

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

W.P.NO.12972 OF 2003

M/s.Deer Cee Exports
Rep. By its Partner Smt. V.Kamakshi
No.9-11, Stanes Road, 1st Street,
Tirupur - 641 602. Petitioner

Vs.

- 1.The Second Appellate Committee
Government of India
Ministry of Textiles
(Exports - III Section)
Udyog Bhavan,
New Delhi.
- 2.The First Appellate Committee
Office of the Textile Commissioner
New CGO Buildings,
48 New Marine Lanes,
Mumbai - 400 020.
- 3.Apparel Export Promotion Council
(Sponsored by Government of India
Ministry of Textiles)
No.1, 3rd Street, Indira Nagar,
(Opp. Avinashi Road)
Tirupur - 641 603. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India by with a prayer to issue a Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the 1st respondent in Order No.14/733/02/E/111/146 dated 14.12.2002 and quash the same as illegal, unsustainable and further direct the 1st respondent to consider the claim relating to the category EU/4, treat the shipment of 6890 pecs under FCFS Quota with appropriate relief.

For Petitioner : Mr.K.Jayachandran
For Respondents 1&2: Mr.K.Srinivasamurthy
Central Government Counsel

O R D E R

The petitioner is a Government recognised Export House and they export apparels / knitted garments to various quota countries. Under the Garment Export Entitlement Policy (GEEP) of the Ministry of Textiles, an exporter has to apply for allotment of quota on First Come First Served (FCFS) basis for exporting garments to countries, for which the Ministry has fixed quota.

2. In the year 2000, the petitioner applied for FCFS quota and submitted Bank Guarantee for Rs.40 Lakhs, being Earnest Money Deposit, to the Apparel Export Promotion Council, Tiruppur. The petitioner was allotted three FCFS Certificates on 13.01.2000 under Category: EU/4 and one FCFS certificate on 17.04.2000 under Category: EU/7.

3. The expression EU means European Union. The Government has assigned members to various countries in the European Union and that is why, the certificates are referred to as "EU/4" and "EU/7" etc.

4. As regards the three EU/4 certificates issued by the Government, the petitioner should have completed the exports before 15.04.2000. As regards EU/7 certificate, he should have completed the exports before 10.07.2000.

5. While so, the petitioner was not able to export the goods covered by the three EU/4 certificates before 15.04.2000. Therefore, the petitioner made a representation dated 15.04.2000 to the Textile Commissioner, Mumbai, for extension of time for completing the export. However, according to the petitioner, he exported the goods on 19.04.2000 under EU/4 category. This export was not made under the FCFS quota as the quota had expired on 15.04.2000 and instead the petitioner had exported it under Past Performance Entitlement (PPE) quota. As regards the certificates covered under EU/7, the petitioner had exported the goods on 14.07.2000.

6. In short, the petitioner had exported the goods in both the cases after the period stipulated in the quota certificates. On account of that, the third respondent invoked the Bank Guarantee and forfeited a total sum of Rs.6,67,266/- by order dated 20.08.2001.

7. Challenging the said order, the petitioner filed an

appeal before the Appellate Committee, Ministry of Textiles, Government of India, New Delhi, which was dismissed on 22.05.2002.

8. Aggrieved by the same, the petitioner filed a Second Appeal to the Member-Secretary, Government of India, Ministry of Textiles and an order dated 14.12.2002, has been passed, partly in favour of the petitioner.

9. The petitioner is said to have filed a review petition dated 28.02.2003 before the Second Appellate Committee and the same is said to be pending till date.

10. Mr.K.Jayachandran, learned counsel for the petitioner submitted that as regards the export under EU/4, the Textile Commissioner had not passed any orders on his representation dated 15.04.2000 and therefore, the petitioner was forced to make the exports under the PPE quota on 19.04.2000. Therefore, the authorities ought not to have invoked the Bank Guarantee and forfeited Rs.6,67,266/-.

11. The learned counsel for the petitioner placed strong reliance on the following paragraphs in the Garment Export Entitlement Policy (2000 - 2004) :

" VALIDITY PERIOD FOR EXPORT CERTIFICATION ON SHIPPING DOCUMENTS

(i)
(ii)
(iii) Holidays falling during the validity period will be covered in the validity period. If the last day of the validity period happens to be a holiday, the validity will be extended upto the next working day.

(iv)
(v) Notwithstanding anything contained elsewhere in this circular, the Textile Commissioner may grant extension of validity period upto three working days but not beyond 31.12.2000 in individual cases if he is satisfied that the exporter concerned could not export within the period due to circumstances beyond his control."

12. Relying on the above paragraphs, learned counsel for the petitioner submitted that 15.04.2000 was Saturday and 16.04.2000 was Sunday and therefore, the export is valid upto 19.04.2000, which is within three working days and therefore, the authorities should not have invoked the Bank Guarantee.

13. Mr.K.Srinivasamurthy, learned counsel for the

respondents refuted the contentions.

14. This Court gave its anxious consideration to the rival submissions.

15. As regards the export relating to EU/7, there is no dispute. The only dispute is with regard to the three certificates issued under EU/4 category. Even according to the petitioner, the period stipulated in the certificates expired on 15.04.2000 and strangely, the petitioner has given an application to the Textile Commissioner in Mumbai on 15.04.2000 only and is expecting the Textile Commissioner to pass orders immediately, which is impossible. Had the petitioner given the extension application earlier, then, there would have been some time available for the Textile Commissioner to pass appropriate orders.

16. A reading of Clause (v) of the Garment Export Entitlement Policy (2000-2004) stated above shows that the Textile Commissioner can grant extension of validity period only upto three working days, if he is satisfied that the exporter concerned could not export within the period due to circumstances beyond his control. Therefore, when an application is made for extension of time, the applicant must disclose the circumstances, that were beyond his control, on account of which, he was not able to export the goods within the stipulated time.

17. In this case, in the extension application dated 15.04.2000, the petitioner has stated as follows:

"We have been allotted FCFS Quota on 10.01.2000. Due to quality problem, shipment against the following certificates are delayed. We request your good offices to kindly extend the shipment validity of the following FCFS allotments for a period of 10 days from 16.04.2000."

18. The petitioner has merely stated that due to quality problem, he was not able to effect the shipment and does not state anything beyond that. In matters of export, time is the essence and the Textile Commissioner cannot extend the time on his own whims and fancies, at the mere request of the exporter, as that would lead to arbitrary exercise of power. Hence, this Court does not find any irregularity in the action taken by the respondents, with regard to the shipment covered under EU/4.

19. A reading of Clause (iii) of the Garment Export Entitlement Policy (2000-2004) shows that if the validity period

falls on a holiday, the validity will be extended automatically up to the next working day.

20. In this case, 15.04.2000 and 16.04.2000, being Saturday and Sunday, were holidays. Therefore, the petitioner should have exported the goods on the next working day, namely Monday, which was 17.04.2000, but whereas, even according to the petitioner, he had exported only on 19.04.2000, without the formal extension orders of the Textile Commissioner.

21. In the result, this Court does not find serious infirmities in the orders passed by the respondents. Accordingly, the writ petition is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

TK
To

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Tirupur - 641 603.

+1cc to Mr.K. Jayachandran, Advocate, S.R.No.2956
+1cc to Mr.K. Srinivasamurthy, Advocate, S.R.No.2694

pvr (CO)
md(08/02/2017)

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