**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA No. 4369 of 2012(O&M)

Date of decision: 26.8.2019

M/s M.R. Engineers …..Appellant

VERSUS

State of Haryana and another .....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Pankaj Midha, Advocate for the appellant.

Mr. Rohit Arya, AAG, Haryana.

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REKHA MITTAL, J.

Challenge in the present appeal has been directed against judgments and decrees passed by the Courts whereby suit filed by the appellant seeking declaration that recovery proceedings and recovery notice issued by respondent No.2 for payment of Rs.4,00,000/- under Central Sales Tax Act, 1956 (in short 'CST Act') are illegal, contrary to the provisions of law, null and void and as such not binding and not enforceable against the appellant was dismissed by the trial Court vide judgment and decree dated 27.01.2011 that came to be affirmed in appeal filed by unsuccessful appellant/plaintiff, by the Additional District Judge, Faridabad on 23.05.2012.

Indisputably, M/s M.R. Engineers (hereinafter referred to as 'appellant concern') is doing business at 82-C, HSIDC Industrial Complex, Sector 31, Faridabad. M/s Insultek Engineers Pvt. Ltd (hereinafter referred to as "M/s Insultek Engineers') is a manufacturing concern operating from

C-86, HSIDC Industrial Complex, Sector 31, Faridabad. M/s Insultek Engineers applied for sales tax registration under the Haryana General Sales Tax Act, 1973 (in short 'HGST Act'). Under Section 7(2A) of the CST Act, one can apply to the authority granting registration certificate for proper realization of the tax payable under the Act or for proper custody and use of various forms and a condition can be imposed for issuance of certificate of registration that the dealer shall furnish security as specified. The dealer who is granted registration certificate is required to file returns quarterly and pay tax on the turnover declared in the returns. The plea of the appellant is that surety bond alleged to have been filed by the plaintiff to stand surety for M/s Insultek Engineers is without compliance of Section 7(2A) of the CST Act. No notice to frame assessment or notice of assessment to declare the company a defaulter was issued. The plaintiff stood surety for Rs.25,000/- only under the CST Act and amount mentioned in surety bond has been changed to Rs.4,00,000/- by using liquid eraser. It is averred that surety bond becomes invalid as cutting or overwriting on the stamp paper has not been got authenticated from the signatory. The alleged surety bond is stated to be invalid and illegal inter alia on the grounds detailed in sub-para (1) to (13) of para 2 of judgment of the trial Court.

The respondents/defendants filed written statement and controverted the allegations on the basis whereof the appellant sought to assail recovery proceedings and recovery notice as M/s Insultek Engineers committed default in payment of due tax. They raised preliminary objections regarding maintainability; locus standi; availability of other efficacious remedy; or for want of notice under Section 80 of the Code of Civil Procedure, 1908 and jurisdiction of the Court etc.

The trial Court framed issues reproduced in paras 6 and 7 of the judgment of said Court. The parties were permitted to adduce evidence, detailed in paras 8 and 9 of judgment of the trial Court. Having heard counsel for the parties in the light of material on record, the trial Court negated plea of the appellant/plaintiff that it is not liable to pay the outstanding amount against M/s Insultek Engineers in discharge of its liability created under the surety bond furnished by the appellant concern. As has been noticed hereinbefore, findings of the trial Court were affirmed in appeal while dismissing the appeal preferred by the unsuccessful plaintiff/appellant.

Counsel for the appellant has assailed concurrent findings primarily on two counts. It is argued that since the surety bond has been altered to the disadvantage of the appellant by changing the amount of surety from Rs.25,000/- to Rs.4,00,000/- with regard to liability under the CST Act, the surety bond relied upon by the respondents is vitiated and cannot be relied upon by the respondents/defendants to counter case of the plaintiff/appellant. To substantiate his contention, he has sought to rely upon the facts elicited in cross examination of Mrs. Suman Sindhu, E.T.O., Faridabad who had admitted the factum of change in the figure from Rs.25,000/- to Rs.4,00,000/- by using fluid and the change/alteration does not bear signatures/initials of Sh. M.M. Sood, a partner of the appellant concern. Another submission made by counsel is that in the notice raising additional demand of Rs.1095/- under the HGST Act and Rs.12,943/- and Rs.7,59,011/- under the CST Act Ex.P1, there is reference that vide letter dated 11.09.2001, the appellant concern had applied for cancellation/withdrawal of surety vide application dated 23.03.1999. It is argued that in Ex.P1, it has further been mentioned that surety remains liable upto the period of six months from the date of withdrawal of surety but as per the relevant provisions of the CST Act, the said period is not six months rather the same is only 90 days. It is argued with vehemence that the appellant cannot be held liable for any liability that incurred subsequent to 23.06.1999, therefore, additional demand raised by the respondents under the CST Act is not legally sustainable.

