

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH AT NEW DELHI

APPEAL No. 19/2024

In the matter of:

M/s Amazon Seller Service Private LimitedAppellant

Versus

Haryana State Pollution Control BoardRespondent(s)

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MOST RESPECTFULLY SHOWETH:-

1. That mandatory inspection of the appellant unit was allotted to the Regional Office Nuh through HROCMMS portal and unit was inspected accordingly on 09.12.2022 by Asst Environment Engineer, HSPCB, Nuh.
2. That the above subjected appeal has been filed against the order dated 22.02.2024 (Pg 34-35) passed by Haryana State Pollution Control Board whereby Environmental Compensation of Rs. 13,22,500/- was imposed, as during inspection of the appellant unit on 09.12.2022, sample was collected from the inlet and outlet of the Sewage Treatment plant (STP) and as per Analysis report dated 21.12.2022 (Pg 84), parameters were found exceeding the permissible limits.
3. That it relevant to give brief description of the unit. The unit is covered under consent management of Board and falls under orange category. As per information submitted by unit at serial no.11, 18 of Part A-General, of application for renewal of CTO (Pg 112-118), number of workers and office staff is 1900 and 40 KL domestic waste is generated daily. The unit has installed STP of capacity of 40 KLD at site.
4. That grounds raised on behalf of appellant during the course of argument on 08.05.2024 and 09.05.2024, and counter reply of HSPCB are summarized below:

On 08.12.2022, the appellant carried out maintenance	FIRSTLY, no prior intimation was given to Board regarding schedule of maintenance of STP by appellant unit. Even, at the time of inspection, no information regarding the in- line maintenance and
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<p>activity. On 09.12.2022, when the unit was inspected, STP was under stabilization mode after maintenance.</p>	<p>under stabilization of STP was given by Unit's representative i.e. Mr. Ganesh Deshmukh (RME Manager).</p> <p>SECONDLY, three documents i.e. Spot Inspection Report dated 9.12.2022 (Pg 187-192), 'Notice of intention to have sample analyzed' (Pg 193) and Certificate of marking & sealing of sample in presence of unit's representative (Pg 194) are signed by unit's representative. However, nowhere unit's representative wrote regarding alleged story of STP's maintenance.</p> <p>THIRDLY, it is not the case of appellant that warehouse of not in operation. That's mean generation of sewage was there. But no information regarding storage of sewage is disclosed during period of alleged maintenance of STP.</p> <p>FOURTHLY, it is no where pleaded in appeal that HSPCB official was requested to take sample after stabilization.</p> <p>FIFTHLY, admittedly colour of sample collected from outlet was Hazy which itself shows that STP was not working properly and maintenance story is after thought because the maintenance activities increase the diffusion rate and increase in impurity filtration but results were otherwise.</p>
<p>Sample was not collected from the unit as per provisions of Section 21 of the Water Act. Neither the sample was divided into two parts for allowing one part of the sample to be retained by the</p>	<p>Perusal of sub section 5 of section 21 of Water Act reflect that "<i>When a sample of any sewage or trade effluent is taken for analysis under sub-section (1) and the person taking the sample serves on the occupier or his agent a notice under clause (a) of subsection (3) and <u>the occupier or his agent who is present at the time of taking the sample does not make a request for dividing the sample into two parts as provided in clause (b) of sub-section (3),</u> then, the sample so taken shall be placed in a container which shall be marked and sealed and shall also be signed by the person taking the sample and the same shall be sent forthwith by</i></p>



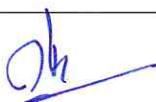
<p>unit for independent examination through laboratory recognized by the Board nor the sample was countersigned by the representative of the appellant.</p>	<p><i>such person for analysis to the laboratory referred to in sub-clause (i) or sub-clause (ii), as the case may be, of clause (d) of sub-section (3)."</i></p> <p>Firstly, No request was made by unit's representative for sending the sample to the state laboratory, therefore, no step was required to be taken on the part of HSPCB as alleged in grounds raised. Secondly, sample was countersigned by the unit's representative is evident from Annexure-A and Annexure-C.</p> <p>Point No.21 of Spot Inspection Report (Pg 188 of Annexure-A) is being reproduced:</p> <p><i>"21. The Sample/samples of trade effluent of M/s Amazon Seller Services Pvt. Ltd., Bilaspur-Tamu Road, Teh-Tauru, Dist- Nuh from the point mentioned at Sr. No. 21 above was collected in presence of Sh. Ganesh Dashmukh Managing Director/Director/Partner/Manager/Occupier of the industry and placed in a clean dry and empty glass container after explaining the provisions of section 21 of the Water (Prevention & Control of Pollution) Act, 1974 to them. The Samples was stirred and placed in clean empty bottle divided into two parts and sealed with seal bearing inscription of E.E./A.E.E./Se'C/Se'B/SSA/JSA/JEE of Nuh Region of the Haryana State Pollution Control Board after placing the chit signed by</i></p> <p>(i) Sh. Ganesh Deshmukh (ii) Sh. Manish Yadav, AEE (iii) Sh.</p> <p><i>If request for sending the sample/samples to the State Laboratory has been made in writing with reqd. fees then the sample/samples be sent to the State Laboratory (Request be in writing)..... No such request made by unit"</i></p> <p>Annexure-C (Pg 194) under signature of Unit's representative states that sample has been marked and sealed in his presence. It was further certified that samples have been collected in temper proof glass bottle.</p>
<p>Appellant replied upon some Analysis Reports</p>	<p>None of the laboratory is recognized by the HSPCB. As per ARs of M/s Merieux NutriSciences, samples were packed in Plastic Can and plastic</p>

