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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 4194/2013, CM APPL. 9797/2013, CM APPL. 17187/2014**
& CM APPL. 2049/2020

DULARI EXPORTS PVT LTD

..... Petitioner

Through: Mr. Vinay Sabharwal, Advocate with
Mr. K. Shah, Advocate.

versus

APPAREL IMPORT EXPORT PROMOTION
COUNCIL & ANR

..... Respondents

Through: Mr. Rajesh Rawal and Mr. Kuljeet
Rawal, Advocates for R-1.
Mr. Ripu Daman Bhardwaj, CGSC
with Mr. Kushagra Kumar,
Mr. Abhinav Bhardwaj and
Mr. Manaswini, Advocates for UOI.

CORAM:

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

ORDER

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29.01.2024

1. The present petition is filed under Articles 226/227 of the Constitution for issuance of directions to set aside and quash the order dated 26.07.2012 passed by the Second Appellate Committee, Ministry of Textiles, Government of India.
2. The counsel for the petitioner has made the following prayer:-
 - a) **Issue a writ of certiorari or any other appropriate writ, order or direction in the nature of certiorari to set aside/quash the order dated 26.07.2012 passed by the second appellate committee, Ministry of Textiles and attachment orders dated 03.12.2012 & 02.04.2013 and all earlier orders dismissing the contentions of the petitioner by respondents;**



b) issue a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus, directing respondent no. 2 herein to cancel/recall the invocation the bank guarantee against the petitioner ;

c) Set-aside and quash prevailing policy with regard to export quota (apparel) being arbitrary, unconstitutional, illegal and void-ab-initio;

d) Direct the respondent to formulate proper, valid legal policy with regard to "force majeure" in the said policy and appreciation of the same by the appellant authority of this respondent;

e) award the costs of this petitioner; and

f) Pass such other orders as may be deemed fit, proper and necessary.

3. The petitioner filed the writ petition bearing W.P.(C) no. 5068/2007 titled as **Dulari Exports Pvt. Ltd V Secretary Ministry of Textiles & Ors.** to impugn the order dated 23.01.2007 passed by the Second Appellate Committee, Ministry of Textiles, Government of India whereby the forfeiture of Rs.17,03,180/- imposed on the petitioner was upheld. This Court vide order dated 14.12.2009 has set aside the order dated 23.01.2007 and the matter was remanded back to the Second Appellate Committee, Ministry of Textiles, Government of India to decide the appeal filed by the petitioner on merit. The relevant portion of the order dated 14.12.2009 is reproduced as under:-

4. As the matter is being remanded back to the 2nd Appellate Authority for afresh consideration, I need not go into the said aspects. However; the petitioner will file all necessary documents including Government documents to prove and establish that the



shipments were ready on or before 31st December, 2004 and because of Tsunami there was delay.

5. Accordingly, the Impugned Order dated 23rd January, 2007 is set aside and the matter is remanded back to the 2nd Appellate Committee to decide the appeal filed by the petitioner on merits. The petitioner will file necessary documents within four weeks and produce the originals at the time of hearing. The appeal of the petitioner will be disposed of within six months from the date copy of this Order is received.

6. It is clarified that this Court has not expressed any opinion on the merits of the case and whether petitioner's case is covered by *force majeure* clause or Circulars. The observations made in this Order are for disposal of the Writ Petition and will not be binding on the second Appellate Authority.

4. Mr. Vinay Sabharwal, Advocate for the petitioner stated in pursuance of order dated 14.12.2009 passed in W.P.(C) no. 5068/2007 the Second Appellate Committee vide order dated 26.07.2012 re-decided the matter in issue and held as under:-

4. Aggrieved with the orders of 2nd Appellate Committee, the appellant filed a Writ Petition No.5068 of 2007 in the hon'ble High Court of Delhi. The hon'ble High Court vide its orders dated 14 12 2009 in the above Writ Petition directed the 2nd Appellate Committee to decide the appeal on merits and also directed the appellant firm to file all necessary documents within four weeks and produce the originals at the time of hearing, including Government documents to prove and establish that the shipments were ready on or before 31st December, 2004 and could not be shipped due to Tsunami.

5. The 2nd Appellate Committee considered the appeal in detail during the meeting held on 08th June, 2010 and has gone through the evidence produced in support of the appeal. The plea taken by the representative of the appellant firm that the shipment of 3075 pcs. (3.48 of the total quota utilization) which were affected due to Tsunami and subsequently shipped out during the period from 1st January to 15th January 2005 was also taken into consideration by



the appellate committee and they were advised to produce the original documents/evidences in support of the claim. Therefore, the committee decided to adjourned the matter for next meeting.

6. The 2nd appellate committee in its meeting held on 08.11.10 again called the appellant firm to attend the hearing. Sh. Pankaj Gupta C.A appeared on behalf of the appellant firm and informed the committee that they have shown the original documents/evidences as desired by the committee and pleaded to consider a quantity of 3075 pcs. which were shipped by them during the period of 1st January to 15th January 2005. He further mentioned that if the above is considered, the their performance comes to more than 75%. (The representative of the appellant firm sought some more time to produce more documentary evidence in support of their claim that the shipments in question were affected due to Tsunami disaster.) The Committee accordingly decided to grant time to the appellant firm for submission of papers, so that the appeal could be taken up in the future session of the Committee.

