

(1985) 04 P&H CK 0032

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 77 of 1977

Industrial Cables (India) Ltd.

APPELLANT

Vs

Hindustan Aluminium Corporation Ltd. and Others

RESPONDENT

Date of Decision : 08-04-1985

Acts Referred:

Arbitration Act, 1940 — Section 34

Citation : (1985) 6 ECC 78 : (1985) 5 ECR 2325 : (1987) 28 ELT 204

Hon'ble Judges : G.C. Mittal, J

Bench : Single Bench

Advocate : Bhagirath Das and Ramesh Kumar, for the Appellant; L.M. Suri and Ravinder Arora, for the Respondent

Final Decision : Allowed

Judgement

G.C. Mittal, J.—The Industrial" Cables (India) Ltd., Rajpura, (hereinafter referred to as the plaintiff-company) filed a civil suit for the recovery of Rs. 6,75,514.80 against Hindustan Aluminium Corporation Ltd., Renukoot, District Mirzapur, U.P., Union of India through the Secretary to Government of India, Department of Revenue and Insurance, Ministry of Finance, and Collector of Central Excise, Allahabad, on the plea that during the period 13th April, 1967 to 28th February, 1969 the plaintiff-company purchased aluminium rods from the defendant-company and paid the aforesaid amount to the defendant-company on account of excise duty under the bona fide belief and mistake of law whereas in fact and in law. no excise duty was payable. The refund was claimed from the defendant-company and reliance was placed on a decision of the Gujarat High Court. It was also pleaded that the plaintiff-company requested the defendant-company to refund the amount of excise duty but the said company refused to refund the amount on the plea that the defendant-company had taken up the matter with the Central Excise Authorities. They rejected the claim for refund. That is how the suit was filed against the defendants.

2. The defendant-company, instead of filing the written statement, filed the

application u/s 34 of the Indian Arbitration Act, 1940 for stay of the suit on the plea that there was an arbitration agreement between the parties on the basis of which the matter could be referred to the named Arbitrator,,i.e., Indian Chamber of Commerce, Calcutta. The trial Court by order dated 25th October, 1976 stayed the suit in view of the arbitration clause. The plaintiff f-company has come to this Court in appeal against that order.

3. Shri M.L. Suri, appearing on behalf of the defendant-company, has urged that in paragraph 5 of the plaint the plaintiff-company has categorically admitted that the defendant-company had already paid the excise duty to the Central Government and thereafter realised the same from the plaintiff-company in terms of the agreement. He has further highlighted that in that very paragraph of the plaint the plaintiff-company has also admitted that the defendant-company had to pay the excise duty to the Central Excise Authorities before clearing the goods at the factory at Renukoot and since the Central Government has declined their request for refund, the claim of the plaintiff-company is primarily against the Central Government and the Collector of Central Excise, and if it is ordered that no relief is being claimed against them, they have no objection if the suit is allowed to proceed.

4. When this matter was put to Shri Bhagirath Dass, appearing on behalf of the plaintiff-company, he stated that if the defendant-company is able to prove that they have actually paid the amount to Central Government, then, of course, no relief would be claimed against them. But in case ultimately, it is found that the defendant-company has not paid anything to the Central Government towards the excise duty and if ultimately the Court holds that the excise duty is not payable, then it will be only the defendant-company which would be liable to refund the amount to the plaintiff-company and not the Central Government.

5. After considering the rival contentions of the parties, I am of the view that the suit deserves to proceed because of the following two reasons. The first would be the point which Shri Suri has urged, and from the pleadings of the plaintiff-company in paragraph 5 of the plaint it is clear that it is the admitted fact that if the defendant-company has paid the excise duty to the Central Government, it can get the same reimbursed from the plaintiff-company in terms of the agreement. However, in ease the stand of the Central Government in the written statement is that the defendant-company did not pay anything to them towards the excise duty for the goods ultimately supplied to the plaintiff-company, then this matter has to be gone into in the suit. It is the admitted case that in case the Central Government has been paid the excise duty by the defendant-company, then the claim of the plaintiff-company would be given up according to Shri Bhagirath Dass, against the defendant-company and after that the defendant-company need not take part in the proceedings of the suit.

6. The second ground is still more favourable to the plaintiff-company. There would be no dispute between the two companies to refer it to the Arbitrator regarding refund of the excise duty. The question of levy of excise duty on an

article would be such an intricate question of law which would not be referable to the arbitrator unless the parties specifically agree that such a question would also be referable to the arbitrator. Moreover, such a question cannot be determined in the absence of the Central Government. Therefore, the arbitration clause has to be read in the context of the agreement and while doing so, it cannot be spelt out that the arbitration clause included the decision of dispute whether on the articles supplied by the defendant-company to the plaintiff company, the excise duty was payable or not. What is agreed is that, if the excise duty is payable, then it would be charged at the rate specified by the Government at the relevant time. Hence, the crucial dispute, whether the excise duty was payable or not, would be between the plaintiff-company and defendants 2 and 3, i.e. the Union of India and the Collector of Central Excise, with whom the defendant-company has nothing to do. For the determination of this dispute, the defendant-company would be merely pro forma. As already stated above, even under the first point, the defendant-company would be merely pro forma in case the Central Government admits in the written statement that the defendant-company has paid the Central excise duty to them. Hence, it was not a" case in which the arbitration clause was involved and the dispute, which is raised in the plaint, has to be decided by the competent Court of law.

7. Lastly, it was argued by Shri Bhagirath Dass that in case the plaintiff-company succeeds in the suit, the Central Government might take up the position that they would refund the amount to the defendant-company since the defendant-company had paid it, and therefore, it should be clarified that the defendant-company would not be entitled to claim refund to the extent of goods supplied to the plaintiff-company and the amount would be payable to the plaintiff-company and not to the defendant-company. To this Shri L. M. Suri, appearing for the defendant-company, has no objection, and therefore, it is ordered accordingly.

8. For the reasons recorded above, this appeal is allowed, the order of the Court below dated 25th October, 1976 is hereby set aside and the matter is remitted to the trial Court to proceed with the suit in accordance with law keeping in view the observations made above. The parties, through their counsel, are directed to appear in the trial Court on 6th May, 1985. However, there will be no order as to costs.