

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2019

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.740 of 2018

and

A.Nos.2387, 293 & 4779 of 2019

M/s.M.Nagarajan & Co.,
A registered Partnership Firm,
Rep.by Partners,
M.Nagaraj, M.Mohamed Abubakar Siddique and
P.Mythili.

... Plaintiff

Vs.

1.The Chief Engineer,
Highways,
NABARD & Rural Roads,
HRS Campus,
Chennai – 600 025.

2.The Superintend Engineer,
Highways,
NABARD & Rural Roads,
Chengalpattu.

3.The Divisional Engineer,
Highways,
NABARD & Rural Roads,
Chengalpattu.

... Defendants

Plaint filed under Order VII Rule 1 C.P.C. read with Order IV
Rule 1 of the High Court Original Side Rules praying for:

(a) to declare that the withholding of Bank

Guarantee No.32/10 and 116/2009 issued by Indian Overseas Bank, Gemini Circle Branch, Cathedral Road, Chennai, by the defendants is illegal and contrary to contract and consequently direct the defendants to return the bank guarantee within the time frame fixed by this Hon'ble Court;

(b) Consequently for permanent injunction restraining the defendants from encashing or insisting for extension of Bank Guarantee on the ground of pendency of audit report for excise duty exemption;

(c) to declare that the plaintiff is entitled for exemption of excise duty for cement and consumption machineries used as claimed pursuant to Government to India (Ministry of Finance, Department of Revenue) Central Excise Notification No.108/95 and Customs Notification No.89/95 (Revised No.84/97) and in accordance with G.O.M.S.No.583/Revenue (NC IV); as claimed by the plaintiff and permitted by defendants;

(d) For cost of the suit; and

(e) For such further or other orders as this Hon'ble Court may deem fit and proper on the facts and circumstances of the case and render justice.

For Plaintiff : M/s.G.Surya Narayanan

For Defendants : Mr.M.Sricharan Rangarajan,
Special Government Pleader (CS)

J U D G M E N T

The suit has been filed to declare that the withholding of Bank Guarantee No.32/10 and 116/2009 issued by Indian Overseas Bank, Gemini Circle Branch, Cathedral Road, Chennai by the defendants is illegal and contrary to contract and consequently direct the defendants to return the bank guarantee as originally given towards the construction of bridge.

2. During the course of this proceedings, it is brought to the notice of the Court, by the plaintiff, as per Government of India (Ministry of Finance, Department of Revenue) Central Excise Notification No.108/95 and Customs Notification No.89/95 (Revised No.84/97) and in accordance with G.O.M.S.No.583/Revenue (NC IV), the plaintiff is entitled to exemption of excise duty on machineries and materials purchased and used for this project. According to the plaintiff, in respect of the machineries, a sum of Rs.11,94,503/- to be paid back to the defendants. Therefore, the department cannot withhold the bank guarantee furnished.

3. The learned Special Government Pleader (CS) appearing for the defendants on instructions submitted that the Department is

also in principle agreeable for the notification and the amount for machineries need not be clarified on the audit objection towards machineries. The same is liable to be paid by the plaintiff.

4. Whereas, the plaintiff would contend that he is ready to furnish the Bank Guarantee for Rs.12 lakhs and also to undertake in the event of the audit finds more amount payable to the machineries, he is ready to pay the amount.

5. In view of the above undertaking, the letter of the Highways Department, dated 27.09.2019, placed before this Court, the department also in principle agree the notification and it also indicates that the machineries value of Rs.11,94,503/-, the suit itself can be disposed of and direct the defendants to return bank Guarantee for a sum of Rs.1,81,00,000/- given by the plaintiff from the date on which the plaintiff furnished bank Guarantee for Rs.12 lakhs towards the department. In the event of audit finds that more amount has to be paid, the department can recover the same. In the event, similarly the audit finds that no amount is payable towards the machineries, the Bank Guarantee for a sum of Rs.12 lakhs taken from the plaintiff shall also be returned.

6. It is made clear that the defendants are directed to return the Bank Guarantee within two weeks and the plaintiff shall furnish the Guarantee of Rs.12 lakhs within the same period.

7. Accordingly, the suit is disposed of. No costs. Consequently, connected applications are closed.

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