

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

% Judgment reserved on : 13.09.2013  
Judgment pronounced on : 18.09.2013

+ W.P.(C) 1407/2011  
SEASKY EXPORTS PVT.LTD. .... Petitioner  
Through: Mr. Ashok Mathur, Adv.

versus

UNION OF INDIA & ORS.  
..... Respondent  
Through: Ms. Sweety Manchanda, CGSC for  
R-1/UOI  
Mr. Savinder Singh and Mr Vishal,  
Adv. for R-2

**CORAM:**  
**HON'BLE MR. JUSTICE V.K. JAIN**

**V.K. JAIN, J.**

The Government of India, with a view to encourage exports firms, started a scheme termed as External Market Assistance and Internal Market Assistance Scheme which stipulated grant of subsidy to the exporters of specified products including diversified jute products. Vide communication dated 1.4.1991, the Government of India amended the definition of 'diversified jute products' for the purpose of extending benefits under such schemes to mean products containing two or more fibers in which jute remain the dominant fiber, provided that the percentage of jute contents in products containing jute and some other fibers shall not be more than 50% and in fact the products containing

three or more fibers including jute percentage of jute, by weight, it should be at least 34%. Vide communication dated 12.1.1995, the Government of India directed that only jute yarn, jute or jute blended union decorative fabrics and jute and jute blended garments would be eligible for EAM Assistance. Vide communication dated 27.3.1997, the Government of India decided that with effect from 1.4.1997 only seven products i.e. (i) jute or jute blended/ covered yarn, single and multiplied provided the weight of the yarn does not exceed 10,000 decitex (ii) jute or jute blended floor covering and matting (iii) jute or jute blended/ union decorative fabrics provided the FoB value is more than Rs.40,000 per M.T. (iv) jute wall hangings (v) jute handicrafts (vi) jute and jute blended garments and made-ups and (vii) carpet backing cloth would be eligible for EMA assistance. However, at no stage, the Government altered percentage of jute prescribed vide communication dated 1.4.1991.

2. The petitioner before this Court is an export house which has been exporting jute floorings and coverings to various countries and was duly registered under the EMA Scheme of Government of India. The petitioner submitted a claim amounting to Rs.4886894/- for grant of the said assistance in respect of jute/ wool durry exported between December, 2001 to July, 2004. The claim of the petitioner, however, was refused on the ground that the export documents did not indicate percentage of jute content in the products exported by it. Being aggrieved from refusal of the respondents to release the cash assistance in terms of the aforesaid scheme, the petitioner is before this Court seeking the following reliefs:

- A. Issue a writ of certiorari or any other appropriate writ, order or direction in the nature of certiorari quashing the letter no.JMDC/FIED-NE/2008 dated 19.2.2008 passed by respondent no.2;
- B. Issue a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus directing the respondents to consider the claim of the petitioner for External Market Assistance in accordance with law;
- C. Issue a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus directing the respondents to allow, the claim of the petitioner for External Market Assistance.
3. In their counter affidavit, the respondents have taken a preliminary objection that the writ petition suffers from delay and laches having been filed about seven years after the last export was carried out in July, 2004 and, therefore, is liable to be dismissed. On merits, it is stated in the counter affidavit that the products exported by the petitioner was multiple fiber product and it was necessary for the petitioner to disclose the percentage of jute content in the products so as to establish that the jute was the dominant fiber in the product. Since the said information was not disclosed, the claims were rejected.
4. This is petitioner's own case that the export, in respect of which assistance has been claimed by it, were made between December, 2001 to July, 2004. The claim for grant of External Market Assistance was submitted by the petitioner on 10.3.2004 to the Jute Manufacturing Development Council and was received by the said Council on the same

date. The petitioner had a cause of action to come to the Court after waiting for a reasonable period of say about 3-6 months for the assistance to be disbursed to it. Since neither any disbursement was made nor was any assurance given to the petitioner in this regard, it ought to have come to the Court soon thereafter and in any case within three years after expiry of six months from the submission of the claim. The petitioner, however, chose to wait for more than six years after submitting the claims. The petitioner, therefore, is clearly guilty of delay and laches in approaching the Court and, therefore, the writ petition is liable to be dismissed on this ground alone.

5. On merit also, I find that no case is made out by the petitioner for grant of EMA to it. As noted earlier, the assistance was available only if a multiple fiber product exported from India had at least 50% jute content unless it contained three or more fibers in which case the jute content by weight had to be at least 34% and more. Admittedly, the documents submitted by the petitioner, along with its claim did not disclose the jute content in the products exported by the petitioner. In the absence of disclosure of jute content in the products, it was not possible for the respondent to verify as to whether said product had the prescribed percentage of jute or not. Without such verification, no assistance in terms of the said Scheme could have been released to the petitioner. In fact, even the Federation of Indian Export Organization, vide its communication dated 25.6.2008, informed the petitioner that they were required to check and verify from the documents as to whether fiber content was more than 50% when the product had more than two fiber and more than 34% when the product had three and more fibers and on

verification of their documents, the fiber content of the products was found absent. That was the reason why the claim was rejected. In my view, considering that the assistance was available only to product having specified percentage of jute and documents submitted by the petitioner did not disclose the jute content, the respondents were fully justified in rejecting the claim.

6. The learned counsel for the petitioner contended that in terms of format revised with effect from 1.4.1997, they were required to declare the JTC (HCDCS) Code in the application form for claiming External Market Assistance and therefore it was not necessary to disclose the jute content while seeking such assistance. I, however, cannot agree with the learned counsel for the petitioner. Even if the Code of the product is given, the respondent cannot verify the jute content in the product unless requisite information in this regard is given to them. It is not as if the code itself contain the jute percentage of the product. Therefore, mere giving the code number would not enable the respondents to verify the jute percentage in the product exported by the petitioner and without verifying the said content, they cannot make payment in terms of the scheme notified by the Government. When this contention was raised, I requested the learned counsel for the petitioner to satisfy me that the HS Code itself discloses the percentage of jute in the carpet and other flooring covers, to which the said code number pertains. However, no such information is available from the product code. The learned counsel for the petitioner then referred to a Circular dated 10.1.2008 issued by the Government clarifying that carpet and floor covers could be classified as carpets or floor covers of the textile material (wool/ silk/MMF-etc) which

predominates by weight. This document, to my mind is of no help to the petitioner because unless the percentage of jute content is verified, no assistance can be granted to the exporter irrespective of the name given by the exporter to the product.

For the reasons stated hereinabove, I find no merit in the petition and the same is herein dismissed. There shall be no orders as to costs.

**V.K.JAIN, J**

**SEPTEMBER 18, 2013/*rd***

