(2009) 12 DEL CK 0237

In the Delhi High Court

Case No : LPA 533 of 2009

Brahmaputra Infrastructure Ltd. APPELLANT

Vs

Delhi Development Authority RESPONDENT

Date of Decision : 14-12-2009

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2009) 12 DEL CK 0237

Hon'ble Judges : A.P. Shah, C.J;Dr. S. Muralidhar, J

Bench : Division Bench

Advocate : Venkataramani, Amith Pung and A.K. Joseph, for the Appellant; P.K. Mittal, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal is directed against the impugned order dated 4.9.2009 passed by the learned single Judge dismissing W.P.(C) No. 11435/2009. The prayer in the writ petition was for a direction to the Respondent DDA to reimburse to the Appellant a sum of Rs. 60,19,872/- on account of service tax along with interest @12% from the date of the first payment of the service tax which had been declined by the DDA.

2. We have heard the submissions of Mr. Venkataramani, learned Senior Counsel appearing for the Appellant. Reliance is placed on a letter dated 30.11.2007 written by the DDA to the Appellant awarding it the work for which the DDA had invited tenders. The relevant paragraphs of the said letter, relied upon by the Appellant, read as under:

You shall be required to contribute towards P.F/ESI and Pay service tax and other taxes to the Concerned Authorities. Nothing extra shall be paid on the aforesaid contributions/recoveries, if any.

xxxxx

xxxxx

You are also requested contact Assistant Engineer-V of this office and start the work at once. Please note that the time allowed for carrying out the work as entered in the tender form shall be reckoned from the 10th day after the date of issue of this letter to commence the work. Your letter Dated 25.07.07, 30.08.07, 20.09.07 & 04.10.07 extending the validity of the tender and negotiation letter dated 28.07.07 reducing their quoted rates in respect of certain items shall form part of the agreement.

3. Although in the first quoted paragraph, it was made clear by the DDA that the Appellant was required to pay the service tax, in the last paragraph, according to the appellant, the DDA had also indicated that the Appellant''s letter dated 28.07.2007 would form part of the agreement. It is stated that in its letter dated 28.7.2007, the Appellant had informed the DDA that the rates quoted by it were exclusive of service tax and that the liability of service tax would be reimbursed by the DDA. It is sought to be contended that it is the subsequent paragraph of the letter dated 30.11.2007 which would govern the contract between the parties and in terms thereof, the DDA was liable to reimburse the service tax. It is also sought to be contended that inasmuch as the matter involves no disputed question of fact, the plea of the Appellant ought to be entertained in a writ petition under Article 226 of the Constitution.

4. We are unable to accept this submission for more than one reason. First the DDA has in its affidavit dated 2.12.2009 disputed the claim of the Appellant by pointing out the first quoted paragraph of the letter dated 30.11.2007 whereby the Appellant was told that it had to pay the service tax. It is denied that "there is any agreement between the petitioner and the respondent to reimburse the Service Tax by the Respondent to the Petitioner". Secondly, the averments made by the parties call for interpretation of the terms of the contract and for evidence to be led for that purpose. This exercise obviously cannot be undertaken in a petition under Article 226 of the Constitution. (See e.g. State of U.P. and others Vs. Bridge and Roof Co. (India) Ltd.,

5. Consequently, we seen no merit in this appeal and the same is accordingly dismissed.

