0144

Hon'ble Judges : K. Raviraja Pandiah, J

Bench : Single Bench

Advocate : R. Sudhakar, for N. Ananth, for the Appellant; V.T. Gopalan, Addl. Solicitor General for S. Manikumar, SCGSC, K. Ramakrishnan Reddy, RR. l to 3 and K.S. Sundar, R4, for the Respondent

Final Decision : Allowed

Judgement

K. Raviraja Pandiah, J.—The writ petition in W.P. No. 13892 of 2001 is filed for the relief of issuance of a writ of Certiorarified mandamus to call for the records before the first Respondent ending with the order/letter dated 23.07.2001 and quash the same and direct the first Respondent not to enforce the bank guarantee No. 000801 dated 20.12.2000.

2. The writ petition in W.P. No. 13893 of 2001 is filed for the relief of issuance of a writ mandamus to direct the fourth Respondent not to pay any amount to the first Respondent pursuant to the letter the first Respondent pursuant to the letter of the first Respondent bearing No. ACPC/DG/PP/2001/1863 dated 23.07.2001.

3. The writ petition in W.P. No. 13894 of 2001 is filed for the relief of issuance of a writ of certiorari to call for the records of the third Respondent ending with the order No. 14/98 1 /2000-E-(III) 357 dated 22.06.2001 and quash the same.

4. Mr. Sudhakar Learned Counsel for the Petitioner submitted that the Petitioner

was an exporter of garments and knitwear. In terms of Export and Import policy, 1992-97, the Petitioner had a quota of their own past performance entitlement (in short, "PPE"). The total export obligation in respect of the categories of export was 6,17,140 pieces. The obligation had to be performed by the Petitioner on or before 30.09.1996. A quantity of 5,08,528 was exported by the Petitioner with the time granted. For the remaining quantity, the export obligation period was validated by the Respondent upto 31.12.1996. Within that period, 72,139 pieces were exported well in advance. The remaining quantity of goods were dispatched to the Customs House on 31.12.1996. Shipping bills were made in Bill Nos. 17971 and 17973. the Customs Authorities endorsed the bill to the effect that "Value checked- pass for shipment after examination ". But in view of unprecedented reach of cargo, the goods could not be shipped, as the Customs Authority closed the office at midnight of 31.12.1996. On representation by exporters like the Petitioner, the Customs Authorities sought for clarification from the Apparel Export Promotion Council, but of no avail. The Respondent consideration the non-exportation of the goods on or before 31.12.1996 as violation of export obligation and sought to invoke the bank guarantee furnished by the Petitioner. He further contended that the Petitioner exported the goods and brought back that foreign exchange on 06.03.1997 and 20.03.1997. He contended that in the above said circumstances, there was substantial compliance of the export obligation. The invocation of bank guarantee of the Respondent is not justified.

5, Mr. V.T. Gopalan, learned Additional Solicitor General contended that what ever may be the reason, the fact remains the goods are not exported on or before 31.12.1996 and as such the Petitioner cannot had to say anything about the invocation of bank guaranteed.

6. Heard Learned Counsel on either side.

7. Having regard to the fact that the goods were entered into the Customs House and Shipping bill was also endorsed by the Customs Authorities and the fact that due to unprecedented rush of cargo, the customs authorities had not issued let export permission was also impliedly accepted by the Customs Authorities and in the light of the further fact that the foreign exchange in respect of the goods had been reverted back to our country, 1 am of the view that the technical objection that the goods had not been exported before 31.12.1996 would not stand to reason and the Petitioner is entitled to succeed in this writ petition.

8. For the reasons stated above the writ Petitioner in W.P. No. 13892 of 2001 is allowed and the rule is made absolute. W.P. Nos. 13893 and 13894 of 2001.

9. In the light of order passed in W.P. No. 13892 of 2001, these writ petitions are disposed of accordingly.

However, there is not order as to costs.

