IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 2032 of 2016 (O&M)
Date of decision: 19.9.2016

Malwa Engineering Works

.. Petitioner

v.

The Union of India and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Vikram Bali, Advocate for the petitioner.

Mr. Ashish Rawal, Advocate for respondents No. 3 and 4.

Mr. Tajender K. Joshi, Advocate for respondent No. 5.

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Rajesh Bindal J.

The petitioner has approached this court impugning the order dated 23.12.2015, passed by the Commissioner, Municipal Corporation, Chandigarh, whereby the representation filed by the petitioner seeking payment of ₹ 17,77,023/-, was rejected.

In the case in hand, the petitioner was awarded a contract for lifting of dry leaves/horticulture waste/ solid waste from Sector 22, Chandigarh in response to E-tendering notice. The tender was floated on 10.5.2012 and the work was allotted to the petitioner on 31.5.2012. As per the condition in the contract, the amount to be offered was to include all taxes and levies. As service tax was leviable under the provisions of the Finance Act, 1994, as amended upto date, at the time of acceptance of tender, the component was included in the amount offered by the petitioner. Monthly instalments were being paid to the petitioner against the bills raised upto November, 2012. The service tax component used to be deposited by the petitioner with the department. In fact, the service tax on the kind of service provided by the petitioner was exempted by Government of India, Ministry of Finance, vide notification dated 20.6.2012 w.e.f. 1.7.2012. However, this notification did not come to the notice of the Municipal Corporation, hence, the amount of service tax, which was included in the amount offered by the petitioner, was being paid and as a consequence, the same was being deposited by the petitioner with the department. From December, 2012 onwards, finding that service tax is not leviable on the kind of service provided by the petitioner, the Municipal Corporation, while making payment to the petitioner, reduced that amount. The grievance of the petitioner is that he is required to be paid the entire amount without deducting any amount on account of service tax stating that in case any tax would have been levied subsequently, the liability was on the petitioner, hence he deserves to be benefited in case the service has been exempted from leviability of service tax subsequently.

On the other hand, learned counsel for the Municipal Corporation submitted that the condition in the tender provided that the amount offered should include all taxes and levies and on the date when the tender was floated and accepted, service tax was leviable and the same was included in the amount offered by the petitioner. As subsequently, the service has been exempted from tax, the petitioner cannot be paid that amount as the same was being paid for further deposit with the service tax department. The petitioner cannot be permitted to be unjustly enriched at the cost of the State. Even for the period from July, 2012 till November, 2012, the amount was paid by mistake as the notification granting exemption did not come to the notice of the Municipal Corporation. The action shall be taken for recovery of that amount from the petitioner.

Heard learned counsel for the parties and perused the paper book.

The fact that service tax was leviable at the time when the tender was floated and accepted on the kind of service to be provided by the petitioner is not in dispute. It is further not in dispute that the amount to be offered by the petitioner was to include all taxes and levies. It was after understanding the terms and calculating the amount of tax payable, the petitioner had offered the amount. Vide notification dated 20.6.2012, the levy of service tax on the kind of service provided by the petitioner was exempted from payment of tax w.e.f. 1.7.2012. The notification having not come to the notice of the Municipal Corporation, the bills raised by the petitioner were cleared upto November, 2012, which included the amount of service tax as well, however, from December, 2012 onwards, the amount of service tax was reduced. The grievance of the petitioner is that he is entitled to be paid that amount as well. However, we do not find any merit in the claim made. Once the amount offered by the petitioner included all taxes and levies and subsequently, the levy of service tax was withdrawn by the Government, that amount being one of the component in the price offered by the petitioner, he is not entitled to claim that from the Municipal Corporation, as that amount was to be received and paid to the department concerned. In case, the amount on account of tax is directed to be paid to the petitioner, he is not required to deposit the same with the department and will be unjustly enriched.

For the reasons mentioned above, we do not find any merit in the present petition. The same is, accordingly, dismissed.

(Rajesh Bindal)
Judge

(Darshan Singh)
Judge

19.9.2016
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No