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<p>of private laboratory (Annexure-4, 5, 6).</p>	<p>Bottle (Pg 49, 52, 55, 58, 61, 64, 67, 70, 74) which is against settled norms of collecting samples into sterilized glass bottles.</p> <p>As per Certificate of Accreditation of M/s Geological and Metallurgical Laboratory (Pg 77), this Lab was accreted for testing facilities at Bengaluru only. Test Reports were issued from Jaipur Rajasthan (Pg 78-79). Sample is mentioned to be taken from Unit at Nuh, Haryana at 09.12.2022 at night 10 o'clock.</p> <p>As per A/Rs of M/s Quality Lab (Pg 81-82) samples were packed in pet bottles (Polyethylene terephthalat).</p> <p>In view of above all submissions, the A/Rs relied upon by appellant has no credibility and hence they can't be relied upon.</p>
<p>On 09.01.2023, the appellant submitted its response to the Show Cause Notice with the HSPCB. During the meeting with the officials of HSPCB on 09.01.2023 itself, the appellant was informed by R-2 that due process of re-sampling will be initiated once the requisite sampling fees is deposited by the appellant after which resampling will be permitted</p>	<p>On 09.01.2023 when first reply was submitted, unit's representative was informed about requirement of re-sampling fee and performance security as well. By no stretch of imagination, it can be presumed that half information (about re-sampling fee only) will be provided by the officer.</p> <p>09.01.2024 cannot be taken as cut of date of assessment of EC because Firstly, despite unit's own admission in para no.4(P) at Pg 19 that on 09.01.2023 it was informed by R-2 that resampling fee will be initiated once requisite sampling fee is deposited by the appellant, unit deposited re-sampling fee of Rs.4500/- only on 02.02.2023.</p> <p>Secondly, despite admission of knowledge about requirement to deposit performance security conveyed on 30.01.2023, unit did not deposit the same on 02.02.2023 while depositing the resampling fee but was it deposited <u>performance security only on 16.02.2023.</u></p> <p>In view of above, unit deliberately caused delay in submitting the re-sampling fee and performance security, therefore, 09.01.2023 cannot be</p>

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<p>by the R-2. On 30.01.2023, the appellant was informed by the R-2 to deposit performance security of Rs.3 Lacs and resampling fee of Rs.4500/-.</p>	<p>considered last day of period taken into account for assessment of EC as recommended by Regional Office, rather Environment Compensation Advisory Committee (ECAC) rightly observed 70 days of violation till 16.02.2023. (Pg 27-28, 40 of record produced on 09.05.2024)</p>
<p>R-2 submitted performa for recommendation of EC to R-1 vide the Performa letter, recommending imposition of Rs.6,00,000/- as EC for period from 09.12.2022 to 09.01.2023 (totaling to 32 days). Environment Compensation has been fixed at Rs.13,12,500/- without any specific reason as to why R-1 has reached a different conclusion than the R-2 as to quantum of EC</p>	<p>Error caused in assessment of Environment Compensation by taking less days into consideration on the part of Regional Office cannot said to be binding on Environment Compensation Advisory Committee (ECAC) and/or the competent authority passing the final order of environmental compensation.</p> <p>The ECAC has rightly taken the 70 days as period of violation. Although, reason of taking 16.02.2023 is not mentioned in ECAC note/finding but final order of assessment (Pg 34-35) itself clearly mentions that violation period of unit in this case has been taken 70 days i.e., 09.12.2022 (date of inspection and sampling during which sample of the unit exceeded the limits) to 16.02.2023 (date of reply submitted by the unit along with performance security).</p> <p>It is worthwhile to mention here that if 09.01.2023 is taken as last date of violation period despite deposit of performance security on 16.02.2023 with admitted knowledge of requirement on 30.01.2023 (although it was informed on 09.01.2023 itself), it will setup a wrong precedent to give unjustified defense to defaulting units to get Environment Compensation reduced.</p> <p>Thus, ground raised by unit is untenable and liable to be rejected.</p>



There was delay in re-sampling from STP and delay in recommendation of imposition of EC	No prejudice has been caused to appellant unit on account of delay in re-sampling from STP and delay in recommendation of imposition of EC because period of violation has been taken into account only from date of sampling to date of reply with deposit of performance security. No additional day on account of delay in re-sampling etc. has been taken into account for assessment of EC.
Show cause notice does not mention tentative amount of environmental compensation to be levied on the appellant. (Although, no such ground was pressed during the course of argument on behalf of appellant)	It is being clarified that impugned order mention the clear and unambiguous assessment of compensation with full details of all factors i.e., Pollution Index, number of days, factor in Rupees, factor of scale of operation and location factor. In memorandum of appeal, no factor applied in the formula of computation has been challenged by the appellant unit except the number of days. It is submitted that on this factor, comprehensive arguments have been heard and explained in preceding paras hereinabove also.

