



OP.Nos.502 & 993 of 2017

In the High Court of Judicature at Madras

Reserved on 05.11.2025	Delivered on : 18.11.2025
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Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Original Petition Nos.502 & 993 of 2017

O.P.No.502 of 2017 :

1.M/s.E-Lights Techno Park (P)
Ltd., No.23, Rajiv Gandhi Salai,
(Old Mahabalipuram Road),
Chennai-103.

2.M/s.Pacifica (India) Projects
Pvt. Ltd. formerly known as
Pacifica (Chennai-Old
Mahabalipuram Road)
Infrastructure Company Pvt.
Ltd., 408, Iscon Mall,
Satellite Road, Ahmedabad-15.

...Petitioners

Vs

M/s.Citilights Properties Pvt.Ltd.,
rep.by Chief Operating Officer
Mr.R.Sathyan, No.1,
Vivekananda Road,
Srinivasa Nagar, Chetpet,
Chennai-31.

...Respondent



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O.P.No.993 of 2017 :

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M/s.Citilights Properties Pvt.Ltd.,
No.1, Vivekananda Road,
Srinivasa Nagar, Chetpet,
Chennai-31 rep.by its Chief
Operating Officer Mr.R.Sathyan

...Petitioner

Vs

1.M/s.E-Lights Techno Park (P)
Ltd., No.23, Rajiv Gandhi Salai,
(Old Mahabalipuram Road),
Chennai-103.

2.M/s.Pacifica (Chennai-Old
Mahabalipuram Road)
Infrastructure Company Pvt.
Ltd., 408, Iscon Mall,
Satellite Road, Ahmedabad-15.

...Respondents

PETITIONS under Section 34 of the Arbitration and Conciliation
Act, 1996 praying to

(i) partly set aside the award dated 28.1.2017 passed by the
learned Arbitrator to the extent as indicated in the grounds of this
petition (O.P.No.502 of 2017); and

(ii) set aside the award dated 28.1.2017 passed by the learned
Arbitrator to the extent indicated in the grounds of the petition (O.P.
No.993 of 2017).



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For Petitioners in
O.P.No.502 of 2017 &
Respondents in
O.P.No.993 of 2017 : Mr.R.Venkat Raman for
M/s.Tatva Legal Chennai

For Respondent in
O.P.No.502 of 2017 &
Petitioner in
O.P.No.993 of 2017 : Mr.Kuberan for
Mr.S.Umapathy

COMMON ORDER

These petitions have been filed by the respective parties under Section 34 of the Arbitration and Conciliation Act, 1996 (for brevity, the Act) challenging the arbitral award dated 28.1.2017 passed by the learned Arbitrator to the extent they were aggrieved.

2. The petitioner in O.P.No.993 of 2017 is the claimant before the learned Arbitrator whereas the petitioners in O.P.No.502 of 2017 are the respondents before the learned Arbitrator. Both petitions arise out of partly challenging the very same Award.

3. In this common order, for the sake of convenience, the parties will be referred to as are arrayed before the learned Arbitrator.



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4. The facts leading to filing of these petitions are as follows :

(i) The claimant is a company incorporated under the Companies Act, 1956 and is engaged in the business of property development in Tamil Nadu and other States. The claimant entered into a development agreement dated 14.2.2005 with the owners namely one Mr.Sheriff Dyan and M/s.Shedan Games Park & Holidays (P) Ltd. (for short, M/s.Dyan and Co.) for development of the lands ad-measuring 7.29 acres belonged to the said M/s.Dyan and Co., into a software technology park (STP) complex. As per the said agreement, the claimant was entitled to 74% of the super built-up area together with the proportionate undivided share (UDS) in the lands while the remaining 26% would be retained by the said M/s.Dyan and Co.

(ii) On 07.12.2005, the claimant transferred its entire 74% entitlement to the second respondent by incorporating a special purpose vehicle namely the first respondent - M/s. E-Lights Techno Park Private Limited. The claimant acted as the constituted attorney of the owners and executed two sale deeds dated 23.1.2006 bearing Doc.Nos.411 and 412 of 2006 registered on the file of the Sub-Registrar, Tirupporur, Kancheepuram District and transferred the 74% UDS to the first respondent.



