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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-5418-2016 (O&M)
Date of decision : 16.09.2016

State of Haryana

... Appellant

Versus

M/S M.G. Contractors Private Ltd. And another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ashwinie Kumar Bansal, Advocate for the appellant.

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AMIT RAWAL, J. (ORAL)

CM-18762-CII-2016

For the reasons mentioned in the application, which is duly supported by an affidavit, the delay of 33 days in re-filing the appeal is condoned.

CM stands disposed of.

FAO-5418-2016

The appellant-State of Haryana is aggrieved of the dismissal of the objections under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter called 'the 1996 Act') for setting aside the Award dated 21.12.2010, whereby the claimant has been held to be entitled to retain ₹ 20,40,810/- subject to the finalization of the assessment order.

Mr. A.K. Bansal, learned counsel appearing on behalf of the appellant submits that the assessment order dated 28.04.2009 (Annexure P-4) reveals that the assessment of the sales tax is @ 4%, therefore, since the order is as per the assessment order, therefore, the claimant would not be entitled to retain the amount of ₹ 20,40,810/-. The aforementioned finding of the Arbitrator was on the premise that the assessment was presumably @ 10%. This aspect has also not been taken care by the Objecting Court as the assessment order was the part and parcel of the record.

I have heard the learned counsel for the appellant and appraised the paper book. In my view, filing of the objections was totally a futile exercise as the assessment order is final one and had not been set aside. It clearly reveals that the Contractor was taxed @ 4% and therefore, would not be entitled to difference of 6%, because the Award of the Arbitrator construed in such manner. For the sake of brevity, the operative part of the Award reads thus:-

> *"However, in the present case from the undertaking (Annexure R-3) given by the claimant it is obvious that the tender was processed on the assumption that the sale Tax payable on bitumen was Ten percent and this rate of sales Tax quoted by the contract taken into consideration while arriving at the contract price. Admittedly, thus, the claimant/contractor is under legal obligation to pay difference in Sale Tax @ 6 per cent at the time of assessment is finalized. The amount of ₹ 20,40,810/- which is liable to be paid as and when the assessment is finalized, is thus, to be retained by the claimant in a fiduciary capacity and not as of right. Hence, I do not find any justification to award any interest to the claimant."*

In my view, the appellant shall be at liberty to raise all possible plea/objections in the execution proceedings stated to be pending, but not in the manner and mode as has been adopted.

For the foregoing reasons, no ground is made out for interference and accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

16.09.2016
yogesh

✓
Whether speaking/reasoned **Yes/ No**
✓
Whether Reportable **Yes/ No**