



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2021

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.NO.1836 OF 2020

AND

W.M.P.NO.2140 OF 2020

M/s.McNally Bharath Engineering Company Ltd,
Ecospace Campus 2B,
11F /12 (Old Plot No.AAII/BLK3),
New Town Rajarhat North,
24 Parganas, Kolkata - 700 160.
Rep. by its R.Ashwin Gopal

... Petitioner

.Vs.

1. The State of Tamil Nadu Rep. by
The Regional Joint Director of Industries and Commerce,
Thiru. Vi.Ka. Industrial Estate,
Guindy, Chennai - 600 032.
2. Micro and Small Enterprises Facilitation Council,
Chennai Region,
Thiru. Vi.Ka. Industrial Estate,
Guindy, Chennai - 600 032.
Rep. by the Chairman (Industries Commissioner &
Director of Industries and Commerce)
3. M/s.Sri Shanmuga Casting,
Represented by L.Ramesh,
61/1, T/Pudaiyur Road,
T.Pudaiyur Village,
Virdhachalam,
Cuddalore District.

... Respondents

PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records of the 2nd respondent culminating the order dated 20/08/2019 in Case No.MSEFC/CR/261/2018 and to quash the same.



WEB COPY

For Petitioner : Mr.Menon

For Respondent : Mr.A.Selvendiran
Government Counsel
For R1 & R2

Mr.R.Kannan for R3

O R D E R

This writ petition has been filed challenging the impugned order passed by the 2nd respondent dated 20.08.2019 wherein, the Micro and Small Enterprises Facilitation Council (herein after called as the "Council") had allowed the claim made by the 3rd respondent and directed the petitioner to pay the principal amount along with interest.

2. The brief facts of the case is that the petitioner had placed certain purchase orders with the 3rd respondent for supply of Bucket Wheel Teeth of specified quality standard. The grievance of the 3rd respondent is that the petitioner failed to make the payments in spite of the supplies being effected and thereby the petitioner was due and payable a sum of Rs.33,36,066/- along with interest. To substantiate this claim, the 3rd respondent had placed reliance upon nearly 37 invoices which pertains to the period from 19.07.2016 to 16.06.2017. The Council on considering the claim made by the 3rd respondent allowed the same by an order dated 20.08.2019 and aggrieved by the same, the present writ petition has been filed before this Court.

3. When the matter was taken up for hearing on 17.08.2021, this Court passed the following order:

Heard the learned counsel for the petitioner in extenso.

2. The learned counsel for the petitioner apart from raising several other issues while questioning the impugned order passed by the 2nd respondent, has raised a preliminary objection with regard to the very maintainability of the application filed by the 3rd respondent before the Council on the ground that the 3rd respondent was not registered under Part II. To substantiate this submission, the learned counsel for the petitioner brought to the notice of this Court the Gazette Notification issued by the Ministry of Small Scale Industries dated 30.09.2006,



WEB COPY

of application Part-II on 18.08.2021, now they informed by letter dated 18.08.2021 as if the application was returned by the office on 19.11.2012 advising to apply through on line. Since the application EM-Part-II was not accepted through on line, it was sent by post on 16.11.2012 with the covering letter. Therefore it was the mistake of the officer who dealt with it and it could not be a valid reason when office has issued circular excluding the industries of 3d respondent filing the application EM Part-II through on line. Therefore my submission is that the application was kept pending in the office of DIC, Cuddalore.

