

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision: 7th February, 2008

versus

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MS. JUSTICE REVA KHETRAPAL

- JUDGMENT**
07.02.2008

1. This appeal is directed against the order dated 03.09.2007 passed by the learned Single Judge dismissing the writ petition filed by the appellant challenging the legality of the concurrent findings of fact and orders passed by the Apparel Export Promotion Council; the Appellate Textile Commissioner and the Second Appellate Committee constituted to decide grievances by the Central Government, Ministry of Textiles.
2. The appellant herein was allocated a quota in terms of the Garment Export

Policy prevalent in 1997. At the relevant time, garment exports were entitled to benefits/schemes such as Past Performance Entitlement, Past Performance Transfer, First Come First Served, Non-Quota Entitlement and New Investment Entitlement, etc. The aforesaid schemes which were made available by the Central Government enabled exporters to obtain a number of concessions/quota. In terms of such schemes, if an exporter completed his obligations before 30th of September of the concerned calendar year, he was unconditionally eligible to benefits without submission of legal undertakings or bank guarantees. In the present case, the appellant was allotted quota under country/category during the year 1997 and because of short shipment, the competent authority forfeited an amount of Rs.3,54,130/- by issuing an order on 10.07.1998. Against the aforesaid order dated 10.07.1998, the appellant preferred an appeal before the Textile Commissioner, who dismissed the appeal under order dated 31.08.2001.

3. Being aggrieved by the said order, further appeal was taken to the Second Appellate Tribunal, which was again dismissed by order dated 28th October, 2003. Against the said order, a writ petition was filed which was also accordingly dismissed as stated hereinbefore and hence the present appeal, on which we have heard the learned counsel appearing for the parties and have also gone through the records. There is a concurrent finding of facts of the three authorities, namely, the primary authority as also the first appellate authority and the second appellate authority, that the appellant could not manufacture the garments and export the same and the same could not be processed within the stipulated time. The defence that was taken by the appellant for explaining his problem in not making supply within time was that there were unforeseen factors, namely, labour problems at the processor's unit and subsequently at his own unit and, therefore, there was delay in

obtaining fabrics and manufacturing which in turn resulted in short utilisation of the quota.

4. The aforesaid three authorities on appreciation of the records available before them held that the aforesaid defence of unforeseen factors, namely, labour problems at the processor's unit is not a valid defence and cannot be used as a shield of defence because no such documentary evidence was produced before the primary authority as also before the first appellate authority. Such certificates as are being relied upon subsequently appear to have been produced for the first time before the second appellate authority. The said documents also indicate that the processor's unit was allegedly closed from 18.09.1977 and that even thereafter, the appellant got the said revalidation done on 01.10.1997.

5. Another defence that was sought to be raised was that even the appellant's unit was closed from 17.11.1997 to 23.12.1997. It is not clear from the records as to whether the documents pertaining thereto were even placed before the second appellate authority. Be that as it may, the said documents were also taken notice by the learned Single Judge and on appreciation thereof he has held that the said documents would not be relevant because even if there was some problem in the unit of the appellant, he could have got the said garments processed and made in some other unit, if he was interested in doing so.

6. There are thus concurrent findings of fact and this Court sitting on the appellate side should not and would not reappreciate the evidence and the concurrent findings of facts arrived at. There is apparently a default on the part of the appellant to meet the requirement and the stipulation in terms of the obligations cast on him under the Garment Export Entitlement Policy, which he could not met. Revalidation of quota was sought for even after the period during

which it was stated that the processor's unit was closed for labour unrest. The strike of the unit of the processor occurred on 18.09.1997 whereas the revalidation was done on 01.10.1997, knowing fully well the implications and obligations thereof. From 01.10.1997, there was total non-action on the part of the appellant, although on record a document is placed to show that there was some labour problem in the appellant's unit also from 17.11.1997 to 23.12.1997.

7. Considering the facts and circumstances of the case, we find no infirmity in the order passed by the learned Single Judge. The appeal has no merits and is dismissed. CM Nos.144-45/2008 also stand dismissed.

CHIEF JUSTICE

REVA KHETRAPAL, J

FEBRUARY 07, 2008
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