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(iii) A dispute arose when the respondents defaulted in payment of service tax, which resulted in the filing of applications in O.A.Nos.53 and 54 of 2008 by the respondents before this Court against the claimant and another and it was ultimately settled through a settlement agreement dated 05.3.2008. As per the settlement agreement, the total amount agreed between the parties was Rs.1,41,55,656/-, out of which, a sum of Rs.1,00,00,000/- retained by the respondents for completion of snagging works, another sum of Rs.28,53,767/- withheld for undelivered materials (plumbing fittings) and a further sum of Rs.13,01,889/- represented tax deducted at source (TDS) shortfall and it was claimed by the claimant.

(iv) The claimant contended that despite having handed over possession of 74% of the STP area on 28.3.2008, the respondents wrongfully withheld these amounts. The claimant further sought for declaration that the respondents were liable to discharge the statutory demands of service tax and customs duty, amounting to a sum of Rs.31,08,56,413/-.

(v) Thereafter, the Service Tax Department, by show cause notice No.327/2010 dated 23.4.2010, demanded a sum of Rs. 17,06,17,440/- for the 74% share of the construction. The claimant



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contended that the respondents were liable to pay this demand and invoked the arbitration clause on 23.3.2011. However, the Arbitral Tribunal was not constituted as the process was stalled over the appointment of arbitrators.

(vi) Subsequently, the Commissioner of Central Excise, Chennai-34 issued a show cause notice dated 18.4.2011 to both the claimant and the respondents, as the machinery served both the respondents' 74% (Block I) and the said M/s.Dyan and Co.s' 26% (Block II). The Department called upon the parties to show cause as to why the machineries should not be confiscated and imposed a customs duty of Rs.2,93,87,139/- on the ground that the claimant had imported duty free machinery under a Customs Bonded Warehouse License and B-17 bond availing exemption for developing the STP and transferred 74% of the STP along with the machineries to the first respondent without securing mandatory de-bonding or paying duty.

(vii) The respondents thereafter filed an application under Section 9 of the Act before this Court seeking for interim relief against the confiscation of machinery. Thereafter, the claimant filed counter applications under Section 9 of the Act seeking security for the service tax demand, customs duty demand and other claims. This Court, vide



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order dated 29.3.2012, consolidated all the 9 applications filed under Section 9 of the Act and appointed an Arbitrator.

(viii) The claimant filed a claim for a total sum of Rs.31,08,56,413/-, which included the retained amounts, the service tax and the customs duty liabilities and damages.

(ix) The respondents, in their defence statement, contended that the sum of Rs.1,00,00,000/- was rightfully withheld for the incomplete snagging works and for non-production of the mandatory completion certificate. The respondents further submitted that the sum of Rs.28,53,767/- was retained by the second respondent in lieu of non-delivery of certain materials.

(x) Before the learned Arbitrator, the respondents denied shortfall in TDS remittance asserting that the differential amount had been adjusted towards interest levied due to delays attributable to the claimant. In respect of the service tax and the customs duty liabilities, the respondents placed reliance on Clause 1.2 of the settlement agreement, which contained an indemnity clause obligating the claimant to bear and discharge all statutory liabilities. It was further contended by the respondents that the liability to pay customs duty arose squarely from the claimant's own act of transferring the bonded



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machinery without permission. The respondents also filed a counter claim and sought for a declaration directing the claimant to discharge the customs duty demand and further claimed damages to the tune of Rs.10 Crores.

(xi) The learned Arbitrator framed the following issues:

(1) Whether the respondents are liable to pay a sum of Rs.2,47,24,695/- to the claimant as mentioned in para 28(i) of the claim petition and the interest thereon as claimed in the Claim ?

(2) Is the claimant entitled to claim against the respondents, the service tax to the extent of 74% on the demand made by the Commissioner of Service Tax, Chennai dated 23.4.2010 with interest and cost of defending the show cause notice spent by the claimant less Rs 4,32,60,000/- already paid by the first respondent?

(3) Are the respondents liable to pay the customs duty demanded by the Commissioner of Customs and Central Excise, Chennai in the show cause notice dated 18.4.2011 as claimed by the claimant with interest, penalty and the cost of defending the notice spent by the claimant? If it is so, to what extent?



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(4) Whether the respondents are jointly and severally liable to pay 50% of the compensation mentioned in para 28(iv) of the claim petition?

(5) Whether the claimant is entitled for damages with interest as mentioned in para 28(v) of the claim petition?

(6) Whether the 1st respondent breached the obligations undertaken under the order dated 05.3.2008 passed in O.A.Nos.53 & 54 of 2008 and the agreement dated 25.1.2006 and if it is so, are not they liable for the customs duty?

