

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1714 OF 2022

Metaforge Engineering (I) Pvt Ltd ...Petitioner
Versus
Union of India & Ors ...Respondents

Mr Alankar Kirpekar, with Sagar Kasar, i/b Sagar Kasar, for the
Petitioner.
Mr PS Jetly, Senior Advocate, with Niranjana Shimpri, for Respondent
No. 1-UoI.
Ms SS Bhende, AGP, for the Respondent-State.

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CORAM G.S. Patel &
Neela Gokhale, JJ.
DATED: 26th June 2023

PC:-

1. Respondent No.4 is absent though served. The service through Court indicates that office is closed and an Affidavit of Service to that effect is on record.
2. Rule. Rule returnable forthwith and the matter is taken up for final disposal.
3. The matter seems to be fully covered by the judgment of a Division Bench of SV Gangapurwala J as he then was and Sandeep

Marne J on 20th July 2022 Civil Writ Petition No. 3034 of 2022. The question for law is the same and in fact that decision was rendered in the context of this very Petitioners. For the purposes of the Micro, Small and Medium Enterprises Development Act 2006 (“**MSMED Act 2006**”), the question was who can be said to be a supplier under Section 2(n)(iii). This is because Sections 17 and 18 provide a recourse or remedy for a ‘supplier’. The Division Bench in essence held that the supplier does not itself need to be a micro or small enterprise. It can be, on a plain and unambiguous reading of the statute, any other entity that is supplying goods produced by the micro and small enterprises. Such a supplier is entitled to invoke remedies under Sections 17 and 18 for recovery of dues.

4. The complaint by Mr Kirpekar is that the rejection of the Petitioner’s application was primarily on this ground that the Petitioner was not a small or micro enterprise and was therefore not entitled to this remedy. We ignore the other objections that the application was not made online. That is at best an irregularity that can always be cured. In any case we see no reason why a physical copy could not have been accepted.

5. The impugned order at page 447 is contrary to the law declared by this Court in *Metaforge Engineering (I) Pvt Ltd v Union of India & Ors.*¹ It cannot therefore be sustained. We make the same order as the previous Division Bench. The impugned order is quashed and set aside. The Council is to consider the facts of the case and if it comes to the conclusion that the Petitioner is indeed a

¹ Writ Petition No. 3034 of 2022, decided on 20th July 2022.

supplier of goods produced by Micro, Small and Medium Enterprises and is rendering services provided by such Micro and Small Enterprises, then the counsel must consider the claim of the Petitioner on merits in accordance with the provisions of the MSMED Act 2006.

6. We clarify that we have not insisted upon an application being filed online. If there is no online facility, this does not mean that people cannot register complaints or make applications. A Council must surely make provisions for physical filings and maintenance of registers.

7. Rule is made absolute in these terms. We clarify that we have not expressed any opinion on the merits of the Petitioner's claim for recovery.

(Neela Gokhale, J)

(G. S. Patel, J)