IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2017

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.21001 of 2004
and
W.M.P.No 25284 of 2004
&
W.V.M.P.No.630 of 2006

Narmathaa Textiles Limited,
Rep. By its Managing Director,
No.1, 5th Street,
Dr.Radhakrishnan Salai,
Mylapore,
Chennai-600 004. ... Petitioner

Vs.

1.Ministry of Textiles,
2nd Appellate Committee,
Government of India,
Udyog Bhavan,
New Delhi- 110 011.

2.The Textile Commissioner,
Senior Officers Appellate Committee,
New C.G.O.Buildings,
No.48, New Marine Lines,
Mumbai-400 020.

3.The Cotton Textiles Export Promotion Council,
Engineering Center,
5th Floor,
No.9, Mathew Road,
Mumbai-400 004. ... Respondents

Prayer:
Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the entire records relating to the orders passed by the First respondent in order No.14/497/2004-Exports-III/1543 dated 23/03/2004 in confirming the order passed by the second respondent in order No.21(3181)2002/EP.I/96 dated 09/01/2004 in confirming the order passed by the third respondent in order No.Quote/GR/Compn/N-7(00)/10612 dated 14/08/2002 and quash the

same and directing the respondents to forbear from invoking the bank guarantee based on the orders by the respondents.

For Petitioner : Mr.PL.Narayanan

For Respondent : Mr.C.V.Ramachandramurthy
for R1 & R2.

No appearance for R3.

O R D E R

The petitioner filed the writ petition challenging the order, forfeiting the amount of rupees eleven lakhs for his export obligation . The petitioner company is an export oriented company and was allotted PPE quota under category No.218 fast to country USA during the year 2000. Because of the non -shipment of the Texprocil and non utilisation of the quota extended for shipment during the year 2000 , the original authority, on 14.08.2002 after issuing the show cause notice and considering the matter on merits, forfeited the amount of rupees eleven lakhs. As against the said order, the petitioner herein filed an appeal before the second respondent. The second respondent vide order dated 09.01.2004, rejected the appeal. As against the Appellate authority order, the petitioner preferred further appeal before the first respondent. The first respondent confirmed the orders of the original authority as well as the appellate authority on 23.03.2004, against which, the writ petition has been filed.

3.The learned counsel for the respondent submitted that the matter is covered by the decision of the Division Bench of this court made in W.P.No.21916 of 2005 dated 09.08.2016 in the case of M/s.Niyaz Apparels Rep by its Proprietrix Mrs.Fatima Haris Vs. The Union of India, Rep. By Secretary, Ministry of Textiles and other, the relevant portion which is extracted here under.

> 3.The learned counsel appearing for the respondents pointed out that some what a similar issue was considered by the Hon'ble Division Bench of this Court in M/s.Samy Products and others v. Inspector of Factories, Tiruppur and others in W.A.Nos.3 to 22 of 1999 and the Hon'ble Division Bench pointed out that the nature of transaction between the appellants therein and the Apparel Export Promotion Council are commercial transactions and the appellants with their open eyes entered into the same and hence, if one of the parties

do not honour the commitment and an action is taken against them, then the same cannot be treated as punishment. Though the issue that arose for consideration in the said batch of cases was slightly different, yet the legal principle which was laid down by the Hon'ble Division Bench was that the nature of transaction between the petitioner and the second respondent is a commercial transaction.

4.The learned counsel for the respondent also submitted that there are several decisions of this Court, wherein similar transactions were considered to be commercial transactions and relief was declined.

5.That apart, the petitioner seeks for a monetary claim by way of writ petition, that too against the second respondent which is an independent body.

6. In view of the above stated position, no relief can be granted to the petitioner and consequently, the writ petition stands dismissed. No costs.

4.The learned counsel further relied on the order of this court dated 29/04/2003 made in W.P.No.6791 of 2002 in the case of M/s.Leena Enterprises, rep. by its Authorised Signatory and others Vs. The chairman, Second Appellate Committee, Ministry of Textile and others. The relevant portion of the said order is extracted here under.

7.A Division Bench of this Court in M/s.SAMY PRODUCTS REP.BY ITS AUTHORISED SIGNATORY P.BALASUBRAMANIAN Vs. THE INSPECTOR OF FACTORIES, OFFICE OF THE INSPECTOR OF FACTORIES, TIRUPPUR & OTHERS in W.A.Nos.3 to 22 of 1999 (order dated 19.6.2000), held that the forfeiture of bank guarantee for non fulfilment of the export obligation cannot be considered as a punishment at all. The forfeiture of amount, by invoking bank guarantee of the respective petitioners, is a simple transaction, which is of commercial nature and the petitioners had, with their open eyes, entered into such commercial transactions and they were well aware of what would happen for their bank guarantee, if they fail to honour their commitments by non fulfilling their export obligations. <u>Therefore, once such power of the respondents to forfeit the bank guarantee is held to be valid and</u>

cannot be interfered with, as the same falls within the powers and jurisdiction of the respondent, I do not find any force to appreciate the contention of the petitioners that the direction to send the amount forfeited to the Consolidated Fund is illegal, as the same is only consequential and flows from the powers conferred under Sections 3 and 4 of the Import and Export Control Act, 1947, and such power is traceable in Clause 128 of the Garment Export Entitlement Policy 2000-2004, agreed by the petitioners.

8.The further contention advanced by the learned senior counsel for the petitioners that the forfeiture of amount by invoking bank guarantee vitiates, inasmuch as it provides for a direction to send the amount forfeited to the Consolidated Fund, which lacks the legislative competency, in my considered opinion, is not tenable, as the same is nothing but a consequence of the forfeiture which is agreed between the parties and it is for the respondents to divert the funds forfeited statutorily and the petitioners have no locus standi to challenge the same.

9. In any event, it may not be proper for this Court to interfere with the powers and authority of the respondents to forfeit the amount by invoking bank guarantee, particularly, when the petitiioners fail to honour the export obligation specifically agreed under the policy, by invoking Article 226 of the Constitution of India, which would otherwise affect the very economy of the country.

Finding no merit, these writ petitions are dismissed.No costs.Consequently.W.M.P.Nos.8746, 8751 and 67679 of 2002 are also dismissed.

(Emphasis Supplied)

5. In view of the above, I do not find any fault to interfere with the order passed by the first respondent. Accordingly the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To

1. Ministry of Textiles,
   2nd Appellate Committee,
   Government of India,
   Udyog Bhavan,
   New Delhi- 110 011.

2. The Textile Commissioner,
   Senior Officers Appellate Committee,
   New C.G.O.Buildings,
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3. The Cotton Textiles Export Promotion Council,
   Engineering Center,
   5th Floor,
   No.9, Mathew Road,
   Mumbai-400 004.

+1cc to Mr.C.V.Ramachandramurthy, Advocate in sr.no59356

W.P.No.21001 of 2004
and
W.P.M.P.No 25284 of 2004
&
W.V.M.P.No.630 of 2006

LRS(CO)
NR 11/09/2017