5. That answering respondent rely upon following documents in respect of requirement of performance security in case of re-sampling after first sample is failed. The documents produced during course of arguments on 09.05.2024 with their page no. are referred as below:

- (i) Office order dated 28.02.2012 endorsed on 01.03.2012 (Pg 1), in first para, it mentions that Board has issued a policy order regarding procedure to be followed **in cases where sample fails** and on closure of the unit which includes obtaining **Bank Guarantee** to make over the deficiencies/inadequacies.

At bottom, it mentions as under:

“whereas, the matter was placed before the Board in 161st meeting vide agenda Item No. 161.17(S). The Board has approved the proposal. Based upon the decision of the Board



following procedure shall be followed in addition to above policy orders already issued for **bank guarantees**:...

- (ii) Office order dated 06.07.2011 (Pg 9-10), in first para, it mentions as under:

*"Whereas an office order was issued vide endst No. HSPCB/2009/8853-75 dated 12.10.09 regarding procedure to be followed for taking follow up action after refusal/revocation of consent/**failure of sample** under section 25/26 of the Water (Prevention & Control of Pollution) Act, 1974 and section 21/22 of the Air (Prevention and Control of Pollution) Act, 1981 which includes levy of **security as performance guarantee** to make up the deficiencies/inadequacies alongwith scheme of upgradation of ETP/APCM & undertaking etc."*

- (iii) Office order dated 11.05.2012(Pg 3-5), in first para, it mentions as under:

*"The Board vide office order Endst. No. HSPCB/2009/8853-75 dated 12.10.2009 & amendment vide Endst. No. HSPCB/PLG-22/dated 6.7.2011 issued policy directions regarding procedure to be followed for taking follow up action after refusal / revocation of consent under Water/Air Act and on **account of failure of sample**. In the said policy order the slab of **Bank Guarantees** were prescribed to make over the deficiencies/ inadequacies pointed out by the Board. In the said schedule the earlier categories of industries were mentioned i.e. as Case-I, Case-II& Case-III. Now, since the Board has changed the nomenclature of polluting units into Red, (highly polluting), Orange (medium polluting) & Green (Less polluting) instead of Case-1, Case-II& Case-III categories vide resolution No. 162.10. Therefore, the categories of this table needs to be amended and Red, Orange & Green may be mentioned in place of Case-I, Case-II & Case-III respectively and the revised schedule of **Bank Guarantee** is enclosed at Annexure. It is pertinent to Mentioned here that the Board vide above mentioned resolution decided not to charge Performance Guarantee from Green Categories of industries for the purpose of granting consent to operate. However, on account of refusal of consent and **failing of samples** or any other violation the **Bank Guarantee shall be applicable as per the schedule of Bank Guarantee enclosed in Annexure.**"*

- (iv) Office order dated 06.11.2012 endorsed on 16.11.2012 (Pg 16-17), in first para, it mentions that

*"The agenda regarding **Bank Guarantee** being taken with the consent to establish (NOC application), performance security taken during extension of consent to operate and **Bank Guarantee** being taken on failure of samples was placed before the Board in its 164th meeting held on 26.06.2012 vide agenda Item No. 164.7 and the Board has approved the proposal that **instead of taking Bank***

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Guarantee at the time of consent to establish only Bank Draft of the same amount as prescribed for units to make up deficiencies/inadequacies as given at Annexure-A will be taken.”

It is clear from the office order dated 06.11.2012 that performance security was prescribed to be taken Bank Draft only instead of Bank Guarantee.

- (v) Office order dated 07.02.2014 endorsed on 11.02.2014 (Pg 6-7), in first para, it mentions that

*“As per policy of the Board approved in its 162nd meeting held on 20.03.2012 and circulated vide order Endst Nodt. 03.05.2012, the units **whose samples are found to be exceeding the permissible limitson account of minor operational problems**, are provided an opportunity, on submission of scheme of modification of ETP/APCIM and undertaking to comply with the standards laid down by the Board in a time bound manner alongwith prescribed **performance security** and curtailment of production proportionate to the existing capacity of pollution control devices i.e. ETP/APCM.....”*

- (vi) Performa for recommendation for re-sampling to be submitted by the ROs contain the column of performance security. In present case, recommendation dated 05.05.2023 (annexure-15, Pg 104) and 23.10.2023 (annexure-18, Pg 110), both at serial no. 7 mention about No. and date of performance security with amount as per policy.

In view of the submission made hereinabove, it is humbly prayed that present Appeal may kindly be dismissed and appellant unit be directed to deposit the environmental compensation without any further delay.

Respondent No. 1 and 2

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(Sr. Environment Engineer)
Member of ECAC

Date: 14.05.2024
Place: Panchkula