(7) Whether the claimant is entitled to transfer the imported capital machinery to the respondent without securing de-bondment from the Customs and Excise Department?

(8) Whether the claimant had handed over the materials so as to demand for refund of Rs. 28,53,767/-?

(9) Whether the respondents deposited the entire amount, which was deducted at the claimant's source into the account of Income Tax Department?

(10) Have both the parties complied with the terms and agreements dated 07.12.2005, 21.5.2006 and 05.3.2008?



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(11) *Whether the respondents are entitled to claim Rs.10 crores towards damages suffered by way of counter claim?*

(12) *Whether the counter claims are barred by limitation?*

(13) *Whether the claimant is entitled for interest? If it is so, at what rate and at which period?*

(14) *Whether the parties are entitled for costs?*

(15) *Any other relief which the parties are entitled to ?*

Additional Issues :

(1) *Whether the claimant has completed the works mentioned in Schedule D of the settlement agreement dated 05.3.2008 for claiming payment of Rs.1,00,00,000/- (Rupees one crore only) ?*

(2) *Whether any of the claims made by the claimant are barred by limitation?*

(xii) During the arbitral proceedings, CW1 was examined and Ex.C.1 to Ex.C.85 were marked on the side of the claimant. RW1 was examined and Ex R1 to R36 were marked on the side of the respondents.



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(xiii) After considering the submissions made on either side, the learned Arbitrator passed the impugned award dated 28.1.2017 and awarded the following claims :

(a) Rs.28,53,767/- towards withheld materials with interest at the rate of 18% per annum from 04.7.2008; and

(b) Rs.13,01,889/- towards TDS shortfall with interest at the rate of 18% per annum from 05.3.2008;

(c) The Tribunal further rendered a finding that the respondents were jointly and severally liable to pay 50% of the compensation due to the said M/s.Dyan and Co. Ultimately, the claim petition was partly allowed and all the other claims and the counter claims were rejected.

(xiv) Aggrieved by the award passed by the learned Arbitrator, the respondents questioned certain claims that were allowed in favour of the claimant and also rejection of their counter claim whereas the claimant questioned the disallowance/rejection of some of their claims.

5. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record and more particularly the impugned award.



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6. The respective learned counsel appearing on behalf of the parties focussed only on the issues pertaining to the service tax liability and the customs duty liability and they did not address their submissions on the other issues that were the subject matter in the award passed by the learned Arbitrator. Hence, it will suffice to focus on the submissions made by them touching upon those two issues.

7. This Court will have to focus on the findings rendered by the learned Arbitrator only in so far as the two declaratory reliefs sought for by the claimant are concerned. For proper appreciation, they are extracted as follows :

"(a) Declaring that the respondents are liable to pay to the claimant to the extent of 74%, the service tax demanded by the Commissioner of Service Tax, Chennai vide the show cause notice No.327/2010 dated 23.4.2010 together with the interest, penalty and the cost of defending the show cause notice as spent by the claimant upto the date of payment by the respondent less Rs.4,32,60,000/- already paid by the first respondent; and

(b) Declaring that the respondents are liable to pay to the claimant the customs duty demanded by the Commissioner of Customs and Central



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Excise, Chennai vide the show cause notice No.18/2011 dated 18.4.2011 together with the interest, penalty and the cost of defending the show cause notice as spent by the claimant upto the actual date of payment by the respondents.”

8. The learned counsel appearing on behalf of the claimant submitted as follows :

The learned Arbitrator went wrong in holding that the respondents were not liable to pay to the claimant the service tax demanded by the Department in spite of the fact that the respondents made partial payment towards the service tax and such liability would continue until a final assessment was made. That apart, the learned Arbitrator completely misread the scope of Clause 1.2 of the settlement agreement, which did not provide for payment of service tax only after it was quantified. Hence, the finding of the learned Arbitrator was contrary to law and also is opposed to public policy.

9. Per contra, the learned counsel appearing on behalf of the respondents submitted as follows :



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The learned Arbitrator rightly concluded that the claimant could not shift their own liability regarding the payment of service tax to the respondents. That apart, the learned Arbitrator could not decide as to who should pay the service tax and it was only the exclusive jurisdiction of the Department to take a decision. Ultimately, the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Chennai, by order dated 26.9.2018, came to a conclusion that the levy of service tax could not be sustained and accordingly, the appeal filed by the claimant was allowed. Thus, the liability has been crystallized/ adjudicated only at that point of time and hence, the finding of the learned Arbitrator in this regard was in accordance with law and did not suffer from any patent illegality.

