BEFORE THE NATIONAL GREEN TRIBUNAL, PRINCIPAL BENCH, NEW DELHI

Appeal No. 89/2013

M/s Mellcon Engineers Pvt. Ltd. V/s Delhi Pollution Control Committee

CORAM: HON'BLE MR. JUSTICE DR. P. JYOTHIMANI, JUDICIAL MEMBER
HON'BLE MR. JUSTICE M.S. NAMBIAR, JUDICIAL MEMBER
HON'BLE PROF. (DR.) P.C. MISHRA, EXPERT MEMBER
HON'BLE MR. B.S. SAJWAN, EXPERT MEMBER

Applicant / Appellant : Mr. Sanat Kumar, Adv.
Respondent No. 1 : Mr. Birja Mahapatra, Adv. and Mr. Dinesh Jindal, Law Officer, DPCC
MoEF : Mr. Vikas Malhotra and Mr. M. P. Sahay, Advs.

Date and Remarks	Orders of the Tribunal
Item No. 1 **February 10, 2014** DV	This Appeal has been filed against the order of the Appellate Authority dated 22.07.2013 passed under sections 31 of the Air (Prevention and Control of Pollution) Act, 1981. The Appellate Authority has dismissed the appeal filed by the appellant against the order of the Pollution Control Board in refusing to renew the consent to its establishment. The appellant is a Company registered under the Companies Act, 1956 engaged in manufacture/fabrication of engineering works such as compressed air dryers and air filtration systems. This was stated to have been started in the year 1986. According to the appellant, it is a registered small scale industry. It is also registered under NSIC apart from having registration under the Commission of Industries. With the pleadings that the industry concerned is a micro industry, the appellant has applied for consent to the Pollution Control Committee which on the first occasion, namely, 19.06.2003 has granted the consent based on the then existing Master Plan. The consent granted on 19.06.2003 was valid for three years and admittedly it has expired as on 31.07.2005. In the meantime, the new Master

Plan came into effect from 07.02.2007. The appellant has applied for renewal of consent and that was granted on 03.07.2009 by the Pollution Control Committee which was valid upto 05.06.2010. The appellant has made a request for further renewal on 15.12.2010. Based on that, there was an inspection and the inspection report dated 24.06.2011 has stated that the industry of the appellant comes under the category "General Industrial Machinery". It was in those circumstances, a show cause notice was issued to the appellant on 12.07.2011 stating that as per MPD 2021 General Industrial Machinery (such as hydraulic equipments, drilling equipments, boilers, etc.) registered at S. No. 26 is in prohibited/negative list of industry and such types of units are not permitted to establish/operate in view of the provisions of MPD 2021.

The said show cause notice was replied by the Appellant on 27.07.2011. In the reply, the appellant's Company has stated that the industry does not fall under the prohibited/negative list registered under S. No. 26, namely, General Industrial Machinery. It was also stated that they are not only small scale industry but also engaged in doing custom engineering works like compressed air system including dryers, air filtration and air drying systems as per different client's requirements. According to them, basically they are carrying on engineering work, air filtration work and their industry is not an integrated unit for manufacturing and it was a part of complete compressed air system including dryers, filters and spare parts.

Inspite of the same, the Pollution Control Committee has passed order refusing to grant renewal against which the appellant has moved before the Appellate Authority as stated above under section 31 of the Air (Prevention and Control of Pollution) Act, 1981.

The Appellate Authority on the admitted factual scenario has held that the Delhi Development Authority (DDA) in its reply dated 29.06.2012 has stated in annexure-III about the prohibited/negative list of industries in S. No. 26 as General Industrial Machinery and the said annexure having been prepared on the recommendation of sub group of industrial aspect and extensive consultations have been made before the final notification was made in the MPD 2021. The said Expert Body has come to a conclusion that the appellant's industry is covered under S. No. 26. For arriving at the said conclusion, the Appellate Authority has also relied upon the reply made by the CPCB which has taken a stand in conformity with DPCC and also to the effect that the appellant is engaged in manufacturing of compressed air dryer. It was in that view of the matter that the Appellate Authority has dismissed the appeal confirming the original order passed by the Pollution Control Committee.

Learned Counsel appearing for the appellant has taken strenuous efforts to explain that the Appellate Authority has failed to consider the basic aspects of the contentions made on behalf of the appellant that the appellant's unit is a micro industry and therefore, it cannot be covered in such category under S. No. 26. It is his contention that if we refer to the various list of industries mentioned in S. No. 26 (hydraulic equipments, drilling equipments, boilers, etc.) each of the components form part of a separate category and, therefore, the word "etc." cannot be used to the disadvantage of the appellant especially when all the said three industrial activities mentioned before the word "etc." are relating the macro industries. According to him, the Appellate Authority ought to have considered that the industry of the appellant is a micro

industry, which has been admittedly registered as small scale industry and, therefore, the categorisation made under S. No. 26 has no legal basis.

