IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.08.2019

PRONOUNCED ON : 30.08.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.338 of 2016

M/s.Hotel Sri Sampoorna
Represented by its Proprietor
S.Soundararajan
No.27, Mettupalayam Road,
Coimbatore. ... Appellant /Appellant/ Defendant

Vs.

M/s.Ess.Emm.Corporation,
Represented by its Managing Partner
M.Sathish Kumar,
No.112A, Dr.Nanjappa Road,
Coimbatore. ... Respondent/ Respondent/ Plaintiff

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 14.08.2015 passed in A.S.No.52 of 2013 on the file of the V Additional District Court, Coimbatore, confirming the Judgment and Decree dated 08.08.2011 passed in O.S.No.222 of 2008 on the file of the II Additional Subordinate Court, Coimbatore.

For Appellant : Mr.R.Bharath Kumar
For Respondent : Mr.C.Veeraraghavan

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 14.08.2015 passed in A.S.No.52 of 2013 on the file of the V Additional District Court, Coimbatore, confirming the Judgment and Decree dated 08.08.2011 passed in O.S.No.222 of 2008 on the file of the II Additional Subordinate Court, Coimbatore.

2.For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3.Suit for recovery of money.

4.According to the plaintiff, the defendant had placed orders with the plaintiff to supply kitchen equipments and the plaintiff had supplied the same to the defendant on 18.10.2004 as per the invoices detailed in the plaint and the defendant had assured to furnish Form – 17 within a short period of time. However, the defendant had failed to produce Form – 17, despite the repeated requests on the part of the plaintiff and therefore, according to the plaintiff, it had been necessitated to pay the difference tax amount of Rs.2,92,500/- to the sales tax department and the plaintiff had also sent debit note with reference to the same to the defendant, however, the defendant had failed to pay the amount and hence, according to the plaintiff, it has been necessitated to institute the suit against the defendant for the recovery of the abovesaid money with interest as prayed for.

5.The defendant had not disputed the supply of the kitchen equipments to it by the plaintiff. According to the defendant, it had paid the amounts at various stages as detailed in the written statement for the supply of the kitchen equipments to the plaintiff and put forth the case that the plaintiff has supplied the equipments on 09.08.2003 and at that point of time, the plaintiff did not issue the invoices with reference to the supply of the equipments and the defendant had been requesting the plaintiff to issue the original invoices so that it could issue form – 17, however, the plaintiff failed to issue the invoices till the end of the financial year and on the other hand, raised two invoices dated 18.10.2004, as if the equipments were supplied on 18.10.2004 and therefore, according to the defendant, the plaintiff having failed to raise the invoices within the financial year, it is not open to the plaintiff to raise the invoices belatedly and in such view of the matter, it is put forth that any tax paid by the plaintiff to the sales tax department, it is only the plaintiff who has the liability to pay the same and the defendant is not liable to issue form – 17 after the end of the financial year and therefore, according to the defendant, the plaintiff is not entitled to claim any amount from the defendant and the suit is liable to be dismissed.

6.Considering the materials placed on record, as could be seen from the invoices marked as Exs.A2 & A3 dated 18.10.2004, it is found that as determined by the Courts below, the kitchen equipments were supplied to the defendant only on 18.10.2004 by the plaintiff and accordingly, the endorsement had been made by the defendant in the abovesaid invoices that they had received the goods in good condition and as held by the Courts below, DW1, the proprietor of the defendant had admitted that his signatures are available in Exs.A2 & A3 and that he had made the endorsement with reference to the fact evidencing that the goods were received in good condition.

7.As held by the Courts below, the plaintiff having established the supply of the equipments only on 18.10.2004 by way of Exs.A2 & A3 as well as the abovesaid admission on the part of the defendant, on the other hand, the defendant having taken the plea that the goods were delivered on 09.08.2003 itself, the onus is only upon the defendant to establish the same. In this connection, Exs.B1 & B2 were relied upon by the defendant. However, considering the description of the equipments found in Exs.B1 & B2 and when they are found to be not tallying with the description of the equipments covered under Exs.A2 & A3, in such view of the matter, based on Exs.B1 & B2, we cannot conclude that the equipments involved in the present suit had been delivered to the defendant on 09.08.2003.

8.When the invoices marked as Exs.A2 & A3 go to disclose that the equipments involved in the matter were delivered only on 18.10.2004 and furthermore, when claiming the amount due to it, the plaintiff had also sent the letters to the defendant on 21.10.2004 and 28.07.2005 along with the copy of the debit note marked as Exs.A4 to A6 calling upon the defendant to issue form - 17 and also make the payment paid by the plaintiff towards the difference in the tax amounting to Rs.2,92,500/-, however, though the defendant had not repudiated the receipt of the abovesaid letters, despite the above position, the defendant has not sent any reply to the plaintiff repudiating the claim made under the same.

9.When from the pleas put forth by the respective parties, the defendant admits its liability to issue form - 17 and has only taken the plea that the plaintiff had delayed the issuance of invoices with reference to the supply of the equipments in question and as abovenoted, having failed to establish that the equipments in question were supplied by the plaintiff on 09.08.2003 itself and on the other hand, acknowledged the receipt of the equipments only on 18.10.2004 by making appropriate endorsement in Exs.A2 & A3 and when on a perusal of Exs.A2 & A3, the sales tax had been charged at 3% against form - 17 and when the defendant had not given or issued form - 17 to the plaintiff, in such view of the matter, the plaintiff having been necessitated to pay the difference in the sales tax amounting to Rs.2,92,500/- to the sales tax department and the defendant having not denied the abovesaid payment made by the plaintiff, in such view of the matter, the Courts below are found to be justified in holding that the defendant is liable to pay the plaintiff the sum of Rs.2,92,500/- paid by the plaintiff towards the difference in the sale tax, pursuant to the failure of the defendant to furnish form - 17 and also the failure of the defendant to pay the said amount, despite the letters sent by the defendant by way of Exs.A4 & A5.

10.In the light of the abovesaid factors, the Courts below are found to have properly assessed and analysed the materials available on record and rightly determined that the defendant is liable to pay the difference in the sales tax paid by the plaintiff under the invoices Exs.A2 & A3 amounting to Rs.2,92,500/- and the abovesaid determination of the Courts below being centring on factual matrix and not involving any question of law and the abovesaid determination having been arrived at by the Courts below on the proper appreciation of the materials available on record and not suffering from any perversity or infirmity, in such view of the matter, the judgement and decree of the Courts below do not warrant any interference.

For the reasons aforestated, no substantial question of law is found to be involved in the matter and resultantly, the second appeal is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

sms
To

1.The Judge, V Additional District Court, Coimbatore.
2.The Judge, II Additional Subordinate Court, Coimbatore.

Copy to

The Section Officer, V.R.Section, High Court, Madras.

+1cc to Mr.R.Bharath kumar , Advocate SR.No. 76066
+1cc to Mr.C.Veeraraghavan , Advocate SR.No. 75416

S.A.No.338 of 2016

A.SK(12/03/2020)