HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil Miscellaneous Appeal No. 972/2018
CNR: RJHC020169282018 | URN: CMA / 1486U / 2018

1. Director, PH Medical and Health Department, Swasthya Bhawan, Tilak Marg, C-Scheme, Jaipur.
2. Executive Engineer, Medical and Health Department, Near Mridanj Cinema, Shrinagar Road, Dispensary Pal Bichla, Ajmer.

----Appellants/Non-claimants

Versus

M/s. Praman Construction Private Limited, through Managing Director, Hemraj Bardar, Office 8, Five Star Complex, Near Kumbha Nagar, Hiran Magri, Sector-4, Udaipur, Rajasthan.

----Respondent/Claimant

For Appellant(s)	:	Mr. Sankalp Vijay, AAAG Mr. Deepak Mittal Ms. Tanvisha Pant for Mr. Vigyan Shah, AAG
For Respondent(s)	:	Mr. Satish Chandra Mittal with Mr. Prafulla Kumar Mukerjee

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HON'BLE MR. JUSTICE SUDESH BANSAL
HON'BLE MR. JUSTICE ANUROOP SINGHI

Order

20/11/2026

BY THE COURT:-(Per: Hon'ble Mr. Justice Anuroop Singhi)

1. Instant appeal under Section 37 of Arbitration & Conciliation Act, 1996 (for short, '**Act of 1996**') has been preferred by the appellants - non-claimants feeling aggrieved by the judgment dated 03.04.2017, passed by the learned Additional District Judge No.6, Jaipur Metropolitan, Jaipur, vide which their application filed under Section 34 of the Act of 1996 has been dismissed and the arbitral award dated 30.11.2009 passed in favour of the respondent - claimant has been affirmed.

2. We have heard learned counsel appearing on behalf of the respective parties at length and with the consent of counsel for both the parties the matter is heard finally.

3. At the outset, we are conscious that the jurisdiction for grant of indulgence in the order impugned, in exercise of powers under Section 37 of the Act of 1996, is not akin to a regular appeal and the scope of interference is confined to the grounds prescribed under Section 34 of the Act of 1996. Hon'ble Supreme Court while considering the scope of interference under Sections 34 and 37 of the Act of 1996, in a series of judgments, has held and reiterated that the appellate jurisdiction under Section 37 of the Act of 1996 is more constrained, narrower and restrictive than the jurisdiction under Section 34 of the Act of 1996 and is in the form of a 'narrowing pyramid' and with each subsequent layer of appeal, the Court's approach must become increasingly hands-off, so as to protect the finality of the arbitral process. The same principle assumes greater significance where a concurrent finding is under challenge. Reliance in this regard is placed upon the recent judgment of Hon'ble Supreme Court in the case of ***Madhya Pradesh Road Development Corporation Ltd. Vs. M/s. Jabalpur Corridor Private Ltd.*** (Civil Appeal No.10877 of 2018) dated 29.05.2026.

4. The factual matrix, in short, is that for execution of work of repair, renovation, addition and alteration of Government Hospital at Pratapgarh, District Chittorgarh, respondent - claimant's bid was accepted by the appellants - non-claimants and after issuing a letter of acceptance, a work agreement No.47/2006 was executed between the parties as per which the date of commencement and

stipulated date of completion of work were 21.05.2006 and 20.08.2007, respectively. It is Clause 13.3 of the said agreement, interpretation and consideration of which has given rise to the present dispute between the parties. The said clause reads as under:-

> "13.3. All duties, taxes, and other levies payable by the contractor under the contract, or for any other cause shall be included in the rates, prices and total Bid Price submitted by the Bidder.
> Note: "Bidders may like to ascertain availability of excise/custom duty exemption benefits available in India to the contracts financed under World Bank loan/credits. They are solely responsible for obtaining such benefits which they have considered in their bid and in case of failure to receive such benefits for reasons whatsoever, the employer will not compensate the bidder (contractor). Where the bidder has quoted taking into account such benefits, he must give all information required for issue of certificates in terms of such notifications as per form attached to the Qualification Information in the bid. To the extent the employer determines the quantity indicated therein are reasonable keeping in view the bill of quantities, construction programme and methodology, the certificates will be issued and no subsequent changes will be permitted. The bids which do not conform io the above provisions will be treated as non responsive and rejected. Any delay in procurement of the construction equipment/machinery/goods as a result of the above shall not be a cause for granting any extension of time."