10. The claimant had sought for such a declaration only on the basis of the show cause notice dated 23.4.2010 issued by the Commissioner of Service Tax, Chennai demanding a sum of Rs.34,35,99,934/- towards service tax with interest and penalty. According to the claimant, the respondents were liable to pay to an extent of 74% of the demanded service tax, which was proportionate to the undivided share of the land sold to the respondents.



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11. At this juncture, it will be relevant to take note of Clause 1.2 of the settlement agreement dated 05.3.2018 marked as Ex.C.9, which reads as hereunder :

"The settlement amount will cover all dues, claims of respondent No.1, statutory, contractual or otherwise, arising out of or in relation to the agreements signed by respondent No.1 with either or both the applicants (including others) (hereinafter, the agreements) which are the subject matter of the O.A.No.53 and O.A.No.54 of 2008 before the High Court of Judicature at Madras. Respondent No.1 undertakes to discharge all its statutory liabilities, including service tax and VAT, in relation to the agreements. Respondent No.1 will, at all times, keep the applicants indemnified against any loss, damage or expense suffered by the applicants or account of any default by respondent No.1 in the discharging of the statutory liabilities."

12. The learned Arbitrator has taken into account the fact that in the development agreement marked as Ex.C.1, there was no clause available to make the respondents liable to pay any service tax and that only at the time of the subsequent agreement between the parties, the issue of payment of service tax was taken into



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consideration and it was agreed that the claimant would discharge all the statutory liabilities including the service tax and also get indemnified from the respondents by discharging such statutory liabilities.

13. The specific case of the claimant was that Clause 1.2 of the settlement agreement dated 05.3.2018 was only with respect to the amount already quantified and that the same could not be relied upon to deny the subsequent calculation made by the Department.

14. While dealing with this submission, the learned Arbitrator has taken into account the fact that there was no such pleading available in the claim petition and that such a stand was taken by the claimant for the first time while filing a reply to the statement of defence filed by the respondents.

15. The learned Arbitrator has relied upon the express terms of the settlement agreement to ultimately hold that the entire service tax of Rs.4,44,96,000/- has already been quantified and paid to the Service Tax Department and that the cause of action seeking for such



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declaration had arisen only by virtue of the show cause notice dated 23.4.2010 marked as Ex.C.14 that was issued by the Commissioner of Service Tax, Chennai.

16. In the considered view of this Court, it was too premature for the learned Arbitrator to have ventured into the process of finding out as to whether the claimant would be ultimately mulcted with the liability towards the service tax. This is more so since, during cross examination, C.W.1 had specifically admitted that the claimant had filed an appeal before the CESTAT, Chennai and that the same was pending.

17. As rightly contended by the learned counsel appearing for the respondents, the tax should become due and payable by an assessee only upon a final adjudication/crystallization of the liability by the concerned Authority/Department.

18. Useful reference can be made to the judgment of the Hon'ble Apex Court in ***Harshad Shantilal Mehta Vs. Custodian [reported in 1998 (5) SCC 1]*** (Refer paragraphs 16, 19, 21, 22, 24 and 27).



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19. The tax liability does not get crystallized until it is finally adjudicated and no demand can be made on the basis of a preliminary assessment, which, in this case, was the show cause notice issued by the Commissioner of Service Tax, Chennai.

20. During the course of arguments, it has now come to light that the CESTAT, Chennai, by order dated 26.9.2018, allowed the appeal filed by the claimant by rendering a finding that the levy of service could not be sustained. Thus, actually the service tax liability stood crystallized at that juncture.

21. The relief that was sought for by the claimant was more in the nature of a declaration anticipating that at some future point of time, there might be a service tax liability that would be mulcted against the claimant and at that point of time, the claimant wanted the respondents to take the responsibility of paying the service tax to the extent of 74% of the demand.

22. The learned Arbitrator rightly rendered a finding that the relevant clause in the settlement agreement did not contemplate any



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such right being reserved in favour of the claimant and that apart from that, there was no such agreement between the parties on a plain reading of Clause 1.2 of the settlement agreement. This finding of the learned Arbitrator does not suffer from any perversity or patent illegality warranting its interference. In any case, this issue has now become academic since the CESTAT, Chennai already allowed the appeal filed by the claimant and rendered a finding that the demand for payment of service tax was unsustainable.