5. The learned counsel for the 3rd respondent also brought to the notice of this Court the additional typed set of papers which contains three documents. The first document pertains to the covering letter issued by the 3rd respondent while submitting the application for MSME Part II Registration. The 2nd document pertains to the list of industries which are excluded from e-filing of Entrepreneur Memorandum Part II Application and the learned counsel submitted that the industry run by the 3rd respondent also falls under this category. By pointing out to this document, the learned counsel for the 3rd respondent submitted that insofar as these industries are concerned, the application for Entrepreneur Memorandum Part II should be submitted manually after getting the prior clearance from the Pollution Control Board. The 3rd document pertains to a letter issued by the Department of Industries and Commerce, dated 18.08.2021, wherein it was informed to the 3rd respondent that the application that was submitted for Part II Registration was returned on 19.11.2012 by duly advising the 3rd respondent to apply through on-line. The learned counsel submitted that after the application was returned, it was manually submitted and the same was not processed and it was kept pending and therefore, the same cannot be put against the 3rd respondent.

6. The learned counsel for the petitioner submitted that even as per the Supplementary Affidavit filed by the 3rd respondent and the documents relied upon by the 3rd respondent, it is clear that the 3rd respondent has not completed the Part II Registration. In order to substantiate this submission, the learned counsel for the petitioner also relied upon the Registration Certificate that was issued to the 3rd respondent on 05.02.2018 and pointed out that the particulars regarding previous registration details, if any, is found blank and therefore, it is clear that the 3rd respondent has fulfilled the requirement of registration only on 05.02.2018 which is clearly after the date of the last supply made by the petitioner



on 16.06.2017.

7. The learned counsel for the petitioner also placed reliance upon the latest judgment of the Hon'ble Supreme Court in Silpi Industries Etc. Versus Kerala State Road Transport Corporation and Another reported in 2021 SCC Online SC 439. The relevant portions in the judgment are extracted hereunder:

25. In C.A. Nos. 1620-1622 of 2021, the High Court, while negating the plea of the appellant, on the maintainability of counter-claim, has allowed the application filed by the respondent under Section 11(6) of the 1996 Act and appointed the second arbitrator. Though, we are of the view that counter-claim and set-off is maintainable before the statutory authorities under MSMED Act, appellant in this set of appeals is not entitled for the relief, for the reason that on the date of supply of goods and services the appellant did not have the registration by submitting the memorandum as per Section 8 of the Act. The bids were invited on 23.02.2010, appellant submitted its bid on 17.05.2010, respondent awarded contract to the appellant on 24.09.2010 and the parties signed the contract documents for supply of material, installation/commissioning of the power plant on 29.07.2011. Thereafter, supplies were made and the appellant has raised first invoice on 02.11.2011 for supply contract and also raised the first invoice pursuant to contract for installation on 07.07.2012 and the appellant has raised the last invoice in furtherance of contract for supply of material, on 29.03.2014. The appellant also claims to have raised last invoice on 29.03.2015 in furtherance of contract for installation. It is to be noticed that appellant approached the District Industrial Centre for grant of entrepreneur memorandum only on 25.03.2015.

26. Though the appellant claims the benefit of provisions under MSMED Act, on the ground that the appellant was also supplying as on the date of making the claim, as provided under Section 8 of the MSMED Act, but same is not based on any acceptable material. The appellant, in support of its case placed reliance on a judgment of the Delhi High Court in the case of GE T&D India Ltd. v. Reliable Engineering Projects and Marketing⁵, but the said case is clearly