5. The claims raised by the respondent – claimant before the learned sole Arbitrator were with respect to payment of amount towards excise duty along with interest thereon, compensation as liquidated damages and costs. It was submitted by the respondent – claimant that as the rates quoted by it in its bid were after considering the Clause 13.3 of the Agreement, it repeatedly requested the appellants – non-claimants for issuance of requisite

Customs/Excise Duty exemption certificate in respect of cement, steel and other construction material, however, as the said certificate was not issued by the appellants – non-claimants, the issue was referred to the adjudicator, who vide order dated 29.08.2006 after hearing both the parties and considering the Clause 13.3 of the Agreement, arrived at a specific finding that the respondent – claimant has completed all the formalities required for issuance of the certificate and consequently, the appellants – non-claimants were directed to issue the requisite certificate regarding exemption of Customs/Excise Duty by 10.09.2006.

6. While the said order dated 29.08.2006 was not challenged by the appellants – non-claimants yet the said exemption certificate was issued only on 25.07.2007, which was served upon the respondent – claimant on 01.08.2007. Further, submission of respondent – claimant was that the certificate was valid for a period from 21.05.2006 to 17.07.2007, whereas the project was completed by the respondent – claimant on 03.07.2007, which was prior to the stipulated date of completion i.e. 28.08.2007 and even the validity period of the certificate stood expired prior to the date of its issuance. In such backdrop, respondent – claimant sought refund of the excise duty, of which the respondent – claimant was entitled for exemption, on account of non issuance of the certificate by the appellants - non-claimants in terms of Clause 13.3 but could not get benefit of such exemption.

7. Appellants – non-claimants opposed the claim put forth by the respondent – claimant on the pretext of Clause 13.3 itself raising a point that this clause itself contains dis-entitlement of

respondent - claimant to claim compensation from the appellants - non-claimants, in the event of failure to receive the benefit of exemption of excise duty for any reason whatsoever.

8. That apart, the other defence taken by the appellants – non-claimants was that the respondent – claimant wants to take a benefit of exemption of the excise duty for the material, which was procured prior to or post the contractual period. It was also submitted that the goods were procured by a sister concern of the respondent – claimant, which cannot be permitted.

9. Learned Arbitrator, vide award dated 30.11.2009, after considering the factual matrix and Clause 13.3 of the Agreement held that once the adjudicator vide its judgment dated 29.08.2006 has issued directions to the appellants – non-claimants to issue the exemption certificate in favour of the respondent – claimant, the appellants – non-claimants cannot withhold the issuance of such certificate and further held that the certificate issued on 25.07.2007 which was received by the respondent – claimant on 01.08.2007 and was having validity from 21.05.2006 to 17.07.2007, would not serve any purpose and accordingly, it was held that the claim for excise duty was justified.

10. Learned Arbitrator, while interpreting clause 13.3 in respect of entitlement of respondent – claimant for raising a claim against the appellants – non-claimants in case of failure to receive the benefit of exemption of excise duty for whatsoever reason, relied upon the principle of "*contra proferentem*", the underlying object of which is that *"if two interpretations are possible, the one favourable to the party who drafted the contract and the other*

against him, the interpretation against that party is to be preferred."

11. Learned Arbitrator held that undisputedly, the conditions of work agreement were drafted by the appellants - non-claimants, hence, such condition enshrined in clause 13.3 cannot be read in favour of appellants - non-claimants, rather, once the respondent – claimant has proved its entitlement for availing the benefit of excise duty, it is entitled for refund of the same.

12. Considering all the factual aspects including the fact that purchase of material by sister concern of the respondent – claimant cannot be permitted, as against the claim of Rs.4,04,913/- towards excise duty, the claim of Rs.3,38,416/- only was awarded. Further, taking note of Clause 43.1 of the Agreement, claim towards interest @12% on the said amount along with cost amounting to Rs.77,000/- and Rs.19,250/- was also awarded. However, the claim made by the respondent - claimant towards liquidated damages of Rs.2,25,000/- was rejected.

13. Appellants - non-claimants assailed the arbitral award by filing an application under Section 34 of the Act of 1996 and raised the similar nature of objections that the award has been passed against the public policy and the fundamental policy of Indian Law. The main thrust of objection was on the restrictive nature of Clause 13.3 of the work agreement.

14. The learned Court in exercise of its jurisdiction under Section 34 of the Act of 1996, dismissed the objections with categorical findings that the principles of public policy and the fundamental

policy of Indian Law have rightly been applied by the Arbitrator and once the respondent – claimant has proved its entitlement for getting benefit of the exemption of excise duty so much so the appellants - non-claimants has also acknowledged the said entitlement by issuing a certificate as well, though the same was issued belatedly, the award for refund of the excise duty passed by the Arbitrator does not suffer from any illegality and it cannot be said that award is against the policy of Indian Law or against the fundamental policy.

