
(2013) 06 GAU CK 0020
In the Gauhati High Court
Case No : Writ Petition (C) No. 2352 of 2005

HMR Construction Pvt. Ltd.

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 05-06-2013

Acts Referred:

Citation : (2013) 3 GLD 504

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : G.N. Sahewalla and Mr. P. Deka, for the Appellant; R.M. Deka, for the Respondent

Judgement

Biplab Kumar Sharma, J.—Heard Mr. G.N. Sahewalla, learned senior counsel assisted by Mr. P. Deka, learned counsel appearing for the petitioner. Also heard Mr. R.M. Deka, learned counsel appearing for the respondents. By means of this writ petition the petitioner has prayed for a direction to the respondents to release the security deposit amounting to Rs. 1,55,000/- along with interest as claimed in the writ petition.

2. In this connection, the petitioner has referred to the provisions of the interest on delayed payments under the Small Scale and Ancillary Industrial Undertakings Act, 1993.

3. Mr. Sahewalla, learned counsel for the petitioner placing reliance on the decision of the Apex Court in Modern Industries Vs. Steel Authority of India Ltd. and Others, Shakti Tubes Ltd. Vs. State of Bihar and Others, and the decision of this Court in NEFA Udyog & Ors. v. State of Arunachal Pradesh & Ors., reported in 2003 (2) GLT 323 has submitted that the petitioner is entitled to interest on delayed payment in respect of the security deposit.

4. On the other hand, Mr. R.M. Deka, learned counsel representing the respondents placing reliance on the decision of the Apex Court in Assam Small Scale Ind. Dev. Corp. Ltd. and Others Vs. J.D. Pharmaceuticals and Another,

submits that the work order having been placed with the petitioner prior to coming into force the aforesaid Act, 1993, the petitioner is not entitled to any interest.

5. As stated in the writ petition, the petitioner was issued with the preliminary work order on 24.3.1990 for supply of the particular products. The tenders from the parties were invited on 22.7.1988. As stated in the writ petition (paragraph-5) the agreement was modified and entered between the parties on 19.10.1990.

6. In the modified agreement Clause-18 provided for retention of security deposit by the respondent authority for a period of 6 months on completion of the work.

7. In paragraph-6 of the counter affidavit, the petitioner has stated about the delivery/supply of items on 25.3.1993. In the said paragraph, it has also been stated that as per the aforesaid contract agreement the respondent authority retained an amount of Rs. 3,02,849/- as security deposit. The petitioner has also stated about receipt of final payment.

8. The judgments on which Mr. Sahewalla, learned senior counsel for the petitioner has placed reliance, and referred to above, state that in delayed payment of the bills the authority incurs the liability to pay interest. However, as has been held in J.D. Pharmaceuticals (supra), the provisions of the Act, 1993 having come into operation on 23.9.1992 will not apply to transactions which took place prior to that day.

9. In the instant case, as per own admission of the petitioner, the tender was issued in 1988 and the work order was issued in 1990. The modified agreement referred to above was also executed on 19.10.1990. Although the learned counsel for the petitioner has referred to the modified agreement dated 20.10.1993 but the same is in reference and continuation to the earlier agreement of 1990 and the same is relating to retention of security deposit only.

10. In Modern Industries (supra), the Apex Court has observed thus:--

51. Now, the submission of the learned senior counsel for the buyer with regard to the applicability of the 1993 Act to the present case may be considered. His argument is that the 1993 Act is not applicable to the present case as the contract was entered into on 15.1.1983 and the 1993 Act came into effect on 23.9.1992. The argument does not appeal us for more than one reason. In the first place, this contention was not raised before the High Court, it is canvassed before us for the first time. Secondly, and more importantly, from the available material, it transpires that although the initial contract was entered into between the parties in January 1983 but it got altered from time to time in view of negotiations between the parties about supply of raw materials by the buyer free of cost; the defect in drawings and assignment of additional works and last of such alterations was on 29.4.1995.

53. Assam Small Scale Industries Development Corpn. Ltd. has been followed

recently by this Court in Shakti Tubes Ltd. In Shakti Tubes Ltd. this Court said (SCC pp. 680-81 and 684, paras 18,21-22 & 31).

18. In our considered opinion, the ratio of the aforesaid decision in Assam Small Scale Industries case is clearly applicable and would squarely govern the facts of the present case as well. The said decision was rendered by this Court after appreciating the entire facts as also all the relevant laws on the issue and therefore, we do not find any reason to take a different view than what was taken by this Court in the aforesaid judgment. Thus, we respectfully agree with the aforesaid decision of this Court which is found to be rightly arrived at after appreciating all the facts and circumstances of the case.

11. In view of the above, I am of the considered opinion that the petitioner is not entitled to invest on the purported delayed payment. However, the balance amount, if any, may be repaid to the petitioner as expeditiously as possible preferably within 31.7.2013. With the above observation, the writ petition stands disposed of.