(1994) 05 NCDRC CK 0014

In the National Consumer Disputes Redressal Commission

SAWHNEY EXPORT HOUSE PVT. LTD. APPELLANT

Vs

UNION OF INDIA RESPONDENT

Date of Decision : 03-05-1994

Acts Referred:

Citation : 1994 0 NCDRC 183 : 1994 2 CPJ 12 : 1994 2 CPR 232

Hon'ble Judges : V.BALAKRISHNA ERADI , Y.KRISHAN , B.S.YADAV J.

Advocate : T.S.SAWHNEY , MOHINDER SINGH

Judgement

1. AS the facts of the case and the nature of the complaint in this case are covered by the orders of this Commission in O.P. No.81//1992, M/s. Prem G''s International v. Union of India and the Apparel Export Promotion Council (AEPC) and O.P. No. 86/1992 M/s. Sawhney Brothers v. Union of India and Apparel Export Promotion Council (AEPC) passed on the 21st October, 1993, it would be sufficient to notice the facts very briefly.

2. THE Complainant has two complaints: (a) Non-refund of the EMD (Earnest Money Deposit) (b) Loss on account of aborted exports of Rayon blouses to U.S.A. (a) Refund of Earnest Money Deposit (EMD). According to the Complainant, the Complainant is an exporter of garments who could obtain quota allotment certificates for export on payment of Earnest Money in the form of a Bank draft or bank guarantee to the extent of 5 per cent of the export quota. According to the Complainant, the opposite party, AEPC has failed to refund the earnest money deposit due to it under the rules from 1985 to 1992. (b) Export of Ladies Rayon blouses to U.S.A The Complainant had obtained quota allotment certificate and exported to U.S.A. 5376 Rayon ladies blouses in August, 1991. However, after the consignment reached USA, it could not be delivered as the USA customs placed an embargo on the import of certain Rayon blouses with effect from 11th October, 1991. No help was rendered by the Ministry of Commerce, Government of India and the AEPC in effecting customs clearance and for delivery of the consignment in the USA. The goods are still said to be lying at the US port since 11th October, 1991 and incurring demurrages. The

Complainant has claimed reliefs against the opposite parties as below: (i) Refund of EMD Rs. 53,063.00 (ii) Interest @24% with quarterly rest w.e.f. 1-1-1985 to 30-4-1992 Rs. 2,40,070.00 (iii) Refund of EMD relating to OTS Rs. 14,050.00 (iv) Interest @24% with quarterly rest w.e.f. 1-7-88 to 30-4-92 Rs. 20,286.00 (v) Cost of Rayon blouses US$ 865,736 converted @Rs. 32/-per dollar at market rate Rs. 11,75,552.00 (vi) Difference in currency at the time of reversing the purchased documents because of refusal of documents by the importer Rs. 10,445,00 (vii) Interest @ 24% on Rs. 11,85,997/-w.e.f. 20-9-91 to 30-4-92 with quarterly rest after 20 days transit period Rs. 1,90,088.00 Total Rs. 17,04,154.00 (viii) Compensation on Rs. 17,04,154.00 @23.14% based on aggregate GP during the year 1985 to 1991-92 Rs. 3,94,341.00 Grand Total Rs. 20,98,495.00 It would be seen from the reliefs claimed that there are three components of these reliefs : (i) Amount of EMD not refunded and interest thereon; (ii) non-reimbursement of loans on aborted export of Rayon blouses to USA and interest thereon; (iii) compensation of Rs. 17.40 lakhs due on the amounts claimed on the above two counts.

2. As already mentioned above, this case is fully covered by the orders of this Commission passed in O.P. No. 81/92 and O.P. No. 86/92. Earnest or earnest money is a nominal sum of money given by a party in a contract as a token that parties are bound or in earnest about the bargain. We had, therefore, observed in our order of 21st October, 1993 "earnest money deposit/bank guarantee is not a consideration for any service to be rendered but is intended for ensuring fulfilment of the obligation of licences and quota holders for exports",. It is, therefore, not in the nature of a price or consideration for sale of goods or rendering of service by the Opposite Party. Consequently, the complaint, in relation to the non refund of EMD is not maintainable before the Consumer Forum under the Consumer Protection Act.

3. IN must also be noticed that in his com-'' plaint the Complainant has alleged that the trial balance summary of the balance sheet of the Opposite Party, AEPC for the year ending 31-3-1986 shows a credit balance in the name of the complainant for Rs. 53.063. The Complainant has, therefore, argued that since the Complainant has-been showing the amount of EMD to the credit of the Complainant in its yearly balance sheet from year to year, this amounts to acknowledgement of the credit due to the Complainant from the Opposite Party.

4. AS already observed in our order of 21st October, 1993, the suspense account showing credit of EMD in favour of the Complainant in the books of accounts of the Opposite Party i only an accounting device for exercising control over EMD and does not constitute an acknowledgment that the amount is due and payable to the complainant. As regards the amount claimed from the Opposite Parties on account of aborted exports the observations made in our order of 21s October, 1993 are attracted. It was observed in that order that "consignment could not be cleared in USA because of the embargo on import of this commodity placed by the US customs in October, 1991. This consignment could not be cleared in the

subsequent year because of the absence of bilateral agreement between India and the USA'',. This Commission had, therefore, held that the Complainant could not maintain a claim against the Opposite Party, for the complainant''s failure to export Rayon blouses due to the embargo placed by the US customs. The same observations apply in this case. This claim is, therefore, not maintainable under the Consumer Protection Act.

5. IN their written statement in reply to the complaint the respondents have pointed out that the Complainant had filed an appeal before the Textile Commissioner and the appeal was dismissed on merits. The second appeal was also dismissed likewise. Thereafter, he approached the Consumer Forum. The Consumer Forum cannot sit in judgment over the orders of the Departmental Appellate Authorities.

6. IT is not necessary to refer to or notice the other submissions in the written statement of the respondents. The claims made by the Complainant are not maintainable under the Consumer Protection Act. There is no doubt that he has abused the provisions of the Act by filing the complaint which is not at all maintainable and which is devoid of substance and have also been already adjudicated upon. The complaint is dismissed. The Complainant will pay a sum of Rs. 3,000 as costs to the Opposite Party No. 2.