27th March, 2024
(AK)
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W.P.A 4005 of 2024

M/s. Shomuk Engineering & Consultancy Services and another
Vs.
Engineering Projects (India) Limited and others

Mr. Swarup Paul
Mr. Pankaj Agarwal
Mr. Suryaneel Das
Ms. Muskan Agarwal
...for the petitioners.

Mr. Sumit Ghosh
Mr. Souradeep Majumdar
...for the respondents.

1. Learned counsel for the petitioners contends that that the petitioners did certain works for the respondent no.1.
2. Subsequently when the petitioners insisted for payment of their dues, an amount of Rs.1,49,61,845/- out of the total amount of Rs.1,90,44,000/- was released in favour of the petitioners.
3. However, the balance amount of Rs.40,82,155/- was withheld without any reason. Upon the petitioners approaching the authorities, the respondents indicated that there was some deficiency regarding TDS certificate being attached by the petitioners.

4. Subsequently, on the advice of the respondents, the petitioners complied with due formalities and a provisional certificate was issued to the petitioners under Section 8 of the West Bengal Sales Tax (Settlement of Dispute) Act, 1999.

5. It is submitted that as per Section 8(1)(b), third proviso of the Act, the certificate was to become final on expiry of the period mentioned in the second proviso thereto.

6. As such, the certificate having been furnished to the respondents, the respondents ought to have disbursed the amount in favour of the petitioners.

7. However, the respondent cite the pendency of their query before the Joint Commissioner, Commercial Taxes, Kolkata South Circle, that is, respondent no.5, as to whether the respondents were entitled to the reduction in tax dues by virtue of the SOD clearance certificate issued in favour of the petitioners, to delay the petitioners' balance payment.

8. It is argued that the respondent no.5, as such, be directed immediately to respond to the issue raised by the respondent no.1 so as to enable the respondent no.1 to release the balance claim of the petitioners.

9. Learned counsel for the respondents points out that in the records of the pending appeal case

no.APP/ 2019-20/04/43/V/01218 pending before the Joint Commissioner, it is reflected from the concerned chart that the petitioners had submitted a 'NIL' return which was apparently the reason for the Joint Commissioner having not granted the benefits of reduction in respect of the tax payment in favour of the respondent no.1.

10. It is submitted by learned counsel for the respondent no.1 that for such reason, being so aggrieved, the respondent no.1 has approached the appellate tribunal against the order passed by the Senior Joint Commissioner, Commercial Taxes, Kolkata South Circle which is now pending.

11. As such, it is submitted that the petitioners may very well get themselves added as parties to the said appeal for vindication of their rights.

12. It transpires that for the present, the petitioners have only prayed for a direction on the respondent no.5 to give a clear reply to the respondent no.1 as regards whether the respondent no.1 is entitled to the reduction benefits for the SOD clearance certificate issued with regard to the petitioners.

13. However, it may very well be that the reply of the Joint Commissioner, that is, respondent no.5 comes in the negative.

14. Hence, both opportunities ought to be kept open for the petitioners - to insist upon such reply by the

respondent no.5 as well as to implead themselves as parties to the pending appeal in order to vindicate their rights in case the respondent no.5 holds in the negative against the petitioners.

15. In any event, if the reply of the respondent no.5 is positive, the respondent no.1 shall release the balance dues of the petitioners within four weeks from such communication being made by the respondent no.5.

16. Accordingly, WPA 4005 of 2024 is disposed of by directing the respondent no.5 to intimate in writing to the respondent no.1 the reply to the query made by the respondent no.1 by virtue of its communication dated February 5, 2024 annexed at page-38 (Annexure-P6) of the present writ petition.

17. Such reply shall be given to the respondent no.1 as expeditiously as possible, positively within a fortnight from the date of communication of this order to the respondent no.5, by acting on a server copy of the same.

18. In the event such reply is in favour of the respondent no.1 being entitled to the benefits, the respondent no.1 shall disburse the balance dues of the petitioners within four weeks thereafter.

19. However, in the event the decision goes in the negative, thereby affecting the rights of the petitioners adversely, the respondent no.1 shall

communicate such outcome of the reply by the respondent no.5 to the petitioners in order to enable the petitioners to implead themselves as parties to the pending appeal at the behest of the respondent no.1.

20. In such case, the petitioners will be at liberty to so implead themselves and if so approached, the appellate tribunal shall decide such application as expeditiously as possible to enable the petitioners to vindicate their rights and the relevant issues involved before the appellate tribunal (West Bengal Taxation Tribunal) as well.

21. There will be no order as to costs.

22. Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)