

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment Pronounced on: May 26, 2014

+ Ex. P. No.202/2012, E.A. (OS) Nos.700/2012 & 324/2013

M/S MBL INFRASTRUCTURE LTD Decree Holder
Through Ms.Anusuya Salwan, Adv. with
Mr.Vikas Sood, Adv.

versus

GOVT OF NCT OF DELHI Judgment Debtor
Through Ms.Sana Ansari, Adv. for
Ms.Zubeda Begum, Adv. for JD.
Ms.Sonia Sharma, Sr. Standing
Counsel for Deptt. of Service Tax.

**CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH**

MANMOHAN SINGH, J.

1. The present execution petition has been filed on the basis of the Awards passed in favour of the decree-holder on 11th June, 2009 and 11th May, 2010.
2. The brief facts are that the decree-holder was awarded the contract for comprehensive maintenance of Ring Road and Outer Ring Road vide Agreement No.17/EE/PWD-XXIV/2005-2006 for the period of three years. The stipulated date of start of the contract was 24th August, 2005 and the stipulated date of completion was 23rd August, 2008. The disputes arose between the parties during the currency of the work which was first referred to the Disputes Resolution Expert (DRE) by the Chief Engineer, PWD,

Maintenance Zone M-3 in terms of para 21.1 of the General Condition of Contract (GCC). Being aggrieved of the recommendations of the DRE, the decree-holder invoked clause 22 of the GCC which contained the Arbitration Agreement between the parties and requested the Chief Engineer to refer the disputes to arbitration. The sole Arbitrator was appointed and the award was made on 15th June, 2009 against the judgment-debtor. The judgment-debtor filed objections against the said award vide OMP No.578/2009 under Section 34 of the Arbitration and Conciliation Act, 1996. The Award dated 15th June, 2009 was set aside vide order dated 19th November, 2009 by the learned Single Judge of this Court, holding that the circular relied upon by the Arbitrator has not been brought to the notice of the petitioner for its response and, therefore, the matter was remitted back to the Arbitrator for rehearing.

3. After rehearing the parties, the Arbitrator passed the Award dated 11th May, 2010 holding thereby:

“....the notification of the Central Government imposed the service tax on the road maintenance works with effect from 16th June, 2005 which is after the date of receipt of the bids of the contractors. Therefore, the notification in question was prospective in nature and it could not be made effective retrospectively regardless of the fact that the instructions of the Director General of Works, CPWD existed. In other words, I bow down to the wishes of the respondent and consider that even if the circular instructions of the Director General of Work, CPWD are ignored, the situation does not undergo any change whatsoever regarding the liability to pay the service tax in the instant case and accordingly, I reaffirm that the service tax is payable by the respondent. Accordingly, I do not consider it necessary to disturb my

award. The reference from the Hon'ble High Court of Delhi stands disposed off.”

4. The Award dated 11th May, 2010 was again challenged by the judgment debtor vide OMP No.496/2010 which was dismissed by this Court vide order dated 19th September, 2011 upholding the Award passed by the learned Arbitrator.

5. The order dated 19th September, 2011 passed in OMP No.496/2010 was challenged by the judgment debtor by filing an appeal being FAO(OS) No.558/2011. During the pendency of the said appeal, vide order dated 1st November, 2011, this Court was pleased to direct the judgment-debtor to deposit the entire decretal amount in Court. However, only an amount of Rs.7,51,667/- was deposited by the judgment debtor and the same has been received by the decree-holder on 28th May, 2012 after the said appeal was dismissed with cost of Rs.7500/- vide order dated 12th March, 2012.

6. The decree-holder has vide letter dated 29th November, 2011 requested the judgment debtor to deposit the amount as awarded by the Arbitrator and as directed by this Court vide order dated 1st November, 2011 in FAO(OS) No.558/2011. Thereafter, vide letter dated 17th December, 2011, the judgment debtor was informed that the decree holder has already submitted returns with the Service Tax Department and has cleared the liability and all the proofs of payment have been submitted to the judgment debtor. The decree holder vide letter dated 26th March, 2012 has requested the judgment debtor to remit the amount payable in accordance with the judgment dated 12th March, 2012 passed by the Division Bench of this Court in FAO(OS) No.558/2011 and the entire details were given to the judgment debtor along with the copy of the challans.

