

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.11.2019
CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition No.36783 of 2004
and
W.P.M.P.No.44151 of 2004

M/s.Jayar Enterprises,

Old No.72, New No.58, Appu Street,
Mylapore,
Chennai 600 002,
Rep. by its Sole Proprietor.
C.Jayaraman

... Petitioner

-Versus-

- 1.The Joint Director,
Apparel Export Promotion Council,
Regional Office,
Karumuthu Centre,
498, Anna Salai,
Chennai 600 032.
- 2.The Appellate Committee,
Office of the Textile Commissioner,
Mumbai,
New CGO Buildings,
48, New Marine Lines,
Mumbai 400 020.
- 3.The Second Appellate Committee,
Ministry of Textiles,
Exports III Section,
New No.339-A, Udhog Bhavan,
New Delhi.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records ending with the order No.14/446/2004/Exports-III/2562 dated 03.08.2004 passed by the 3rd respondent and to quash the same and to issue a direction to the 1st respondent to refund the EMD of Rs.3,00,000/- to the petitioner.

For Petitioner : Mr.S.Dhayaleeswaran for
Mr.S.D.S.Philip
For Respondent(s) : Mr.M.A.Abdul Wahab
Mr.C.V.Ramachandramurthy for
R2 and 3

ORDER

This writ petition has been filed challenging the order dated 03.08.2004 passed by the 3rd respondent rejecting the request of the petitioner for return of Earnest Money Deposit (EMD), which was ordered to be forfeited by the 1st respondent, by an order dated 11.07.2003, for the failure of the petitioner to fulfill his export obligations. The order of the 1st respondent was subsequently confirmed by the 2nd respondent sitting on appeal by order dated 16.12.2003.

2. The petitioner firm is a sole proprietorship firm. According to the petitioner, he is new to the business of export of garments and fabrics. The petitioner got quota allotment by transfer in their names from other exporters for export of polyester blouses and polyester skirts through the 1st respondent from M/s.Whispers Fashions Incorporated, New York and Tramp Inc., New York. As per conditions of quota allotment order, the petitioner should fulfill his export obligations. Since the petitioner failed to fulfill his export obligations, the 1st respondent passed an order forfeiting the EMD made by the petitioner as per the agreement entered into by the petitioner with the 1st respondent. Challenging the same, the petitioner filed an appeal to the 2nd respondent which was dismissed and the further appeal filed by the petitioner before the third respondent was also dismissed. Challenging the same, the petitioner is now before this court with this writ petition.

3. The learned counsel for the petitioner would submit that even though there is an obligation to export the resultant products within the specified time, due to some unforeseen circumstances, the supplier failed to supply the raw materials and therefore, the petitioner was not able to fulfill his export obligations, but, without considering the same, the authorities have forfeited the EMD of the petitioner.

4. Per contra, the learned counsel appearing for the respective respondents would submit that the transaction between the petitioner and the 1st respondent was purely a commercial transaction and as per the contract, if the petitioner failed to perform his obligation within the time stipulated in the allotment order, as per the terms and conditions of the agreement/contract, the EMD of the petitioner would be

forfeited. The contract being commercial in nature writ petition cannot be maintained. In support of the their contentions, the learned counsel would rely upon the judgement of this court in MM/s.H&I Imports and Exports v. Union of India (W.P.No.4993 of 2005 dated 06.08.2019).

5. I have considered the rival submissions carefully.

6. In an identical situation, a 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 has held that when a contract was being commercial in nature, the writ petition cannot be maintained. The above said judgement of the Division Bench was relied on by a learned single Judge of this court in W.P.No.21916 of 2005 M/s.Niyaz Apparels v. Union of India (W.P.No.21916 of 2005 dated 09.08.2016). Very recently, yet another single Judge of this Court following the above said two judgments, dismissed the writ petition as not maintainable as it is a pure and simple commercial contract between the petitioner and the 1st respondent.

7. In the light of the above legal position, the present writ petition is not maintainable and the same deserves only to be dismissed.

8. In the result, this Writ Petition is dismissed as not maintainable. No costs. Consequently, connected MP is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

kmk

To

1.The Joint Director, Apparel Export Promotion Council,
Regional

Office, Karumuthu Centre, 498, Anna Salai, Chennai 600032.

2.The Appellate Committee,Office of the Textile Commissioner,
Mumbai, New CGO Buildings, 48, New Marine Lines,Mumbai 400
020.

3.The Second Appellate Committee, Ministry of Textiles, Exports
III Section,New No.339-A, Udhayog Bhavan,New Delhi.

+lcc to Mr.S.D.S.Philip , Advocate SR.No. 91604

+lcc to Mr.C.V.Ramachandramurthy , Advocate SR.No. 92555

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A.SK(27/12/2019)