IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

RA No.136-CII of 2016 (O&M) in
FAO No.3695 of 2013
Date of Decision.02.11.2018

Housing Board Haryana ....Appellant

Vs

Madhukar Mittal and another ...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. P.S. Rana, Advocate
for the applicant/respondents.

Mr. Ashwani Talwar, Advocate
for the non-applicant/appellant.

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AMIT RAWAL J. (ORAL)
C.M. No.10343-CII of 2018

For the reasons stated in the application, delay of 39 days in re-filing of the review application is condoned.

Application is allowed.

RA No.136-CII of 2016 (O&M)

The applicant-respondent has preferred the review application for seeking review of the order dated 01.12.2015 accompanied by an application seeking condonation of delay of 30 days in filing the review application whereby this Court had set aside the award in part and accepted the appeal preferred by the Housing Board vis-à-vis liability of the contractor by burdening him with the payment of service tax on the premise that after interpretation of the similar provisions of the contract in ***M/s Bharat Bhushan Gupta and company Vs. State of Haryana and others 2017(1) RCR (Civil) 774***, it has been held that liability of payment of tax cannot be fastened upon the contractor.

In pursuance to notice, reply has been filed.

Mr. P.S. Rana, learned counsel appearing on behalf of the review petitioner submitted that the objections against the Award dated 20.09.2010 were dismissed by the Principal Court vide order dated 02.04.2013 wherein it was clearly held that liability of the payment of service tax was that of the Housing Board. The work in question was allotted to the applicant-respondent vide allotment letter dated 13.06.2006, which did not envisage payment of the service tax upon the contractor, therefore, there is error apparent on the record in order dated 01.12.2015 whereby the liability for payment of service tax has been fastened upon contractor.

Mr. Ashwani Talwar, learned counsel appearing on behalf of the non-applicant/appellant raised preliminary objection qua maintainability of the review application, for, there is no reference and mention of the order relied upon, giving cause for filing of the present review application. It is not a case of discovery of new or important material or evidence which after due diligence was not within the knowledge of the applicant, thus, it is misrepresentation of the provisions. The explanation to Order 47 Rule 2 CPC specifically envisage that cause of action to file the review arises only when decision of question of law on which judgment is based has been reversed or modified by subsequent decision of the superior court. The interpretation of additional Condition No.3 of the Contract Agreement dated 03.08.2006 envisaged that the contractor would pay <u>royalty sales tax, excise duty, octroi or any other tax or levey</u>, thus, prays for dismissal of the review application.

I have heard learned counsel for the parties, appraised the paper book and after hearing arguments of the parties, is of the view that there is no force and merit in the submissions of Mr. Rana. The Arbitrator had fastened the liability on the Housing Board to reimburse payment of service tax to the contractor conditionally by observing as under:-

> *"….If levied by Service Tax Department, if any paid by the contractor"*

As per the provisions of the Finance Act, I am of the view that there is no error apparent on the face of record, as the expression "any other tax" would also include service tax. The point in the judgment referred to above was in respect of notification dated 20.06.2012 issued by the Government whereby service of construction provided to the Government, a local authority or a governmental authority is exempted from pay of service tax. Here in this case, the contract is prior notification and therefore, the provisions of the Act shall apply.

The arguments raised by the counsel for the review applicant-respondents tantamount to reagitating the issue, which is not the scope of the review as the ingredients of Section 114 and Order 47 of the Code of Civil Procedure do not envisage such grounds. There has to be an error apparent on the face of record, which has not been brought to the notice of this Court. Re-agitation of the issue, in view of the ratio decidendi culled out by Hon'ble Supreme Court in ***Tamilnadu Terminated Full Time Temporary***

<u>LIC Employees Association Vs. S.K. Roy, The Chairman, Life Insurance Corporation of India and another" 2016 (9) SCC 366</u> is not permissible.

The review petition is dismissed on the ground of delay as well as on merit.

(AMIT RAWAL)
JUDGE

November 02, 2018
Pankaj*

Whether Reasoned/Speaking	Yes
Whether reportable	No