7. Vide order dated 9th January, 2013, this Court directed the Service Tax Department to file a short affidavit as to how much service tax as claimed to have been deposited by the decree-holder in relation to the contract, has in fact been deposited. The said affidavit was filed on 2nd April, 2013 in which it was submitted that the Executive Engineer, PWD (GNCTD) requested the Assistant Commissioner, Service Tax (Anti Evasion) to verify whether the service tax payments made by the decree holder were made for the work “Comprehensive Maintenance of Ring Road and Outer Ring Road in NCT of Delhi”. It was submitted that the decree holder has deposited an amount of Rs.4,36,52,889/- from the period 1st August, 2006 to 16th June, 2011 to discharge their service tax liability as is evident from Annexure-1 filed along with the affidavit.

8. Vide order dated 3rd April, 2012, this Court directed the authorized representative of the decree holder to approach the office of the Commissioner of Service Tax along with the original challans and other requisite papers for the purposes of verifying the amount of service tax paid by the decree holder. Accordingly, the authorized representative of the decree-holder appeared before the office of the Commissioner of Service Tax along with all original challans which were duly verified by the Service Tax Department. On 15th April, 2013, the Assistant Commissioner, Commissioner Tax Division-I after verifying the challans certified that as per their records, the decree holder has deposited an amount of Rs.4,90,03,438/- for the period 1st August, 2006 to 16th June, 2011.

9. In the additional affidavit filed by one Sh.Darban Singh Nayal, Manager & Authorized Signatory of the decree holder in which it was

submitted that the decree holder has undertaken that after the receipt of refund of the said amount, the decree holder would not make any claim on the Service Tax Department or with the PWD or with any other authority with respect to the said amounts.

10. In the present execution, the Court on 17th September, 2013 and 26th November, 2013 has filed the orders, the extracts of which are reproduced here as below:-

Order dated 17th September, 2013

“Ms. Salwan draws my attention to the orders dated 3.4.2013 and 9.5.2013 passed by my predecessor.

A reading of the order dated 03.04.2013 will show that the authorised representative of the decree holder was directed to be present in the office of the Commissioner of Service Tax, Delhi on 5.4.2013 at 3.00 pm to sort the issue of refund of service tax deposited by the decree holder.

The second order dated 9.5.2013 shows that the Department has accepted the fact that a sum of Rs.4,90,03,438/- has been deposited by the decree holder between the period 1.8.2006 to 16.6.2011.

Though a direction was issued on 31.7.2013 for the presence of Mr. Sanjay Gupta, Additional Commissioner of Service Tax, Delhi, he is inexplicably not present in Court. There is no application filed seeking his exemption from appearance. This kind of conduct is unwarranted.

Mr. Sanjay Gupta, Additional Commissioner of Service Tax, Delhi, will remain present in Court on the next date of hearing.

Mr. Govind Kumar Garg, Assistant Commissioner of Service Tax, Division-II, is present in Court. He maintains that a sum of Rs.4,90,03,438/- has been deposited by the decree holder. He says that out of the 19 challans, six challans i.e. 1 to 4, 11 and 12 have been verified. These

challans, according to Mr. Garg, represent service tax deposited towards maintenance of ring road. In respect of these six (6) challans, Mr. Garg says that refund would be made subject to fulfilment of other formalities.

Insofar as the remaining challans are concerned, it is stated that they are in the process of being verified.

In the aforesaid circumstances, the representative of the decree holder is directed to visit the office of Mr. Garg on 27.9.2013 at 11.00 am. Mr. Garg will communicate to the representative of the decree holder as the formalities which are required to be fulfilled vis-a-vis the six (6) challans in respect of which verification is completed and the information which is required qua the remaining challans for further processing.

List for directions on 26.11.2013.

Both Mr. Gupta and Mr. Garg will remain present in Court to report to the Court as to the outcome of the exercise.”

Order dated 26th November, 2013

“1. Mr. Sanjay Gupta, Additional Commissioner along with Mr. Govind Kumar Garg, Assistant Commissioner, Service Tax, Division-II, New Delhi are present in Court.

2. They have placed before me an adjudication order dated 25.11.2013. As per the adjudication order, a refund of Rs.3,52,98,692/- has been sanctioned in favour of the decree holder, which is inclusive of service tax element amounting to Rs.3,28,43,454/- and interest of Rs.32,29,238/-. Refund amounting to Rs.1,14,84,925/- has been rejected, (which includes service tax element of Rs.26,25,580/- and interest of Rs.89,59,345/-) out of the total refund claim of Rs.4,76,57,617/-.

