

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 18122 OF 2017

(Arising out of S.L.P. (C) No. 28120/2015)

ZODIAC CLOTHING CO. LTD.

Appellant (s)

VERSUS

APPAREL EXPORT PROMOTION COUNCIL & ORS.

Respondent(s)

O R D E R

1) Leave granted.

2) Heard the learned counsel appearing for the parties.

3) The appellant is a company engaged in the manufacture and sale of clothing articles under the brand name "Zodiac". As part of its business, the appellant exports its products to different countries.

4) The quota policy framed for the period 2000-2004 was amended from time to time. The Union of India set up a system of allotment of export quotas to different manufacturers and exporters to different countries in certain agreed quantities. As part of the policy, a penalty may be levied upon the exporter for not fulfilling the complete export quota, subject, however, to *force majeure*. The stipulation is that the export quota should be completed by the end of September each year, and this time can be extended to the end of December subject to the exporter furnishing a security for performance of the export

obligations.

5) The specific provision relating to penalty, with which we are directly concerned, is set out herein below:

"(iv) The EMD/BG of an exporter who exports not less than 90% of the export entitlement shall be released in full. The DG, AEPC shall forfeit the EMD/BG in case of utilization is upto 75% in case of fast moving items and upto 50% in case of slow moving items, proportionate to the short fall in utilization. If utilization of export entitlement allocation is, less than the above percentages EMD/BG shall be forfeited in full. For this purpose utilization shall be computed on individual entitlements or on the basis of each system separately."

6) For the year 2002, the appellant was allotted quotas for export under the said policy in 'First Come First Serve' category, against depositing the requisite bank guarantee as per the terms of the policy.

7) A show cause notice was issued by the respondent-Apparel Export Promotion Council (for short "the AEPC") alleging under-utilization of quota by the appellant, and alleging that only 87.5% quota was used, and thereby proposed to forfeit the bank guarantee for the same.

8) After the appellant replied, AEPC passed an order dated 18.08.2003 directing forfeiture of the sum of Rs.8,79,867/-. In the First Appeal that was filed, the First Appellate Committee, on 31.03.2004, revised and

scaled down the forfeiture amount from Rs.8,79,867/- to Rs.5,39,919/- i.e. the appellant's performance being revised to 88.91%, by giving relief against 3 quota certificates. However, given the figure of 88.91%, the First Appeal was dismissed.

9) On 18.06.2004, a Second Appeal was disposed of with directions to the AEPC to reconsider the matter. The AEPC, thereafter, invoked the bank guarantee that was submitted of Rs.8,00,000/-, which was far in excess of the determined penalty.

10) Against this, the appellant filed a Writ Petition (C) No. 14467 of 2005 before the Delhi High Court. The Delhi High Court, by its order dated 20.01.2009, quashed the order that was passed and was pleased to remand the matter for fresh consideration.

11) A personal hearing was given to the appellant's representative sometime in the year 2009, who submitted that in point of fact, the fault was not with the appellant but that no quota was at all allotted to the Company against Q.C. No. 653919, and if this particular Q.C. was to be taken out of consideration, then the overall utilization would exceed 90%, in which case no forfeiture could be levied.

12) The AEPC, on remand, by an order dated 11.09.2012, stated that as against the Q.C. No. 653919 a rectifiable discrepancy, which could be rectified within 15 days, was

not, in fact, rectified and, therefore, determined the forfeiture amount at Rs.4,24,415/-.

13) Being aggrieved by this, the appellant knocked at the doors of the Textile Commissioner, who, in First Appeal asked the appellant to submit documentary proof that the quota certificate was not, in fact, allotted to it. The appellant then submitted a copy of the said quota certificate to the Committee which bore the mark "rejected". However, the appellant was again turned down on the ground that there was a rectifiable defect, and then the penalty amount was scaled down from Rs.4,24,415/- to Rs.3,63,087/-.

14) The First Appellate Committee, by its order dated 13.06.2013, rejected the appeal, again reiterating the same amount as penalty. A Second Appeal was thereafter filed by the appellant, in which the Second Appellate Committee, by its order dated 22.07.2015, for the first time, stated that the rectifiable defect was, in fact, the fact that an authenticated L/C was not produced within either the stipulated period or the extended period of 15 days. What was added in this order was that such discrepancy was placed on the Notice Board for information of the trade. Therefore, the Second Appeal was also rejected.

15) In a Writ Petition against this order, the Delhi High Court dismissed the same, by the impugned judgment dated 21.09.2015, stating that since a pure question of fact has been raised, and the matter has gone up and down twice, and

that, since the appellant has been heard throughout there was no reason to interfere.

16) Learned counsel appearing on behalf of the appellant has argued before us that it was pointed out to the High Court that, according to the appellant, no such notice was ever put on the Notice Board, and that this plea has never, in fact, been taken by the respondent(s) at any point of time. The Second Appellate Committee, somehow or the other, while dismissing the Second Appeal of the appellant, came out with this for the very first time. We put it to learned counsel for the respondent(s) that, at any point of time, had the appellant ever been told except at the Second Appellate Committee's stage as to what this "rectifiable discrepancy" was. Secondly, we also put it to learned counsel for the respondent(s) that the appellant's specific case is that nothing was put up on the Notice Board and that the Second Appellate Committee's finding that this particular Q.C. was put up on the Notice Board is completely perverse, and was not the case of the respondent(s) at all. To this, the respondent's counsel has no real answer.

17) We are, therefore, of the view that, despite the several rounds of litigation between the parties, the respondent(s) never ever informed the appellant about the ground for rejection of the Q.C. until the Second Appellate Committee stage when it was informed about one particular ground. As has been mentioned herein above, the fact that

in accordance with the policy this Q.C. was put up on the Notice Board was never the case of the respondent(s) before the Second Appellate Committee and remains a fact which is completely unauthenticated.

18) In this view of the matter, we feel that the appellant has not been fairly dealt with. Also the appellant's case, that it was never informed about the unauthenticated letter of credit throughout the proceedings right till the Second Appellate Committee stage, and that the Q.C. in question was never in fact put up on the Notice Board, appears to be correct.

19) Therefore, we set aside the judgment of the High Court and consequently the orders of the authorities below. We are informed that the appellant's bank guarantee to the extent of Rs.3,63,087/- has been invoked by the respondent. The respondent will refund this sum within a period of four weeks from today.

20) The appeal is allowed in the aforesaid terms.

..... J.
(ROHINTON FALI NARIMAN)

..... J.
(SANJAY KISHAN KAUL)

New Delhi;
November 07, 2017.

ITEM NO.4

COURT NO.12

SECTION XIV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 28120/2015

(Arising out of impugned final judgment and order dated 21-09-2015 in WPC No. 9035/2015 passed by the High Court Of Delhi At New Delhi)

ZODIAC CLOTHING CO. LTD.

Petitioner(s)

VERSUS

APPAREL EXPORT PROMOTION COUNCIL & ORS.

Respondent(s)

Date : 07-11-2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

For Petitioner(s) Mr. Rohan Thawani, Adv.
Ms. Vandana Sehgal, AOR
Mr. Hardeep Singh Anand, Adv.

For Respondent(s) Mr. Kuljeet Rawal, Adv.
Ms. Iti Sharma, Adv.
Mr. Ashwani Kumar, AOR
Mr. Ravinder Nain, Adv.

Mr. Neeraj Kumar Sharma, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

Pending applications, if any, stand disposed of.

(R. NATARAJAN)
COURT MASTER (SH)

(SAROJ KUMARI GAUR)
COURT MASTER

(Signed order is placed on the file)