

7

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

DECIDED ON: 30.03.2009

+

W.P. (C) 18118/2005

MYSORE COFFEE CURING WORKS LTD Petitioner
Through: Ms. Maneesha Dhir, Advocate.

versus

MINISTRY OF COMMERCE & ORS. Respondents
Through: Mr. S.K. Dubey with
Mr. Deepak Kumar, Advocate.
Mr. VSR Krishna, Advocate for Resp-2.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

S.RAVINDRA BHAT, J. (OPEN COURT)

% Heard the counsel for the parties.

2. The writ petitioner seeks a direction to the respondents to reimburse the differential curing charges of Rs.200 Lakhs as recommended by the Coffee Board i.e. the second respondent.

3. The petitioner company is a coffee grower; it also engages itself in coffee curing and manufacturing. It refers to an official delegation of the

Ministry of Commerce who visited the several coffee growing countries and recommended modernization of coffee curing process. It is claimed that pursuant to such requirement spelt out by the Coffee Board, the petitioner company imported machinery to modernize its activities. The petitioner relies on a letter dated 9.9.1988, written by the Coffee Board to the Ministry of Commerce stating that plant and machinery had been imported in 1987 from M/s. Bchier Brothers Ltd., Switzerland. The letter also describes the items and machinery imported and installed by the petitioner. It further states as follows: -

“The advantage of installing modern curing machinery at the curing works are as follows: -

- 1. The overall quality of different typed and grades of coffee could be improved, thereby increasing the quantity of exportable quality coffee.*
- 2. The pace of curing could be enhanced with less power consumption. Thus, cured coffees could be made available for export on time.*

M/s. Mysore Coffee Curing Works have now stated that the curing remuneration paid to them is insufficient to pay the interest on borrowings as the modernization project had been implemented by them at a cost of about Rs.300 lakhs. In view of this, they have requested the Coffee board to recommend their case for reimbursement of Customs duty paid by them, and an incentive for modernization.

The total amount of Customs duty paid by M/s. Mysore Coffee Curing Works at Customs House, Madras is Rs.39,70.615. The relevant copies of Bill of Entry are enclosed. We request you to consider the case of M/s. Mysore Coffee Curing Works favourably and recommended the same to the Ministry of Finance (Department of Revenue) for reimbursement of Customs duty.”

4. It submitted that the respondent – Central Government called the

petitioner for discussion sometime in November, 1988 vis-à-vis the question of reimbursement of Customs duty. The petitioner further adverts to several letters written between the period 1990 and 2000 on the subject. It states that on 30.11.2000 the Additional Secretary, Ministry of Commerce, indicated that the matter was still under consideration by the authorities. The said letter reads as follows: -

"DO No: 11/21/2000-Plant (B) November 30, 2000

Dear Shri Rao,

I have received the papers you had addressed to Hon'ble Minister for Commerce & Industry, representing to revive the sick modernized coffee curing unit.

2. In this connection, I would request you to make it convenient to visit Delhi on a date convenient to you after fixing up prior appointment with me. Let me see how best we can help you in regard to your long pending problem in the Ministry.

With regards,

Yours sincerely

*Sd/-
L.V. SAPTHARISHI*

5. In the circumstances, it is submitted that on 3.1.2001, the Coffee Board again recommended to the Ministry of Commerce for refund of import duty, to the petitioner. The said letter is in the following terms: -

"In the year 1989, the Board recommended the refund of the Import Duty of Rs.39.22 lakhs vide letter dated 7.11.1989. (A copy of this letter is enclosed for ready reference). The recommendations and appeals of M/s. MCCW, Chikmagalur are yet to be considered by the

Ministry of Commerce.

M/s. MCCW, Chikmagalur are not able to get the refund of Import Duty or payment of differential curing charges. This unit has become sick and a case is registered under case No.192/2000 in BIFR and have submitted a revival package.

In the Revival Package submitted to BIFR, they have requested for the release of Rs.200 lakhs as grant from Coffee Board. The copy of the Scheme for Revival submitted to Banks and BIFR is enclosed here with.

In view of the above, we request you to consider the case of M/s. Mysore Coffee Curing Works, Chikmagalur favourably and release the grant as an incentive for 100% Modernisation and also to run the unit with available reliefs and concessions applicable to sick units under BIFR revival package."

6. The petitioner contends that modernization unit was set up due to the mandate of the Central Government and that this imposed a huge financial burden, upon it. It also contends that pendency of its request for refund is on the basis of its understanding that the respondent would consider the request and ensure that the amounts are reimbursed. The petitioner refers to valuable foreign exchange earned and states that it exported 50,000 tonnes of coffee and earned foreign exchange in excess of Rs.500/- Crores. The petitioner relies upon the doctrine of legitimate expectations and contends that having induced it into spending money the respondents cannot now deny the refund.

7. The respondents in their return deny the claim. The Coffee Board states that neither it nor the Ministry of Commerce held out any assurance that there would be differential curing charges. It is claimed that after the

delegation visited several countries, the Coffee Board on the recommendations of the curers' delegation, which included the petitioner, advised all curers to take up the modernization and enhancement of quality to make the products competitive in the global market. The Board also extended its assistance to the coffee curing units to get import license and also participated and assisted in matters to speed up commissioning of such Units. In these circumstances, the petitioner was one of the pool agents and imported machinery from Switzerland and USA in 1987-88. It is claimed that according to the pool agency agreement arrived at between the pool agents and Coffee Board, the agent received the remuneration from the Board. The pool agent is required to collect, store and cure the coffee till its disposal as per directions of the Board. The Board refutes all allegations of having committed to pay differential cost of curing charges or that any amounts are payable. The Board does not deny having written to the Ministry of Commerce to consider the petitioner's request for reimbursement of import duty. However, it disclaims any liability on that score.

8. The above discussion would reveal that the machinery was imported in the late nineteen eighties. The writ petitioner correctly alludes to correspondence with the Coffee Board, spanning a long period of time. Yet, substantial aspects have not been revealed to the Court. These are the "how" and "why" of the claim – whether the petitioner's demand for refund of duty is rooted in law, or based on an exemption notification or a general "gentleman's agreement". That the imported machinery were to suffer

customs duty is undeniable; there are only few channels of claiming refund or saying duty is not payable. None of these are pleaded or urged.

9. Legitimate expectation, a principle relied on in support of the petitioner's claim, is undoubtedly a fact of fairness, to be considered by a decision maker. Yet, it is neither a "key which unlocks the treasury of natural justice and it ought not to unlock the gate that shuts the Court out of review on merits", nor a principle which enables introduction of legitimate state action, based on Court's venture into a "featureless sea of pragmatism" (Ref. Attorney General for *NSW v. Quin* 1990 (64) Aust LJ 327). The petitioner's claim based only on a vague notion of its right to refund, at best is a hope, or "expectation" not an enforceable right.

10. For the above reasons, the Writ Petition fails; it is accordingly dismissed.

**S. RAVINDRA BHAT
(JUDGE)**

MARCH 30, 2009
/vd/