Counsel representing the respondents, on the contrary, has supported concurrent findings of fact recorded by the Courts. It is argued that plea of the appellant with regard to alteration in the surety bond with regard to extent of liability of the appellant concern on the pretext of change in amount from Rs.25,000/- to Rs.4,00,000/- has rightly been rejected by the Courts in view of the statement of Sh. M.M. Sood, partner of the appellant concern, recorded on 05.02.1994 wherein there is no alteration/cutting with regard to surety having undertaken to pay liability of M/s Insultek Engineers to the extent of Rs.50,000/- under the HGST Act and Rs.4,00,000/- under the CST Act. It is further argued that no such plea was raised by the appellant that statement dated 05.02.1994 was prepared on blank signatures of Sh. M.M. Sood obtained on a particular point of time, therefore, plea of blank signatures of Sh. M.M. Sood sought to be raised by the appellant is beyond pleadings and result of an afterthought and has been rightly rejected by the Courts. It is argued that in view of the settled position in law, liability of the surety is co-extensive with that of the principal debtor, therefore, contention of the appellant that the respondents could not proceed against the appellant without initiating proceedings against M/s Insultek Engineers is patently misconceived and legally untenable. The last submission made by counsel is that as plea of the appellant to challenge the statement of Sh. M.M. Sood recorded on the back of first page of the surety bond is not meritorious, failure of the respondents to produce the original surety bond for want of its availability in the records is of no consequence.

I have heard counsel for the parties, perused the paper-book and records.

The primary issue in controversy is whether the appellant can derive advantage of alteration in the amount of liability of the surety from Rs.25,000/- to Rs.4,00,000/-. The respondents produced on record copies of surety bonds Ex.D2 and D3. On the first surety bond Ex.D2, there is statement dated 05.02.1994 of Mr. M.M. Sood which has been attested by a representative on behalf of Governor of Haryana. Similarly, on the back of first page of document Ex.D3, there is statement dated 24.02.1994 of Vijay Tonk and Vijay Tonk is the second surety on behalf of M/s Insultek Engineers. Both the Courts have relied upon statement dated 05.02.1994 of Sh. M.M. Sood to negate plea of the appellant that Sh. M.M. Sood has not authenticated alteration in the surety bond from Rs.25,000/- to Rs.4,00,000/-. As has been rightly argued by counsel for the respondents, no such plea has been raised in the pleadings by the appellant that statement dated 05.02.1994 of Sh. M.M. Sood has been prepared later by using his blank signatures obtained at the time of execution of surety bond. Perusal of the said statement on the back page of Ex.D2 does not give an inkling that the same has been prepared on blank signatures. The theory of blank signatures propounded by Sh. M.M. Sood, during the course of evidence, is beyond pleadings and result of an afterthought, thus, untenable. In this view of the matter, findings of the Courts to reject plea of the appellant and reliance upon surety bond Ex.D2 and D3 cannot be faulted with on any score whatever. As a result, findings of the Courts with regard to the appellant having furnished surety bond undertaking liability to the extent of Rs.50,000/- under the HGST Act and Rs.4,00,000/- under the CST Act in respect of M/s Insultek Engineers are liable to be affirmed and ordered accordingly.

Counsel for the appellant has made a vain attempt to derive benefit from the contents of Ex.P1 that makes reference to application dated 23.03.1999 for cancellation/withdrawal of surety by the appellant. Counsel for the appellant, in response to a query, would fairly inform that no such plea has been raised by the appellant while assailing its liability to pay the amount in view of recovery notice issued by Excise and Taxation Officer – cum – A.A., Faridabad (East). This apart, there is nothing on record suggestive of the fact that the respondents have sought to recover any amount in excess of outstanding liability of M/s Insultek Engineers till 23.06.1999. In the given circumstances, the appellant cannot derive any advantage to its contention from the facts on record, referred to in notice Ex.P1.

Admittedly, the original surety bond has not been produced in pursuance of order dated 07.02.2019 passed by this Court. Counsel for the respondents made a statement that document Ex.D3 is not original surety bond and original document is not traceable. As has been noticed hereinbefore, plea of the appellant in respect of altering the figure from

Rs.25,000/- to Rs.4,00,000/- with regard to liability under the CST Act is inconsequential in view of the statement made by Sh. M.M. Sood, representative of the appellant concern. In the given scenario, non-production of the original surety bond would neither enure to benefit of the appellant nor cause prejudice to the respondents in their endeavour to realize the outstanding liability of M/s Insultek Engineers from the appellant concern whose liability being surety is co-extensive with that of M/s Insultek Engineers but to the extent of surety furnished by the appellant concern.

No other point has been raised.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed with costs.

AUGUST 26, 2019 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no
Whether reportable : yes/no