

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 06.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.No.4933 of 2005

M/s.H&I Imports & Exports,
Rep. by its Authorised Signatory
Mr.Zaheer Ahamed,
S/o.Abdul Gani,
32, R.V.E. Nagar South,
Kangayam Road,
Tirupur - 641604.

...Petitioner

Vs

1.The Union of India,
Rep. by Secretary,
Ministry of Textiles, New Delhi.

2. Apparel Export Promotion Council,
Rep. by its Chairman,
N.B.C.C.Tower,
15, Bhikaji Cama Place,
New Delhi - 110006.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Mandamus, directing the respondents herein to pay the petitioner as amount of US\$ 1,63,377, which is the value of the goods sent under textile Quota US 338 certificates bearing Nos. 1]4IN310856, 2]4IN311341, 3]4IN311343, 4]4IN311344, 5]4IN311345, 6]4IN311554, 7]4IN311339, 8]4IN311346, 9]4IN311347, 10]4IN311553, 11]4IN311342, 12]4IN311340, 13]4IN310853, 14]4IN310854, 15]4IN310855, 16]4IN310857 and 17]4IN310609 issued by the respondents in excess then whay they are entitled to and which caused loss to the petitioner.

For Petitioner : Mr.E.Shankar Narayanan
for Mr.G.Vijay Anand

For Respondents: Mr.C.Ramachandra Murthy, SPC
for R1
Mr.M.A.Abdul Wahab
for R2

O R D E R

It is the case of the petitioner that they are entitled for the value of the quota category U.S. 338 on the ground that they have exported the materials on the basis of the quota issued by the Regulatory Authority and in view of the unexpected Embargo on such goods due to the negligent act of the respondents in issuing the excess quota than what was stipulated by the U.S. Government. The second respondent herein is an Apparel Export Promotion Council, which is an independent body and the petitioner effectively seeks to claim damages from this independent body.

2. A Division Bench of this Court had held in its order passed in W.A.Nos.3 to 22 of 1999, that the nature of transaction between the petitioner and the second respondent herein is a commercial transaction. Following the same, another learned Judge of this Court in a decision dated 09.08.2016 passed in W.P.No.21916 of 2005, had dealt with an identical issue and rejected the claim stating that the Writ Petition cannot be maintained, since the transaction was a commercial transaction. The relevant portion of the order reads as follows:-

2.The petitioner seeks for a relief which is in the nature of a direction to the second respondent to effect payment of US \$ 141323.15, which is the value of the quota certificates issued by the second respondent. The petitioner would allege that on account of the negligence of the second respondent in issuing quota category US 340 in excess, they have caused loss to the petitioner.

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.

3. The claim made by the petitioner in the present writ petition is similar to that of the claim made in the aforesaid decision of this Court in W.P.No.21916 of 2005 and I am inclined to follow the same.

4. In the light of the decision rendered above and the observations made in this order, the writ petition does not deserve any interference. Accordingly, the Writ Petition stands dismissed. No costs.

Sd/-

Assistant Registrar (CS-)

//True Copy//

Sub Assistant Registrar

hvk
To

1.The Secretary,
The Union of India,
Ministry of Textiles, सत्यमेव जयते
New Delhi.

2.The Apparel Export Promotion Council,
Chairman,
N.B.C.C.Tower,
15, Bhikaji Cama Place,
New Delhi - 110006.

+1cc to Mr.C.Ramachandra Murthy Advocate, S.R.No. 67200
RGN(CO)
CB(26/09/2019)

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