It is relevant to consider taking note of the fact that the Appellate Authority for arriving at such conclusion has not passed any speaking order and in any event, we would have earlier remanded back the matter to the Appellate Authority. As such exercise would further delay any finality, we felt that the DPCC should again conduct inspection and find out the present status of the industry as such. Accordingly, the DPCC has today filed an inspection report. In the inspection report, the DPCC has stated that in so far as it relates to the activities of the industry concerned like the storage of hydraulic material and container in the specific level, etc. they are stated to be positive in favour of the industry, while in respect of regulatory measures, namely, as to the date from which the storage began to have been indicated on each container as well as the daily records maintenance in the form no. 3, the report has been given negative to the appellant's company. Even though, these are the regulatory measures, as per law the appellant is liable to follow the same. The report further states that the hazardous waste management scheme requires improvement. However, it indicates that no spray painting is observed during the inspection and water is used for testing purpose at compressor only and afterwards discharged directly into the sewer. It is also stated that the noise monitoring report shows the noise intensity within required standard. The report also states that the unit which is using DG sets is meeting with the permissible limit as per G.S.R. 371(E) dated 17.05.2002. Again it is stated that the ambient air quality standard in respect of noise as mentioned in the Environment (Protection) Act, 1986 are within limit.

Therefore, by and large, there is no difficulty for this Tribunal to come to the conclusion as on date, the pollution level in respect of this industry has come down and it is within the permissible limit.

The issue involved in this case is as to whether the industry is to be categorized under S. No. 26. The contention of the learned counsel by relying upon a judgment of the Hon'ble Apex Court in "*A.L. Ranjane vs. Ravindra Ishwardas Sethna*" reported in *AIR 2003 SC page 300* to the effect that the word "etc." is to be used for something which can be *ejusdem generis* with the previous item and, therefore, according to the learned counsel where once the previous words are relating to the different generis altogether "etc." has to be construed in a practical view especially when the industry is a micro-industry and, therefore "etc." should not have been used to cover the appellant's industry. It is true that this aspect has not been duly considered by the learned Appellate Authority.

The reliance placed by the learned counsel appearing for the appellant on the judgment of the Hon'ble Apex Court in "*M.C. Mehta vs. Union of India & Ors" (1996) 4 SCC page 750* relates to the effect of the Master Plan as to whether such Master Plan can be extended to the new industries or the existing industries also.

On a reference to the said judgment, it is seen that when new Master Plan was brought in the year 1996 in the city of Delhi, the functioning of many number of heavy industries came to be closed or they were directed to be re-located or shifted outside the NCR Region. It was in those circumstances, while considering the land use concept in the light of the Delhi Development Act of 1957, the effect of new Master Plan was considered by the Hon'ble Apex Court.

Ultimately, the Hon'ble Apex Court has rejected the contention of some of the heavy industries that if they are non-polluting, they should not be shifted.

In our considered view, the said judgment is of no assistance to the case of the appellant.

Be that as it may, as correctly contended by the learned counsel for the appellant, the Appellate Authority has not taken note of the various issues raised by the appellant during the course of the hearing. The Appellate Authority has simply accepted the DPCC, CPCB and DSIIDC's version and even for accepting the same plausible reasons have not been given. In such view of the matter and taking note of the present status report of the DPCC after inspection, we are of the view that these papers must be placed before the Appellate Authority afresh for arriving at an appropriate conclusion, since this Tribunal cannot again traverse on the factual matrix.

Accordingly, we set-aside the impugned order of the Appellate Authority and remand the matter back to the Appellate Authority with a direction to consider all the above-said contentions and pass orders afresh taking note of the report filed by the DPCC which shall be forwarded to the Appellate Authority for re-consideration. The Appellate Authority shall give due opportunity to both the parties and decide the same in accordance with law expeditiously in any event within a period of eight (8) weeks from the date of receipt of the order.

The order of *status-quo* in respect of the functioning of the unit concerned passed by this Tribunal dated 10th October, 2013, shall be continued for a period of eight weeks or till the disposal of the Appeal.

The original file submitted by the MoEF is directed to be

returned to the learned counsel appearing for the MoEF in the open Court.

The Appeal stands allowed in the above terms.

....., JM
(Dr. P. Jyothimani)

....., JM
(M.S. Nambiar)

....., EM
(Prof. (Dr.) P.C. Mishra)

....., EM
(B.S. Sajwan)