23. The next issue pertains to the customs duty liability.

24. The learned counsel appearing on behalf of the claimant submitted that the payment of customs duty rests with the owners of the machinery and not with the contractor, who had imported them for the use of the owners. In Ex.C.34, which was the letter sent by the respondents to the Director of the Software Technology Parks of India (STPI), it has been confirmed that the claimant was only a contractor.

25. While dealing with this issue, it was contended that the learned Arbitrator had given a finding that the claimant had imported



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the machinery and when a question arose as to who had to meet the necessary customs duty, the learned Arbitrator rendered a finding against the claimant. This finding was rendered in spite of the fact that the STPI Directorate, under Ex.C.50, clarified that the STP Scheme did not require the developer to be an Export Oriented Unit or carry out the export obligations themselves as per the policy. However, a show cause notice dated 18.4.2011 marked as Ex.C.25 has been issued by the Department on the ground that the STP has been put to non STP use. Ultimately, the learned Arbitrator rendered a finding that he had no jurisdiction or authority to deal with the correctness or otherwise of the show cause notice and that therefore, the claimant could not seek for such a declaration.

26. The learned counsel appearing on behalf of the claimant submitted that the declaratory relief was sought for since, ultimately, if the customs duty becomes payable, such liability should not be mulcted on the claimant.

27. Per contra, the learned counsel appearing on behalf of the respondents submitted as follows :



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The learned Arbitrator rendered the correct finding that he could not decide upon the liability arising out of payment of the customs duty. Ultimately, the Commissioner of Customs (Preventive), Tiruchirapallai through proceedings dated 20.12.2021, decided rendering a finding that it was the claimant, which was liable to pay the duty and penalty and that the respondents had been relieved from payment of penalty. This is a decision, which could be taken only by the Department/Authority and it was not within the jurisdiction of the learned Arbitrator.

28. In the strength of Ex.R4, Ex.R5, Ex.R7, Ex.R8 and Ex.C.41, it is seen that certain machinery had been imported by the claimant and the same were installed in the STP. In terms of the agreement dated 25.1.2006 marked as Ex.C.7, it was agreed between the parties that the claimant should be in-charge of developing the STPI and obtaining all relevant statutory permissions, licences, approvals and further indemnifying the respondents from any penalty/liabilities that might arise due to breach/violation of any applicable statute/regulation/by-laws.



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29. A conjoint reading of Clause Nos.4, 7, 8, 9, 10 and 11 of the agreement dated 25.1.2006 makes the position clear. The failure to take appropriate steps to de-bond the imported machinery and provide prior intimation to the Customs and Excise Department for transfer of the said machinery in favour of the respondents resulted in the issuance of a show cause notice dated 18.4.2011.

30. The learned Arbitrator could not have decided regarding payment of the customs duty and against whom, the liability could be fastened. It must be borne in mind that it was done only at the stage of issuance of a show cause notice and the liability had not been crystallized or finalised. In other words, the payment of duty had not been finalised at that point of time. The same reasoning that was given by this Court in so far as the payment of service tax was concerned will apply to the payment of customs duty liability also.

31. The customs duty had not become due and payable by the assessee when the matter was pending before the learned Arbitrator and the crystallization/adjudication of the liability happened only after the order was passed by the Commissioner of Customs (Preventive),



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Tiruchirappalli on 20.12.2021 whereby the liability was fastened only on the claimant and the respondents were relieved from payment of any penalty. The learned Arbitrator reached a conclusion that even before the concerned Department could arrive at a finality, the learned Arbitrator would not decide on the same and fasten the liability.

32. In other words, this relief sought for by the claimant is also in the nature of an anticipatory declaration. The finding of the learned Arbitrator cannot be held to be perverse or a patent illegality. Ultimately, the concerned Authority under the Customs and Central Excise Act has decided that it was only the claimant, which had to make the payment of duty and penalty and not the respondents. This statutory liability cannot be certainly decided by the learned Arbitrator and the finding of the learned Arbitrator in this regard does not warrant the interference of this Court in exercise of its jurisdiction under Section 34 of the Act.

33. In the light of the above, both the above original petitions stand dismissed. No costs.

18.11.2025



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N.ANAND VENKATESH,J

RS

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