3. Even according to the decree holder, insofar as the works in issue are concerned, as per the decree holder’s

affidavit of 28.5.2013, the decree holder will be entitled to refund of only a sum of Rs.4,36,52,889/-.

3.1 To be noted, this scales down the figure from Rs.4,90,03,438/-.

4. Ms. Salwan says that she would like to examine the order-in-original dated 25.11.2013.

5. Mr.Sanjay Gupta is exempted from further appearance, since he says that he has been transferred out, the concerned officer though in the department shall appear in Court, as and when required.

6. Mr. Garg shall, however, remain present in Court on the next date of hearing to assist the Court.

7. Renotify on 20.5.2014.

8. The decree holder shall examine as to whether it would like to challenge the order-in-original by way of a statutory appeal.”

11. The order issued by the Department on 9th May, 2013 indicates that the department has received a sum of Rs.4,90,03,438/- which was deposited by the decree holder between the period 1st August, 2006 to 16th June, 2011. However, the learned counsel for the Department states that the said Service Tax paid on management, maintenance or repairs of ring road for the three projects, i.e. Delhi, Vijaywada and Panagarh. Therefore, the refund amounting to Rs.1,14,84,925/- has been rejected (which includes service tax element of Rs.26,25,580/- and interest of Rs.89,59,345/-) out of the total refund claim of Rs.4,76,57,617/-.

12. Learned counsel for the decree-holder has not disputed the fact that the decree holder has received refund of the service tax amounting to Rs.3,39,07,921/- in cash for the period March, 2006 to September, 2009 against ‘Management Maintenance or Repair Service’. Counsel further

states that for the safety side, the order dated 25th November, 2013 has been challenged by the decree holder. The fact remains that in case, the money has been deposited by the decree-holder with the Department with respect to the Service Tax which is now not applicable, why the amount deposited by the decree holder earlier as a Service Tax should not be returned by the Department. Counsel has not disputed that there are three projects, i.e. Delhi, Vijaywada and Panagarh. However, she has referred the additional affidavit dated 28th May, 2013 filed by the decree-holder where the specific statement has been made with regard to the Delhi Project that the Service Tax amounting to Rs.4,36,52,889/- was deposited by the decree holder. The details of the said amount are given in para 2 of the affidavit which reads as under:-

Details of Service Tax deposited for the comprehensive maintenance of Ring Road & Outer Ring Road in NCT of Delhi		
Challan No.	Date	Amount
7849	01.08.2006	500000
17	17.07.2009	1000000
12	29.08.2009	1000000
1000006	17.02.2010	5000000
1000007	17.02.2010	5000000
1000008	17.02.2010	5000000
1001531	31.03.2010	5000000
1001585	31.03.2010	5000000
1001606	31.03.2010	700000
1100052	21.03.2011	646456
1100055	21.03.2011	3275253

1100057	21.03.2011	3347328
1100063	21.03.2011	2126481
1100065	21.03.2011	2741663
1100066	21.03.2011	1081012
1100070	21.03.2011	904898
1100022	16.06.2011	133011
1100024	16.06.2011	491709
1100026	16.06.2011	705078
Total		43652889

13. It is specifically mentioned in para 3 of the affidavit that the said amount has been deposited only for the project of “Comprehensive Maintenance of Ring Road and Outer Ring Road, NCT of Delhi”, i.e. project for which the Arbitrator had made and published his Award.

14. It is an undisputed thing that the decree holder has also filed an undertaking that the decree holder would not make any claim on the Service Tax Department or with the PWD or with any other authority with respect to the said amounts. In view of the said undertaking, there is no impediment why the Department should not pay the remaining amount deposited by the decree-holder as Service Tax. Under these circumstances, I direct that the Department shall forthwith refund the amount of Rs.1,14,84,925/- which includes service tax element of Rs.26,25,580/- and interest of Rs.89,59,345/- out of the total amount of Rs.4,76,57,617/- deposited by the decree-holder with Delhi Project. The undertaking given by the decree holder which is filed by an affidavit is duly accepted. The Department of Commissioner of

Service Tax shall not issue the said payment to the decree holder within four weeks from today. Copy of order also be sent to the Department for the purpose of compliance.

15. The execution petition and pending application(s), if any, are accordingly disposed of as other prayers at this stage are not pressed.

16. No costs.

(MANMOHAN SINGH)
JUDGE

MAY 26, 2014