
(1993) 03 NCDRC CK 0061

In the National Consumer Disputes Redressal Commission

SAWHNEY EXPORT HOUSE

APPELLANT

Vs

Apparel Export Promotion Council

RESPONDENT

Date of Decision : 19-03-1993

Acts Referred:

Citation : 1993 2 CPJ 748

Hon'ble Judges : R.N.Mittal , S.Brar , A.N.Saxena J.

Final Decision : Appeal partly allowed

Judgement

1. BRIEFLY the facts are that the complainant is carrying on the business as exporter of readymade garments. The opposite party has been sponsored by Ministry of Commerce, Government of India and constituted for issuing quota certificates and export certificates etc. to the exporters of garments etc. It regulates the distribution of all types of export quotas, allocates quotas and grants permission for export of different types of garments to the exporters against 5% Bank Guarantee/Bank drafts called earnest money deposit (EMD) as a guarantee for utilization of full quantity of quota allotted. In case the exporter utilizes the full quota, he is entitled to refund of the EMD.

2. IT is averred that the complainant had been depositing 5% EMD by Bank Draft for the utilization of full quantity of export quota allotted to them. The opposite party was bound to release the earnest money deposit on receipt of the proof of shipment of the goods. They, after utilizing the quota, it is alleged, furnished proof of shipment of the goods, to the opposite party. However, they failed to release EMD to them. Even according to the trial balance summary of the balance sheet of the opposite party for the year ending 31st March"86, an amount of Rs. 1,28,280.07 is due to the complainant on that account from them. Consequently, they have prayed that the respondent be directed to refund the EMD amount of Rupees 1,28,280.07 with interest @ 24% p.a. with quarterly rests w.e.f. 1.1.85 to 1.5.92. IT is further prayed that the complainant be granted compensation @ 24.48%, which comes to Rs. 1,73,501/-. The amount of interest claimed is Rs. 5,80,469/-. Thus the total amount claimed by the

complainant comes to Rs. 8,82,250.07. The complaint has been contested by the opposite party. They have denied the claim of the complainant. A preliminary objection has been raised by them that the complainant is not a "consumer" as the work of the respondent does not fall within the definition of the word "service" as given in Section 2(1)(o) of the Consumer Protection Act (hereinafter referred to as the Act). It is not necessary to reproduce the pleas on merits taken by the opposite party as the only preliminary question on which the arguments were addressed is that the complainant is not a "consumer" and is not entitled to file the complaint.

The complainant has vehemently argued that at the time of allotment of the quota by the opposite party a minimum of Rs. 20/- upto one thousand pieces are taken as service charges from the exporters. The said charges are for registration of the contract. They are further required to deposit 5% by Bank drafts a security for utilization of full quantity of quota allotted to them. The said amount is liable to be forfeited in case they fail to export the allotted quota.

3. ON the other hand the learned Counsel for the respondent has submitted that the Central Government with the intention to facilitate the grant of licenses has constituted various bodies like the respondent and has assigned them the duty of issuance of quota on taking earnest money deposit as a guarantee money for due performance on the terms and conditions on which quota is issued. The EMD is deposited with the opposite party as per Export Control Order, 1977, which is a part of the statute. Thus the opposite party is discharging statutory duty vested in it for issuance of quota as per government policy and it cannot be said that it is rendering any service. We have duly considered the arguments of the learned Counsel. However, we agree with the submission of the complainant. The word "service" has been defined in Section 2(1)(o) of the Act as follows : "Service" means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service."

4. FROM a reading of the definition it is clear that it is not an exhaustive definition but an illustrative one. According to the definition, "service" means service of any description, which is made available to potential users. It is very wide definition and includes service rendered by various departments of the Government. FROM the illustrations given in the definition, it is further clear that the persons, who are discharging statutory duties are also covered by the definition. The exports of the goods is made under Import Export Regulation Act, 1947. In order to facilitate its work the Government has constituted various Councils, which discharge the duties of the Government. The opposite party is one of such Councils. It allots quotas to the exporters in prescribed manner and for doing that duty it charges some amount from the exporters as remuneration.

The amount so charged has not been shown to be a fee under the provisions of any enactment. The work done by the opposite party, therefore, falls within the definition of word "service. Thus the complainant has hired the service of the opposite party for consideration. Consequently we are of the opinion that the complainant is a "consumer" as defined u/Sec. 2(1)(d) of the Act and is entitled to file the complaint. This preliminary objection of the respondent is, therefore, overruled. Appeal partly allowed.