7. The Appellate Committee again considered the Appeal in its meeting held on 26.07.2012. Sh. Ashok Maheshwari and Sh. Dinesh Sharma authorized representative attended the hearing on behalf of the appellant. The Committee noted that the appellant firm did not submitted any additional documentary evidence in support of their aforesaid claim. The Committee therefore, discussed the matter in detail and rejected the appeal.

5. Mr. Vinay Sabharwal, Advocate for the petitioner stated that the Second Appellate Committee again vide impugn order dated 26.07.2012 has passed the order without giving any reasons and without discussing the record produced by the petitioner during the hearing before the Second Appellate Committee or by the respondent no. 1 and he argued that the impugned order dated 26.07.2012 is liable to be set aside.

6. The respective counsel for the respondents argued that the Second



Appellate Committee has granted the time to the petitioner for submission of the documents but the petitioner has not submitted additional documents in support of its claims as well as in pursuance of directions given by this Court vide order dated 14.12.2009. The counsel for the respondent no. 1 in addition also argued that the petitioner only achieved the 74% target of the export obligation which is also reflecting from the bare perusal of the writ petition. Accordingly, the present petition is liable to be dismissed.

7. It is suitably established in India that an adjudicatory authority is required to give reasons for its decision. The Supreme Court in **Siemens Engineer and Manufacturing Co. V Union of India**, AIR 1976 SC 1785 reiterated the principle with an emphasis that the rule requiring reasons to be given in support of an order is a basic principle of natural justice, which must inform the quasi-judicial process. It should be observed in its proper spirit and "mere pretence of compliance with it would not satisfy the requirement of law". It was observed in **Maneka Gandhi V Union of India**, AIR 1990 SC 1984 that giving of reasons is a healthy check against abuse or misuse of power. The requirement of duty to give reasons was further crystallized in **S.N. Mukherjee V Union of India**, AIR 1990 SC 1984 and reasons due to which a reasoned decision must be passed were discussed. It was observed that reasoned decision: (i) guarantee consideration by the authority; (ii) introduce clarity in decisions; and (iii) minimize chances of arbitrariness in decision-making thereby ensuring fairness in the process. It was observed as under:

In our opinion, therefore, the requirement that reason must be recorded must be recorded should govern the decisions of govern the an administrative authority exercising quasi-judicial functions irrespective of fact whether the decision is



subject to appeal, revision or judicial review. It may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clean and explicit so as to indicate that the authority has given due consideration to the points in controversy.

7.1 The Supreme Court in **Rani Lakshmi Bai Kshetriya Gramin Bank V Jagdish Sharan Varshney & others**, (2009) 4SCC496 held that the purpose of disclosure of reasons is that people should have confidence in judicial and quasi-judicial authorities and minimize chances of arbitrariness. It was held as under:-

The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in the case of S.N.Mukherjee vs. Union of India reported in (1990) 4 SCC 594, is that people must have confidence in the judicial or quasi-judicial authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimizes chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation.

7.2 The Supreme Court in The Supreme Court in the case of **Namit Sharma V Union of India**, (2013) (1) SCC 745 regarding duty to give reasons held as under:-

It is not only appropriate but is a solemn duty of every adjudicatory body, including the tribunals, to state the reasons in support of its decisions. Reasoning is the soul of a judgment and embodies one of the three pillars on which the very foundation of natural justice jurisprudence rests. It is informative to the claimant of the basis for rejection of his claim, as well as provides the grounds for challenging the order before the higher authority/constitutional court. The reasons, therefore, enable the



authorities, before whom an order is challenged, to test the veracity and correctness of the impugned order. In the present times, since the fine line of distinction between the functioning of the administrative and quasi-judicial bodies is gradually becoming faint, even the administrative bodies are required to pass reasoned orders. In this regard, reference can be made to the judgments of this Court in the cases of **Siemens Engineering & Manufacturing Co. of India Ltd. v. Union of India & Anr.** [(1976) 2 SCC 981]; and **Assistant Commissioner, Commercial Tax Department Works Contract and Leasing, Kota v. Shukla & Brothers** [(2010) 4 SCC 785].

7.3 Any authority when conferred with a discretionary power must exercise that power after applying its mind to the facts and circumstances of the case. The authority should not act mechanically in exercise of discretion. The Supreme Court in **East Coast Railway V Mahadev Appa Rao**, (2010) 7 SCC 2794 observed that every order passed by a public authority must disclose due and proper application of mind by the person making the order.

8. The perusal of impugned order dated 26.07.2012 reflects that the Second Appellate Committee only discussed the matter in detail before rejecting the appeal. However, the points of discussion among the members of the Second Appellate Committee are not disclosed in the impugned order. The impugned order dated 26.07.2012 is also not reflecting of any reason which is assigned for rejection of the appeal preferred by the petitioner. Accordingly, the impugned order is set aside and the matter is remanded back with direction to the Second Appellate Committee to decide the appeal filed by the petitioner on merits after giving necessary reasons and proper hearing to the petitioner. The petitioner shall also be at liberty to file the necessary documents within 04



weeks and also is directed to produce the original documents at the time of hearing. The Second Appellate Committee is also directed to dispose of the appeal within 06 months from the date of receipt of copy of this order.

9. It is made clear that this Court has not expressed any opinion on the merit of this case and all the pleas and contentions taken by the petitioner and the respondents are left open to be decided by the Second Appellate Committee on merits.

10. The copy of this order be given *Dasti* to the petitioner as well as to the respective counsel for the respondents for doing the needful for information and necessary action.

DR. SUDHIR KUMAR JAIN, J

JANUARY 29, 2024

Sk/sd/abk