15. In respect of assailing the rate of interest @ 12% on the amount of refund of excise duty, same was also affirmed relying upon the Clause 43.1 of the work agreement which stipulates for award of interest @ 12% from the date of completion of the project.

16. Finally, the learned Court dismissed the application filed under Section 34 of the Act of 1996 and affirmed the arbitral award dated 30.11.2009.

17. In our considered opinion, a bare perusal of Clause 13.3 of the Agreement reveals that the said clause acknowledges that a bidder can claim the benefit of exemption of Excise/Custom Duty, provided all the information required for issuance of such exemption certificate is submitted by it in the requisite manner. The clause further provides that the appellants - non-claimants (which has been referred as the ‘employer’ in the said clause) will have the right to determine the quantity in respect of which the exemption certificate will be issued. This clause also provides that in case the respondent – claimant fails to receive such benefits for

whatsoever reason, the employer is not bound to compensate for the same.

Indisputably, the respondent – claimant was found to be entitled for the exemption from excise duty as is corroborated from the fact that the exemption certificate was issued to it by the appellants – non-claimants on 25.07.2007. It is also a matter of record that the said certificate was issued in its favour subsequent to an order dated 29.08.2006 passed by the Adjudicator in an earlier proceeding, after hearing both the parties and considering the Clause 13.3 of the Agreement. Also, it has been submitted before this Court that the said order dated 29.08.2006 was not challenged by the appellants – non-claimants.

18. That being so, it cannot be said that it is a case which involves grant of compensation to the appellants – non-claimants as per Clause 13.3 of the Agreement. Rather, the present claim of the respondent – claimant is in furtherance to the exemption certificate already issued by the appellants – non-claimants. Though, the Arbitrator has applied the principle of *contra proferentem* by referring to two different sentences of Clause 13.3, however, the case of the respondent – claimant falls on a much better footing as a harmonious interpretation has been taken by the Arbitrator, which has been affirmed by the learned Court while rejecting the objections, the basis for which is also the order dated 29.08.2006, whereby the respondent – claimant has already been declared entitled for the exemption. Merely because the appellants – non-claimants issued the said exemption certificate belatedly, that cannot deprive the respondent –

claimant from the benefits to which it is entitled to. As a matter of fact, once the entitlement certificate with respect to exemption from excise duty has been issued by the appellants – non-claimants in favour of respondent – claimant, no such challenge itself could have been made by the appellants – non-claimants. Accepting such a challenge would result into granting benefit to the appellants – non-claimants for its own fault and such an interpretation has been rightly rejected.

19. In view of the above discussion, the judgment of Hon'ble Supreme Court in the case of ***Rashtriya Ispat Nigam Limited Vs. Dewan Chand Ram Saran*** reported in ***(2012) 5 SCC 306,*** relied upon by learned counsel for the appellants – non-claimants to submit that the principle of *contra proferentem* will not apply in the case of a commercial document will not be render any assistance to him. Thus, we do not find any fault in the concurrent findings wherein the respondent – claimant has been held entitled to payment of Rs.3,38,416/- towards excise duty.

20. The claim with respect to grant of interest @12% on the awarded amount is based on Clause 43.1 of the Agreement and as the parties to an agreement have mutually agreed for a particular rate of interest, the said objection of the appellants – non-claimants was also rightly rejected. Further, the claim towards costs has been partly allowed to the extent of Rs.77,000/- out of Rs.1,54,750/- and also an amount of Rs.19,250/- has been awarded which pertains to the Arbitrator fees and venue charges not paid by the appellants – non-claimants wherein also, we find no infirmity.

21. Accordingly, considering the above factual aspects and applying the aforesaid principle as laid down by Hon'ble Supreme Court in the case of ***Madhya Pradesh Road Development Corporation Limited (supra)*** the impugned order(s) warrants no interference and consequently, the appeal stands dismissed.

22. Both the parties admit that in furtherance to the interim order dated 06.12.2019, 50% of the awarded amount has already been disbursed to the respondent-claimant, therefore, since, stay order dated 06.12.2019 stands vacated, respondent-claimant is entitled to recover remaining amount of arbitral award.

23. Pending application(s), if any, also stand disposed of.

(ANUROOP SINGHI),J **(SUDESH BANSAL),J**

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