IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2019

CORAM

THE HONOURABLE MR. **JUSTICE N.SATHISH KUMAR**

Original Petition No.151 of 2013

Rail Vikas Nigam Limited,
Mezzanine Floor,
Tirumailai Railway Station,
Mylapore,
Chennai – 600 004. .. Petitioner

Vs.

1. M/s.Concrete Product and Construction Company,
New.No.398, Old No.766,
Poonamallee High Road,
Chennai – 600 010.

2. Mr.A.M.Chowdhary,
General Manager/Electrical,
Rail Vikas Nigam Limited,
Mezzanine Floor,
Tirumailai Railway Station,
Mylapore,
Chennai – 600 004. .. Respondents

Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the arbitral Award dated 24.09.2012 made in relation to disputes arising out of Contract Agreement No.RVNL/CPM/MAS/IPL-ICTT/OT-5, dated 30.05.2009.

For Petitioner : Mr.V.G.Suresh Kumar

For Respondents : Mr.Thayumanavan
for M/s.A.Jenasenan for R1.

ORDER

This original petition has been filed to set aside the arbitral Award dated 24.09.2012 made in relation to disputes arising out of Contract Agreement No.RVNL/CPM/MAS/IPL-ICTT/OT-5, dated 30.05.2009.

2. The brief facts leading to file this petition is as follows:

The agreement dated 13.09.2018 had entered between the petitioner and the respondents for manufacturing and supply of prestressed pretensioned concrete sleepers for bridges and bridge approaches to Drawing No.4088 Alt.3 and Drawing No.4089 to 4097 Alt.4 against the claim of VAT @ 12.5%. The respondents have admitted only 2% of VAT. Hence, the claim has been preferred for difference of VAT. The respondents assisted the above claim on the ground being the contract does not specify about the payment of VAT.

3. The learned Arbitrator has passed the award directing the respondents to pay the VAT reimbursement, the value actually paid.

4. The learned counsel for the petitioner would contend that in the contract, there is no mention about the reimbursement of VAT.

Further, despite the requisition made by the petitioner, the respondents have not provided any information as to the payment of VAT. Therefore, when the contract itself is very much silent about the payment of VAT, the Arbitrator has directed the petitioner to pay the VAT, which is against the terms of the contract.

5. The learned counsel for the respondents submitted that the Arbitrator has considered the entire matter and passed the detailed order, the same cannot be interfered.

6. Admittedly, the small issue with regard to the payment of VAT, the VAT is legally paid by the respondents which is not in dispute. The percentage of VAT at 4.5% is also not in dispute. The learned Arbitrator has in fact clearly noted down that both parties are at fault in following the procedures, as far as, VAT is concerned, by holding so, the learned Arbitrator also held that though the claimant has not quoted about the percentage of VAT. Accordingly, in the tender, the respondents have also not verified the quoted rate of the VAT issued by the Government of Tamilnadu. By holding so, the learned Arbitrator said that these facts did not alter the condition though VAT @ 12.5% is to be paid is legally applicable and paid.

N.SATHISH KUMAR,J.

msv

7. Taking note of the award passed by the learned Arbitrator, the Arbitrator considered the materials on record and interpreted the contract reasonably. This Court cannot sit as an Appellate Court to re-appreciate the entire evidence. This is also within the power of the Arbitrator who has reasonably interpreted the contract. Hence, I do not find any materials or any ground to interfere the award under Section 34 of the Arbitration and Conciliation Act, 1996 .

8. Accordingly, the original petition is dismissed. No costs.

08.07.2019

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