Exportos India Vs. Union of India and ors.

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SooperKanoon Citation : sooperkanoon.com/695198

Court : Delhi

Decided On : Dec-10-1996

Reported in : 1997IAD(Delhi)96; 65(1997)DLT796

Judge : M.K. Sharma, J.

Acts : Code of Civil Procedure (CPC), 1908 - Order 15, Rule 1

Appeal No. : Suit No. 396 of 1982 and Interim Application No. 11146 of 1996

Appellant : Exportos India

Respondent : Union of India and ors.

Advocate for Pet/Ap. : Y.P. Narulla,; Sudha Srivastava,; G.L. Rawal and;

Judgement :

M.K. Sharma, J.

(1) The present suit was instituted by the plaintiff against the defendants praying for a decree of sum of Rs. 12,16,782.49, the principal amount being Rs. 8,27,398.37 and the balance being interest at the rate of 18 per cent per annum with effect from 1.4.79 till the date of filing of the suit.

(2) The plaintiff is a Private Limited Company and is engaged in the business of export of garments from India to various countries including the European

Economic Community and United States of America.

(3) The Defendant No. 1 is the Union of India, whereas the Defendant No. 2 is the Textile Commissioner who announces every year various cash incentives to which garment exporters arc entitled to. The Defendant No. 4 is the Apparel Export Promotion Council.

(4) On 29.3.78, the Defendant No. 1 acting through the office of Defendant No. 2 vide its D.D. No. EPP/P-5/(30)/6/614/17 dated 29.3.78, intimated to the Defendant No. 3 its decision to contribute to the Export Promotion Funds of the Icmf from 1.4.78 to 31.3.79 at various rates. Pursuant to the said circular of the Defendant Nos. I and 2, the Defendant No. 3 vide its circular dated 19.4.78 announced a new rate of cash assistance, applicable against exports of cotton textiles including readymade garments .from 1.4.78 to 31.3.79. It is stated in the plaint that pursuant to the said promise by Defendant Nos. 1 to 3 and relying upon the availability of cash assistance, the plaintiff entered into firm contracts with their foreign buyers and quoted prices keeping in view the availability of cash assistance.

(5) The Defendant No. 1 by circular dated 11.11.78, laid down certain rules for the allotment of quota for readymade garments (cotton man made fibre and woollen) for exports to Eec and Usa for the year 1979. It has been further averred in the plaint that in view of the aforementioned cash incentive and quota policy of the defendants, the plaintiff entered into various firm contracts with foreign buyers before 31.12.78. The shipment against the said contract was to be commenced from January, 1979. However, to the surprise of the plaintiff, the defendants vide their Circular No. STT-36(1)/100 dated 6.1.79 discontinued the cash incentive to the exports of certain items of cotton garments with effect from 1.1.79.

(6) The plaintiff in the present suit has challenged the validity of the said circular discontinuing cash assistance to the exporters by contending, inter alia, that the said circular of the defendants was illegal, void and invalid and that the Defendant No. 1 and the other defendants have no right to withdraw and/or to refuse payment of the cash incentive against the exports made from 1.1.79 to 31.3.79 against the firm contracts entered into by the plaintiff on or before 31.12.78. It is stated that since the said circular dated 6.1.79 issued by the Defendant No. 1 was void, the

plaintiff made his application in the prescribed form for cash incentive to Defendant No. 2 claiming therein a sum of Rs. 8,27,328.37 from the Defendants. However, inspire of several reminders by the plaintiff demanding the aforesaid cash incentive due to it, the Defendants have failed to pay the same and accordingly, the present suit has been instituted seeking the relief of a decree for a sum of Rs. 12,61,782.49 against the defendants, and interest at the rate of 18 per cent per annum with effect from the dale of institution of the suit till the date of realisation.

(7) The Defendant Nos. 1 and 2 have filed their written statement denying the liabilities of the Defendant Nos. 1 and 2 for payment of the aforesaid amount as claimed in the plaint by the plaintiff. It was stated that the Defendant Nos. 1 and 2 have the right to withdraw the facility at any time and that grant of benefits to the plaintiff by way of cash assistance did not confer right or title in favor of the plaintiff.

(8) The plaintiff has filed in this Court a copy of the judgment passed by this Court in Civil Writ Petition No. 290/1982=53 (1993) Dlt 9 (Old Village Industries Ltd. v. Union of India and Others). In the said writ petition, it appears that the petitioner namely, Old Village Industries Ltd., challenged the action of the respondents in withdrawing the Cash, Compensatory Support in respect of exports effected pursuant to the policy of the Government of India announced on 29.3.78.

(9) On perusal of the aforesaid judgment rendered by this Court, it appears that the petitioner in the said writ petition challenged the impugned circular issued by Respondent Nos. 1 and 2 on 6.1.79 to discontinue the existing Cash Compensatory Export Scheme with effect from 1.1.79. According to the petitioner, in the said writ petition, the discontinuance of the Cash Compensatory Support, with effect from 1.1.79 by circular dated 6.1.79 is illegal, void and in violation of the promise held by respondent Nos. I and 2 for granting cash assistance for export of readymade garments for the period from 1.4.78 to 31.3.79.

