IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.586 of 2016
In
Civil Writ Jurisdiction Case No.89 of 2011

==

M/s. Speed Crafts Limited, a Company incorporated under the porvisions of the Companies Act, 1956, having its registered office at Layak Bhawan, Boring Canal Road, Patna- 800001, through its Director (Works), S.S. Khadria, Son of Late R.R. Khadria, resident of Layak Bhawan, East Boring Canal Road, P.S. Buddha Colony, District Patna

... ... Appellant/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna
2. The Principal Secretary, Road Construction Department, Government of Bihar, Vishweshwaraiya Bhawan, Patna
3. The Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, Road Construction Department, Government of Bihar, Vishweshwaraiya Bhawan, Patna
4. The Director (Purchase & Transport), Road Construction Department, Government of Bihar, Vishweshwaraiya Bhawan, Patna
5. The Chief Engineer (Mechanical), Road Construction Department, Government of Bihar, Vishweshwaraiya Bhawan, Patna null null

... ... Respondent/s

==

Appearance :
For the Appellant/s : Mr. Suraj Samdarshi
For the Respondent/s : Mr.

==

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 13-11-2017

Heard learned counsel for the appellant.

Appellant is aggrieved by order, dated 01.05.2015, passed by a Learned Single Judge of this Court in C.W.J.C. No. 89 of 2011, by which the writ application, preferred by the appellant for payment of differential amount on account of increase of Sales and

Excise Duty for supply of eight diesel road rollers, made in the year 1999-2000, has been refused.

Learned counsel for the appellant submits that even though Annexure – 1, which is the copy of the supply-order, dated 24.02.1999, provides by way of one of the terms and conditions that the price is inclusive of excise duty. The fact remains that subsequently on the revision made by the appellant to the authorities of the Road Construction Department, the same was under consideration and at one stage even sanction of differential amount was sought for.

Learned counsel for the appellant is, however, unable to show any subsequent amendment in the supply-order, showing that the department had declared its intention to pay the differential amount. Annexure – 1, which is the supply-order remained unaltered.

If this is the situation, then what has been held by a Coordinate Bench of this Court in ***L.P.A. No. 505 of 2008 (State of Bihar and others. Versus M/s Gujarat Apolo Equipments Ltd.)*** vide order, dated 04.09.2009 would equally apply in the case of the appellant. The relevant part of the judgement of the Coordinate Bench in the said case is quoted hereinbelow for a ready reference:-

> ***"It is clearly mentioned in the agreement what shall be the prices of various articles and the first term and condition is to***

the effect that the price is inclusive of Excise Duty, Sales Tax, Freight, Transit, Insurance Charge, Erection and commissioning charge etc. The delivery date is also mentioned as one of the terms and conditions.

Although there was delay in making delivery of the goods but since the goods were accepted, its price had to be paid by the appellants but in view of clear term that the price is inclusive of various charges and taxes including the Central Excise Duty, in our view, section 64A of the Act cannot help the claim of the respondent that the State is liable to make extra payment on account of increase in Central Excise Duty. Section 64A of the Act runs as follows:

"64A. In contracts of sale, amount of increased or decreased taxes to be added or deducted. - (1) Unless a different intention appears from the terms of the contract, in the event of any tax of the nature described in sub-section (2) being imposed, increased decreased or remitted in respect of any goods after the making of any contract for the sale or purchase of such goods without stipulation as to the payment of tax where tax was not chargeable at the time of the making of the contract, or for the sale or purchase of such goods tax paid where tax was chargeable at that time,-

(a) If such imposition or increase so takes effect that the tax or increased tax, as the case may be, or any part of such tax is paid or is payable, the seller may add so much to the contract price as will be equivalent to the amount paid or payable in respect of such tax or increase of tax, and he shall be entitled to be paid and to sue for and recover such addition; and

(b) If such decrease or remission so takes effect that the decreased tax only, or no tax, as the case may be, is paid or is payable, is

> ***paid or is payable, the buyer may deduct so much from the contract price as will be equivalent to the decrease of tax or remitted tax, and he shall not be liable to pay, or be sued for, or in respect of, such deduction."***
>
> ***Sub-section (1) (a) of Section 64 A of the Act is explicit and clear that 'if such imposition or increase in tax is payable to the seller, unless a different intention appears from the terms of the contract, the seller may add it to the contract price. In the present case, on going through the terms and conditions of the contract, as noticed above, we find that there is different intention and the parties had agreed for a fixed price inclusive of tax and charges regardless of any increase or decrease in Central Sales Tax and Excise Duty etc.***
>
> ***In view of the aforesaid discussions, the appeal is allowed in part and the finding of the writ court to the effect that the State cannot deny increased Central Excise Duty and is required to pay the same, is set aside. The direction that the required payment should be made by the State within a period of two months from the date of the order under appeal is also modified only to the extent that the period of two months shall be from the date of this order.***
>
> ***With the aforesaid modifications, in the order under appeal, this appeal is disposed of as allowed in part only. There shall be no order as to costs."***

The Learned Single Judge has also taken note of the fact that the supply-order was issued to the petitioner in the year 1999 for supply of road rollers. The cause of action, if any, to the petitioner for claiming payment of differential amount arose in the year 2000 and, therefore, filing of the writ application after more than 10 years on 03.11.2011 would be fatal for the petitioner on the ground of delay and latches.

In view of the materials, particularly Annexure – A, which clearly shows the intention of the department, while issuing supply-order by including the excise duty in the price itself and the reason for moving this Court after 10 years from the date on which cause of action arose to the petitioner, are equally good grounds for rejection of the writ application.

We do not find any infirmity in the order of the Learned Single Judge.

Appeal has no merit. It is, accordingly, dismissed.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

skm/-

AFR/NAFR	N.A.F.R.
CAV DATE	
Uploading Date	14.11.2017
Transmission Date	