

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**16 REVIEW APPLICATION NO.87 OF 2023
IN
WRIT PETITION NO.8496 OF 2019**

M/s. S. M. Solar Products Ltd. **...PETITIONER**
through its Director /Authorized Signatory
Shaikh Ansar Abdul Bashir

VERSUS

1. Bajaj Auto Ltd. **...RESPONDENTS**
through Its Authorized Officer
Madhusudan Mohanlal Mundada
2. The State of Maharashtra,
Through Directorate of Industries.
Mantralaya, Mumbai
3. The Joint Director of Industries for
Development Commissioner (Industries)
Mantralaya, Mumbai
4. Micro, Small & Medium Enterprises Facilitation
Council (Sukarta Parishad)
Through its Chairman & Member Secretary,
(Industry Facilitation Council, Aurangabad Division
Aurangabad)
Joint, Director of Industries, Aurangabad

Mr. R. N. Dhorde, learned senior advocate a/w Mr. P. S. Dighe,
Advocate i/b Mr. Y. S. Thorat, Advocate for the applicant
Mr. S. B. Pulkundwar, AGP for the respondent/State
Mr. L. D. Vakil, Advocate for the respondent No.1

CORAM : KISHORE C. SANT, J.

RESERVED ON : 26th JUNE, 2023

PRONOUNCED ON : 25th AUGUST, 2023

P. C.

1. By this review application, the applicant seeks review of the judgment and order dated 20-10-2022 passed by this court in Writ Petition No.8496/2019. Present applicant is the respondent No.3 in said petition. The petitioner in the said petition is respondent No.1 in this review application who is only contesting party. Other respondents were respondents in writ petition and are the authorities under the Government.

2. Basic facts in the petition were that the present applicant is manufacturer of silencer supplied to respondent No.1. Dispute was in respect of payment of outstanding amount Due towards parts supplied by this applicant for the year 2001-2002. The Act namely Micro, Small and Medium Enterprises Development Act, 2006 (In short MSMED, Act) came into force in 2006. The applicant got itself registered as supplier under the

said Act. Said Act provides for facilitation Council wherein the supplier can lodge the claim for outstanding amount. A claim for outstanding amount was lodged by the applicant in the said council. The Council on going through the claim and after hearing the parties passed an award in respect of the claims. In this case reference proceeding was filed by this applicant and the same came to be dismissed by award dated 06-08-2012 by holding that it had already received the amount of Rs.1,50,000/- towards full and final settlement. The petition was therefore, filed challenging the said dismissal in writ petition No. 9101/2012. Same came to be dismissed for want of prosecution on 06-09-2021.

3. Pending that writ petition, the present applicant again approached the facilitation council in the year 2017 making demand of Rs.8.64 crore and Rs. 1,16,393.30/- alongwith interest. Objection was raised by the present respondent No.1 i.e. Manufacturer pointing out the separation of the earlier proceeding and jurisdiction of the council to deal

with the dispute relating to the period prior to coming into force of MSMED Act by award dated 28-04-2019. However, the council uphold the claim to the extent of Rs.1,16,393/- alongwith compounding interest. Said order was challenged by the respondent in petition. In petition, question of maintainability was raised by the present applicant. However, same was not accepted by holding that petition was maintainable.

4. Writ Petition No. 8496/2019 was filed by respondent No.1 challenging the award dated 28-04-2019 passed by the Micro Small Enterprises Facilitation Council. Review is sought mainly on the ground that the petition itself was not maintainable before this court. It is the submission that the writ petition ought not to have been entertained. Findings of the court that the petition challenging the award of Council was maintainable itself is not correct and this aspect requires to be reviewed. This court is, therefore, confined to consider only question of maintainability of the petition. The question of

maintainability of the petition is sought to be reviewed on the ground that the case of JSW Steel Limited Vs Kamlakar Vs Salvi and others in Writ Petition No. 12897/2016 is not properly considered. The court has not taken into consideration the date of registration of the review applicant. The court erred in recording a conclusion that the claim of the applicant was of a period prior to 2006. That in the year 2001-2002 the court has not gone into the point of registration. That the registration certificate of the present applicant was on record. Arguments were advanced before the facilitation Council. In the judgment, this aspect is not rightly considered.

5. The learned advocate for the respondent submits that it is the case of the applicant that dues were outstanding from 2002. What is relevant is the date of supply of goods and services and not the date of registration. Cause of action has arisen prior to Act came into force i.e. prior to 2006 and does not have any retrospective operation. The claims of the applicant was already settled. The claim lodged in 2010 was wrongly held

to be maintainable by the facilitation Council. Earlier dispute was pending by way of Writ Petition No.9101/2012. Pending that writ petition, the applicant again approached the facilitation Council in 2017 and that application was allowed. It is further submitted that this court was conscious of the fact about the license and court has rightly considered the relevant provision. In view of the proviso to the section dispute has to be lodged within 100 days. When the dispute was rejected in 2010 the claim made in 2017. Therefore, it is rightly held that the dispute was not maintainable.

6. For considering the review application the court necessarily has to see as to whether there is any error apparent on the face of record. This court finds that the question of maintainability was rightly gone into by this petition.

7. The judgment is now sought to be review passed by this court by relying upon the judgment of the Hon'ble Apex Court in the case of Silpi Industries Etc. Vs Keral State Road

Transportation Cooperation and another reported in 2021 SCC Online SC 439 held that the provisions under MSMED Act are applicable only to the goods supplied subsequent to the registration by specifically holding that the provision do not have any retrospective operation. In this case it is clearly seen from the record that goods were supplied in the year 2001-2002. Thus, on this count this court finds that there is no error apparent on the face of record.

8. Similar issue was considered in the case of JSW steel in writ petition No.1298/2016. This court specifically considered that the provision of Section 32 of the MSMED Act in respect of repealed Act wherein Act of 32 of 1993 is repealed. This court had also considered the definition of the Act of Section 2-A.

9. Considering above, this court finds that no ground is made out to entertain the review application. The review application therefore deserves to be dismissed and is accordingly dismissed.

(8)

ra87.23

10. No order as to costs.

[KISHORE C. SANT, J.]

VishalK/ra87.23