WEB COPY

distinguishable on facts as much as in the said case, the supplies continued even after registration of entity under Section 8 of the Act. In the present case, undisputed position is that the supplies were concluded prior to registration of supplier. The said judgment of Delhi High Court relied on by the appellant also would not render any assistance in support of the case of the appellant. In our view, to seek the benefit of provisions under MSMED Act, the seller should have registered under the provisions of the Act, as on the date of entering into the contract. In any event, for the supplies pursuant to the contract made before the registration of the unit under provisions of the MSMED Act, no benefit can be sought by such entity, as contemplated under MSMED Act. While interpreting the provisions of Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993, this Court, in the judgment in the case of Shanti Conductors Pvt. Ltd. v. Assam State Electricity Board⁶ has held that date of supply of goods/services can be taken as the relevant date, as opposed to date on which contract for supply was entered, for applicability of the aforesaid Act. Even applying the said ratio also, the appellant is not entitled to seek the benefit of the Act. There is no acceptable material to show that, supply of goods has taken place or any services were rendered, subsequent to registration of appellant as the unit under MSMED Act, 2006. By taking recourse to filing memorandum under sub-section (1) of Section 8 of the Act, subsequent to entering into contract and supply of goods and services, one cannot assume the legal status of being classified under MSMED Act, 2006, as an enterprise, to claim the benefit retrospectively from the date on which appellant entered into contract with the respondent. The appellant cannot become micro or small enterprise or supplier, to claim the benefits within the meaning of MSMED Act 2006, by submitting a memorandum to obtain registration subsequent to entering into the contract and supply of goods and services. If any registration is obtained, same will be prospective and applies for supply of goods and services subsequent to registration but cannot operate retrospectively. Any other interpretation of the provision would lead to



8. The learned counsel by relying upon the above judgment submitted that the present case is squarely covered by this judgment and the registration in the present case had taken place only after the last supply made by the petitioner and therefore, the 3rd respondent is not entitled to invoke the provisions of the Micro, Small and Medium Enterprises Development Act, 2006 (herein after called as "Act") for redressing their grievances.

10. In the present case, admittedly the Part I Registration had taken place on 17.03.2010 and the 3rd respondent had commenced the process of getting registered under Part II and had also submitted an application to that effect. However, as per the official communication dated 18.08.2021, it is seen that the application submitted by the 3rd respondent was returned on 19.11.2012. Even though, it is claimed that thereafter, the 3rd respondent had manually submitted the application, there was no follow up and therefore, it is clear from the notification issued by the Ministry of Small Scale Industries, dated 30.09.2006 that the registration under Part I itself becomes invalid, once the Part II Registration does not take place within two years of the filing of Part I.

<https://hcservices.ecourts.gov.in/hcservices/>



12. In view of the above discussion, this Court has to sustain the preliminary objection raised by the learned counsel for the petitioner with regard to the very maintainability of the claim made by the 3rd respondent before the Council by invoking the provisions of the Act, 2006. The Hon'ble Supreme Court has categorically held in the above decision that such a claim can never be maintained where the registration had not taken place even before the last supply was made. In the present case, the last supply had taken place on 16.06.2017.

13. Even though, various other grounds were raised by the learned counsel for the petitioner and it was replied by the learned counsel appearing on behalf of the 3rd respondent, there is no requirement for this Court to deal with all those issues, since, this Court has held in favour of the petitioner on the very maintainability of the claim made by the 3rd respondent before the Council.

14. The upshot of the above discussion leads to the conclusion that the impugned order passed by the 2nd respondent dated 20.08.2019 is liable to be quashed. It is made clear that the 3rd respondent will be at liberty to make their claim against the petitioner in accordance with law and the period that was spent by prosecuting the case before the Council and before this Court shall be taken into consideration while calculating the limitation.

15. In the result, this writ petition stands allowed with the above liberty granted to the 3rd respondent. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ssr

To

1. The Regional Joint Director of
Industries and Commerce,
State of Tamil Nadu,
Thiru.Vi.Ka.Industrial Estate,
Guindy, Chennai - 600 032.



2. The Chairman (Industries Commissioner &
Director of Industries and Commerce),
Micro and Small Enterprises Facilitation Council,
Chennai Region,
Thiru.Vi.Ka.Industrial Estate,
Guindy, Chennai - 600 032.

WEB COPY

+1cc to Mr.Menon, Karthik, Mukundan, Advocate, S.R.No.43749
+1cc to Mr.R.Kannan, Advocate, S.R.No.44049
+1cc to the Government Pleader, S.R.No.43910

W.P.NO.1836 OF 2020 AND
W.M.P.NO.2140 OF 2020

AJS (CO)
PBS/22/09/2021