

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

% Date of decision: 18.11.2010

+ WP (C) No.7011/2008

M/S HINDUSTAN TIN WORKS LTD. ...PETITIONER

Through: Mr.Harish Malhotra, Sr. Adv.
with
Mr.Tanuj Khurana, Advocate

Versus

M/S HIMALAYA INTERNATIONAL LTD. ...RESPONDENT

Through: Mr.V.Shankara, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. | To be referred to Reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

SANJAY KISHAN KAUL, J. (Oral)

1. The petitioner lays a challenge to the impugned order dated 01.07.2008 of the MRTP Commission ('the Commission' for short) in terms whereof the petitioner has been held liable for special damages to be paid to the respondent.
2. The petitioner was supplying cans to the respondent for its export of Mushrooms. It has been found by the Commission

that the cans supplied during the relevant period were defective which resulted in the supply made by the respondent to its customers in USA being rejected. The respondent not only claimed that it was not liable to pay the price of cans to the petitioner, but also that the amount which would have been payable to it by its customers was naturally not paid and thus resulted in a loss.

3. It is the case of the respondent that the petitioner knew the purpose for which the cans were to be utilized and thus the respondent was entitled to special damages.
4. The impugned order dated 01.07.2008 is in two parts. The first part deals with the liability of the petitioner for the defective cans supplied to the respondent. The cans supplied by the petitioner to the respondent have been found to be defective. This portion of the order is detailed and is a reasoned one.
5. We heard learned counsel for the parties at length and after arguments, learned counsel for the petitioner gives up the plea based on this portion of the order.
6. The second part of the order deals with the consequences thereof and the extent of the liability. This is seriously disputed by the petitioner as according to the petitioner the respondent has failed to produce the evidence to either link the defective cans supplied by the petitioner to the respondent with the supplies made by the respondent to its customers in USA or prove the special damages. This

position is naturally repudiated by learned counsel for the respondent. The fact, however, remains that there is really no discussion of the evidence in this behalf and only para 15 of the impugned order of the Commission dated 01.07.2008 deals with this aspect. The said para 15 reads as under:

“ As far as the compensation claim by the applicant company is concerned, there was no evidence led or any cross-examination done of the applicant witness by the respondents with regard to the quantum of compensation claimed. In the circumstances, it is felt that the ends of justice would be met if the respondents are directed to reimburse the loss of Rs.3,49,75,290/- with simple interest @ 8% per annum from the date the concerned consignment was confiscated by the US authorities till the date of payment subject to deduction of any amount which the applicant company might have received from the insurer etc. in the meanwhile and it is order accordingly. There will be no order as to costs in the circumstances.”

7. We are thus of the considered view that a conclusion which forms basis for award of special damages cannot be devoid of discussion of the evidence in this behalf which will indicate the proof of the number of defective cans, the value of the product supplied in those cans, loss caused as a result thereof and whether the loss so ascertained has to be reduced by any transit damage amount.
8. It is agreed by learned counsel for the parties that the matter be remanded on the limited aforesaid aspect of quantification of damages, if any, as a sequitor to the initial findings of the responsibility of the petitioner for the loss. It

is also agreed that no further evidence will be permitted to be filed by the parties and the decision would have to be based on the evidence on record.

9. Needless to say that learned counsels for the parties will be at liberty to advance all arguments in this behalf.
10. The consequence of aforesaid would be that the quantification of damages as awarded in para 15 aforesaid of the impugned order is set aside and the matter is remanded back for fresh adjudication on that aspect.
11. We are informed that the matters of the Commission stand transferred to the Competition Appellate Tribunal which is functioning under the Competition Act, 2002 and thus the fresh adjudication would have to take place before the Competition Appellate Tribunal.
12. The parties are directed to appear before the Competition Appellate Tribunal on 21.12.2010.
13. The writ petition is accordingly stands disposed of with the aforesaid directions.
14. Dasti to learned counsel for the parties.

SANJAY KISHAN KAUL, J.

NOVEMBER 18, 2010
dm

VALMIKI J. MEHTA, J.