IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.01.2021

Pronounced on : 20.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

CRP.NPD.No.1715 of 2015 and
MP.No.1 of 2015

M/s. RMH Diesels Private Ltd.,
A Company registered under the
Provisions of Companies Act, 1956,
having its administrative office,
No.33, Arunachala Ansari Street,
Salem – 636 001 ... Petitioner

Vs.

M/s.Kirolskar Oil Engines Limited,
A Company registered under the
Provisions of Companies Act, 1956,
having its registered office at 13,
Laxman Rao Kirloskar Road,
Kirkee, Pune .. Respondent

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the decreetal order and fair order dated REA.No.33 of 2012 in REP.No.1 of 2011 dated 21.01.2015 on the file of First Additional District Judge, Salem.

For Petitioner : Mr.H.Nazirudeen

For Respondent : Mr.T.Mohan
for Mr.R.Anish Kumar

ORDER

This Civil Revision Petition is directed as against the fair and decreetal order passed in REA.No.33 of 2012 in REP.No.1 of 2011 dated 21.01.2015 on the file of First Additional District Judge, Salem thereby partly allowing the application filed by the petitioner under Section 47 of CPC and partly allowed.

2. The learned counsel for the petitioner would submit that the respondent obtained arbitration award even prior to finalisation of assesment for the year 2002-03. The petitioner is not burdened with obligation of furnishing form 'C' to the respondent which became non existent by virtue of GO dated 03.05.2007 waiving obligation to furnish all forms for sale tax upto the year 2006-07. Therefore, the right of non furnishing of 'C' forms by the petitioner does not survive vis-a-vis decree holder, even though those forms were furnished earlier and misplacement on the side of the respondent had not been brought to the notice. He further submitted that the execution court ordered interest on the excess tax paid by the respondent due to non submission of Form 17 for the period from 28.06.2007 to 10.10.2008 is not proper since the respondent refunded the excess tax paid by him by the order dated 10.10.2008 which is marked as Ex.P9 through PW2, namely Commercial Tax Officer. He

further submitted that the order dated 10.10.2008 passed by the Commercial Tax Officer thereby refunded a sum of Rs.14,71,596/- in terms of the order of the Appellate Authority and the refund order dated 10.10.2008 was suppressed by the respondent and filed execution petition. Therefore, the petitioner is not at all liable to comply the order passed by the Arbitrator.

3. Per contra, the learned counsel for the respondent would submit that the respondent filed claim petition for direction to furnish Form 'C' and Form 17 as per the invoices and in alternative direct to pay a sum of Rs.36,06,097.91/- with interest at the rate of 23% per annum. A sum of Rs.10,74,952.91/- for outstanding as Form 'C' liability and a sum of Rs.25,35,145/- for outstanding as Form 17 liability. He further submitted that as against the award passed by the Arbitrator, the petitioner filed petition under Section 34 of Arbitration and Conciliation Act and the same was also dismissed in MA.No.762 of 2007 by an order dated 11.11.2009. Aggrieved by the same, he also filed appeal under Section 37 of Arbitration Act and the same was also dismissed by the Hon'ble High Court of Bombay. In fact, the petitioner also filed appeal before the Hon'ble Supreme Court of India in STP.No.16160 of 2010 and the same was also dismissed. Even then, as directed by the Arbitrator, the petitioner failed to furnish Form 'C' and Form 17 to the respondent and as such the respondent was constrained to pay a sum of Rs.14,71,596/- by the assessment order dated 28.06.2007 in the year 2007. However, the order of

refund was passed in the reassessment order dated 10.10.2008 by the Commercial Tax Officer and till the date the amount was not received by the respondent herein. Therefore, there is no suppression of any fact by the respondent herein. Only after passing the award, reassessment order was passed on 10.10.2008. He fairly submitted that the court below awarded interest at the rate of 23% as claimed by the respondent whereas the learned Arbitrator awarded with interest at the rate of 14%. Except the rate of interest, the petitioner is liable to pay the sum as directed by the learned Arbitrator.

4. Heard Mr.H.Nazirudeen, the learned counsel for the petitioner and Mr.T.Mohan, the learned counsel for the respondent.

5. Admittedly, the petitioner is liable to issue Form 'C' and Form 17 in favour of the respondent herein so as to claim tax exemption, if not issued, the respondent is liable to pay excess tax. Form 'C' is necessary to get tax exemption from the Government of Maharashtra wherein the respondent company is situated. In respect of Form 17, it is necessary to get tax exemption from the Government of Pondicherry wherein the petitioner company is having dealership of the respondent company. The petitioner examined Commercial Tax Officer as PW2 and he deposed that by order dated 10.10.2008 amended assessment order was passed and thereby ordered to refund Rs.14,71,596/- in favour of the respondent with regards to non submission of Form 17.

6. Though the amount not yet received by the respondent, it will be adjusted in the future tax payable by the respondent herein. As far as the interest is concerned, the court below recorded as 23% per annum on the excess tax namely sum of Rs.14,71,596/- for the period from 28.06.2007 to 10.10.2008. Though the said sum was ordered to be refunded, the petitioner is liable to pay interest as awarded by the Arbitrator. Accordingly, the petitioner is liable to pay interest at the rate of 14% per annum instead of 23% per annum. Non disclosure of reassessment order passed by the Commercial Tax Department, Pondicherry is not amount to fraud on court or abuse of process of law since the Arbitrator passed award prior to the order of reassessment. In fact, the petitioner only approached the District Court under Section 34 and appeal under Section 37 of Arbitration and Conciliation Act.

7. In respect of other direction, directed to furnish Form C, the petitioner failed to prove that it was furnished to the respondent. In this regard, the court below discussed in detail and directed the petitioner to pay the entire outstanding liability of Rs.10,74,952/- due to non submission of Form C with interest at the rate of 23% per annum. The court below erred in awarding interest at the rate of 23% per annum instead of 14% per annum. Therefore, except the portion of interest, this Court finds no irregularity or infirmity in the order passed by the court below.

8. Accordingly, the civil revision petition is partly allowed and the petitioner is liable to pay the interest for the excess tax paid by the respondent for the excess tax at Rs.14,71,596/- from the period from 28.06.2007 to 10.10.2008 at the rate of 14% per annum. Further the petitioner is directed to pay a sum of Rs.10,74,952/- due to non submission of Form C with interest at the rate of 14% per annum. Consequently, connected miscellaneous petition is closed. No order as to costs.

20.01.2021

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
lok

To

The First Additional District Judge,
Salem.

G.K.ILANTHIRAIYAN,J.

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CRP.NPD.No.1715 of 2015

20.01.2021