(10) This Court, after considering various judgments delivered by Bombay, Madras and Karnataka High Court, wherein the same impugned circular also came up for consideration before the said High Courts, came to a finding that the withdrawal of Cash Compensatory Support by circular dated 6.1.79 with effect from 1.1.79 so as

to effect already confirmed contracts was illegal and in violation of the Doctrine of Promissory Estoppel. This Court accordingly quashed the circular dated 6.1.79 insofar as it effects the petitioner in respect of contracts entered into under the Scheme prior to 1.1.79 and the writ petition was consequently allowed and the rule was made absolute and the Respondent Nos. 1 and 2 were directed to examine each of the contracts mentioned in the writ petition and determine within a period of six months whether the said contracts, were entered into under the scheme and whether they were entered prior to 1.1.79. It was held that the petitioner would be entitled to cash assistance under the scheme which would be granted within a period of six months.

(11) It has been brought to my notice by the Counsel appearing for the plaintiff that as against the decision rendered by this Court on the issue arising out of the similar other writ petitions. Letters Patent Appeals were filed before the Division Bench which were registered as L.P.A. No. 83/1993 and L.P.A. No. 85/1993. The said appeals came up for consideration and by judgment and order dated 9.2.94, (1994) Delhi LT 71 the Division Bench of this Court dismissed the appeal filed against the aforesaid decision. It has also been brought to my notice that as against the decision rendered by Madras, Karnataka and Bombay High Court quashing the same circular dated 6.1.79, Union of India preferred Special Leave Petitions in the Supreme Court which were registered as CA. Nos. 4837-66/1984 4837-66/1984 , Special Leave Petition (C) Nos. 1596-97/1969 1596-97/1969 , 9939-44/1992 9939-44/1992 , 1044/1990, 14648-53/1989, 9942-44/1992 9942-44/1992 and 607-08/1990. The Supreme Court by order dated 23.9.92 dismissed the said petitions.

(12) The present suit is at the stage of framing of issues arising out of the pleadings of the parties. However, in view of the fact that the main issue with regard to the legality and/or validity of the action of the respondents in withdrawing the Cash Compensatory Support by circular dated 6.1.79, in respect of exports effected pursuant to the policy of the Government of India announced on 29.3.78, having been decided in the Civil Writ Petition No. 290/1982 and this Court having taken the view that such withdrawal is invalid and illegal and the said circular dated 6.1.79 having been quashed by this Court under the aforesaid judgment,

and the same having been confirmed on appeal by the Division Bench of this Court and a Special Leave Application filed in the Supreme Court having been dismissed, the aforesaid issue which also arises for consideration in the present suit stands settled between the parties in the present suit. In that view of the matter, it appears that the parties to the suit are not at issue on any question of law or of fact and, thereforee, this Court is in a position to dispose of the suit in terms of the provisions of Order 15 Rule 1, CPC. On the facts and circumstances of the present case and following the ratio of the decision of this Court in Civil Writ Petition No. 290/1982, decided on 30.4.93, the present suit filed by the plaintiff stands decreed to the extent indicated herein.

(13) It is held that withdrawal of Cash Compensatory Support by circular dated 6.1.79 with effect from 1.1.79 so as to effect already confirmed contracts is illegal and in violation of the Doctrine of Promissory Estoppel. Accordingly, the circular dated 6.1.69 insofar as it effects the petitioner in respect of contracts entered into under the scheme prior to 1.1.79 stands quashed.

(14) The Defendant Nos. I and 2 namely, the Union of India through the Secretary, Ministry of Commerce, Udyog Bhavan and The Textile Commissioner, Department of Textiles, Ministry of Commerce, New C.G.O. Building, are directed to examine each of the contracts of the plaintiff and determine within a period of six months whether the said contracts were entered into under the Scheme and whether in respect of the contracts entered into under the Scheme prior to 1.1.79, the plaintiff would be entitled to cash assistance under the Scheme. It is ordered that on such examination and determination, the plaintiff if found eligible on the aforesaid criteria, shall be granted cash assistance within the period of six months. The suit stands decreed with cost as against the Defendant Nos. 1 and 2 to the extent indicated above. The suit against the Defendant Nos. 3 and 4 against whom no relief was claimed for at the time of argument stands dismissed.

(15) Counsel appearing for the plaintiffs stated that in case a decree is passed in the present suit, the plaintiff is also entitled to interest at the rate of 18 per cent per annum from 1.4.79 to filing of the suit and then from then to the date of the realisation as claimed in the plaint.

(16) I have heard the learned Counsel appearing for the parties on this issue aswell.

(17) Since the Defendant Nos. 1 and 2 have been directed to examine each of the contracts of the plaintiff as mentioned in the plaint and to determine within a period of six months whether in respect of the said contracts the plaintiff is entitled to cash assistance under the Scheme, in my considered opinion, no interest is required to be paid on the amount of cash assistance to be determined by the Defendant Nos. 1 and 2 within a period of six months as directed herein. If, however, he Defendant Nos. 1 and 2 after examination of each of the contracts of the Plaintiff mentioned in the plaint comes to a determination that an amount towards cash assistance under the scheme is payable to the plaintiff and if such determined amount is not paid within a period of six months as directed herein, the said amount would carry an interest of 12 per cent per annum to be paid from the date of expiry of the aforesaid period of six months till the date of payment. It may be mentioned herein that in the Civil Writ Petition also, on the basis of which the present decree is being passed, no order was made in respect of payment of any interest on the amount of cash assistance found due to the petitioner under the same scheme.

I.A.No. 11146/95 also stands disposed of accordingly.