**(2023) 05 DEL CK 0496**

**In the Delhi High Court**

**Case No :** Civil Writ Petition No. 1629 Of 2023, Civil Miscellaneous Application No. 6201 Of 2023

Indian Oil Corporation Ltd APPELLANT

Vs

Micro Small And Medium Enterprises Facilitation Council & Ors RESPONDENT

**Date of Decision :** 09-05-2023

**Acts Referred:**

Micro, Small And Meduim Enterprises Development Act, 2006 — Section 2(n), 8, 8(1)
Limitation Act, 1963 — Section 14

**Citation :** (2023) 05 DEL CK 0496

**Hon'ble Judges :** Prathiba M. Singh, J

**Bench :** Single Bench

**Advocate :** Kunal Kalra

**Final Decision :** Disposed Of

# Judgement

Prathiba M. Singh, J

1. This hearing has been done through hybrid mode.

2. None appears for the Respondents despite service.

3. The present petition has been filed by the Petitioner - Indian Oil Corporation Ltd. seeking setting aside of the impugned reference order dated 21st September, 2021 issued by the Micro, Small and Medium Enterprise Facilitation Council, South Revenue District, GNCTD (MSEFC) under the Medium Enterprises Development Act, 2006 (MSME Act, 2006).

4. In the present case, the work contract between the Petitioner and Respondent No.2 – GS Buildtech Pvt Ltd is of 4th April, 2017 and work was completed on 10th February, 2020. Subsequently, the Respondent No. 2 was registered as an MSME on 9th March, 2021.

5. Due to certain disputes arising out of the said works contract between the

 

parties, the Respondent No.2 approached the MSEFC. Thereafter, vide the impugned reference order dated 21st September, 2021 the MSEFC referred disputes between the Petitioner and Respondent No.2 – GS Buildtech Pvt Ltd for arbitration before the DIAC.

6. This Court, vide order dated 20th March, 2023, while issuing notice had stayed the arbitration proceedings before the DIAC.

7. The facts of this matter clearly reveal that the date of the works contract as also the completion of work is prior to the registration of the Respondent No.2 as an MSME. The legal issue that arises is squarely covered by the judgment of the Hon'ble Supreme Court in M/s Shilpi Industries vs. Kerala State Road Transport Corporation, CA Nos. 1570-1578 of 2021 and the judgment of this Court in Malani Construction Company v. Delhi International Arbitration Centre & Ors, W.P. (C) 9608/2022. The relevant part of the same is as under:

"11. In both MSEFC cases, the date of registration admittedly being after the date of the last invoice having been raised, the ratio in Silpi Industries (supra) would clearly be applicable to this case. In Silpi Industries (supra) the Supreme Court has clearly held as under:

"26. Though the appellant claims the benefit of provisions under MSMED Act, on the ground that the appellant was also supplying as on the date of making the claim, as provided under Section 8 of the MSMED Act, but same is not based on any acceptable material. The appellant, in support of its case placed reliance on a judgment of the Delhi High Court in the case of GE T&D India Ltd. v. Reliable Engineering Projects and Marketing, but the said case is clearly distinguishable on facts as much as in the said case, the supplies continued even after registration of entity under Section 8 of the Act. In the present case, undisputed position is that the supplies were concluded prior to registration of supplier. The said judgment of Delhi High Court relied on by the appellant also would not render any assistance in support of the case of the appellant. In our view, to seek the benefit of provisions under MSMED Act, the seller should have registered under the provisions of the Act, as on the date of entering into the contract. In any event, for the supplies pursuant to the contract made before the registration of the unit under provisions of the MSMED Act, no benefit can be sought by such entity, as contemplated under MSMED Act. While interpreting the provisions of Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993, this Court, in the judgment in the case of Shanti Conductors Pvt. Ltd. & Anr. etc. v. Assam State Electricity Board & Ors. Etc. has held that date of supply of goods/services can be taken as the relevant date, as opposed to date on which contract for supply was entered, for applicability of the aforesaid Act. Even applying the said ratio also, the appellant is not entitled to seek the benefit of the Act. There is no acceptable material to show that, supply of goods has taken place or any services were rendered, subsequent to registration of appellant as the unit under MSMED Act, 2006. By taking recourse to filing memorandum under sub-section (1) of Section 8 of the

 

Act, subsequent to entering into contract and supply of goods and services, one cannot assume the legal status of being classified under MSMED Act, 2006, as an enterprise, to claim the benefit retrospectively from the date on which appellant entered into contract with the respondent. The appellant cannot become micro or small enterprise or supplier, to claim the benefits within the meaning of MSMED Act 2006, by submitting a memorandum to obtain registration subsequent to entering into the contract and supply of goods and services. If any registration is obtained, same will be prospective and applies for supply of goods and services subsequent to registration but cannot operate retrospectively. Any other interpretation of the provision would lead to absurdity and confer unwarranted benefit in favour of a party not intended by legislation."

12. This judgment in Silpi Industries(supra) has been subsequently considered by the Supreme Court, recently, in 'Gujarat State Civil Supplies Corporation Limited v. Mahakali Foods Private Ltd.(Unit 2) & Anr' , the operative portion for which reads:

"33.Following the above stated ratio, it is held that a party who was not the "supplier" as per Section 2(n) of the MSMED Act,2006 on the date of entering into the contract, could not seek any benefit as a supplier under the MSMED Act,2006. A party cannot become a micro or small enterprise or a supplier to claim the benefit under the MSMED Act,2006 by submitting a memorandum to obtain registration subsequent to entering into the contract and supply of goods or rendering services. If any registration, is obtained subsequently ,the same would have the effect prospectively and would apply for the supply of goods and rendering services subsequent to the registration. The same cannot operate retrospectively. However, such issue being jurisdictional issue, if raised could also be decided by the Facilitation Council/Institute/Centre acting as an arbitral tribunal under the MSMED Act, 2006.

34.The upshot of the above is that-...

...(vi) A party who was not the 'supplier' as per the definition contained in Section 2(n) of the MSMED Act, 2006 on the date of entering into contract cannot seek any benefit as the 'supplier' under the MSMED Act, 2006.If any registration is obtained subsequently the same would have an effect prospectively and would apply to the supply of goods and rendering services subsequent to the registration ..."

13. The ratio of these two judgments is clear to the effect that if the registration under the MSMED Act, 2006 was obtained subsequently, the benefits under the said Act would not apply. Even in a situation where some portion of the goods/ services are supplied prior to registration and some are supplied post registration, the Act would apply, depending on the facts, only qua the goods and services which are supplied subsequent to the registration.

8. In view of the above decision, the reference in the present case dated 21st September, 2021 shall stand set aside. The Respondent No.2 is free to avail of its

 

remedies in accordance with law. If the Petitioner wishes to avail of its remedies by 31st July, 2023, the concerned forum shall extend benefit of Section 14 of the Limitation Act, 1963 for the period commencing from the date when the application was filed before the MSEFC till 31st July, 2023.

9. Petition is disposed of in these terms. All pending applications are also disposed of.

 