

(2001) 09 DEL CK 0211

In the Delhi High Court

Case No : CW 5064 and CM 8727 of 2001

Integrated Fire Protection Pvt. Ltd.

APPELLANT

Vs

Director of Purchase Air Headquarters and Others

RESPONDENT

Date of Decision : 18-09-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 61 DRJ 779 : (2002) 144 ELT 530

Hon'ble Judges : Mukul Mudgal, J

Bench : Single Bench

Advocate : G.L. Sanghi and Krishna Kumar, for the Appellant; B. Datta Sachin Datta and Maninder Singh, for the Respondent

Final Decision : Dismissed

Judgement

Mukul Mudgal, J.—The main dispute involved in this petition revolves around the interpretation of the clause relating to the Customs Duty Exemption (hereinafter referred to as "CDE") in the tender submitted by the petitioner in response to the Notice Inviting Tender (hereinafter referred to as "NIT") dated 28th November 2000 issued by the respondent No.1.

2. The relevant clause for determination of the dispute involved in the writ petition in the NIT and the petitioner's and the respondent No. 5's response in their respective tenders thereto are set out below:

"DETAILS OF ITEMS OFFERED:

See/Part	Description	Specific	at	DOQ	Qty.	Price	No.	No.	Sl. -ions
1.	321F/ Foam Liquid DS CAT No. 1tr. 101,200 Aqueous Film Forming Type 6 IND/CQAFE/ (Normal) for fire PFOV/0013 (c) Fighting in 1999								Containers

*Unit price should be exclusive of all Government duties, Govt. Duties/taxes etc. should be specified giving the current rate applicable, Packing & Forwarding charges, if any are to be included in the Unit Price. Price should be quoted on for destination basis.

(a) is Customs Duty Exemption Certificate (CDE) required Yes/No.

Petitioner's bid.

Price

Ex Factory Unit Price (Rs. per ltr)

(excluding Excise Duty Sales Tax transportation charges & Customs Duty Element).

10. Total for Destination price for 1,01,2000 Ltrs.

Total for Destination price for 1,01,2000 Ltrs. Rs. 40,63,900.54 (including Excise Duty/Exemption Certificate is provided by AIR Head Quarters the above mentioned Total FOR Destination. Price will not have Excise Duty & Sales Tax & Transportation Charges but excluding Customs Duty Element)

If Excise Duty Exemption Certificate is provided by AIR HEAD QUARTERS the above mentioned Total FOR Destination Price will not have Excise Duty component and Sales Tax would be calculated on Ex factory price only.

CDE

Customs Duty Exemption Certificate is required

CIF Value of stores for 2500 Kgs. - USD 38025=Rs.17,79,570 (1USD = Rs.46.80

Customs Duty Payable @ 35% + 3.5% =38.5% = Rs.6,85,134/-

(current prevailing) on CIF Value of stores.

Respondent's Bid

Customs Duty Exemption Certificate Not required."

3. It is not in dispute that if the amount of Rs.6,85.134/- towards the CDE quoted by the petitioner is added to the petitioners financial bid then the respondent No.4's bid is the lowest and if the said figure is excluded then the petitioner's bid is the lowest. The petitioner's plea is that respondent 1 to 3 erred in adding the figure of Rs.6,85,134/- to the petitioner's bid of Rs. 40,63,900.54/- so as to make it higher than the bid of respondent No.5 which was Rs.40,85,845.17. The petitioner submits that the figure of Rs.6,85, 134/- was quoted only in response to the clause in the tender and could not be construed to be a part of the petitioner's price bid. Mr. G.L. Sanghi, the learned counsel for the petitioner further submitted that unlike the petitioner, the

respondent also did not have adequate capacity to meet the requirement of the tender which was for the immediate delivery of about one lakh litres as at the relevant time the respondent No.5's capacity was only 10,000 litres per month.

4. Mr. Maninder Singh appearing for respondents 1 to 4 submitted that the petitioner's tender clearly had stated the value of the CDE to be Rs. 6,85,134/- and the view taken by the respondent No. 3 could not be termed as so perverse, so as to invite the interference by this Court under Article 226 of the Constitution. He submitted that the inclusion of the CDE element in the price component while construing the petitioner's bid was the only interpretation possible. He in the alternate submitted that in any event the bid as tendered by the petitioner was ambiguous and the view taken by the respondent was a reasonable view and did not warrant interference under the writ jurisdiction. He also submitted that even if the petitioner's interpretation is accepted as a possible one, it is not enough to stick down the award of tender to the respondent No. 4. Mr. B. Dutta, learned senior counsel for respondent No.4 denied the pleas relating to his capacity by contending that his present capacity was 10000 litres per day. He further submitted that even in the tender finalized immediately preceding the present one, the petitioner had been the successful tendered by not quoting CDE at all and respondent No. 4 who had quoted CDE had lost out and in the present situation the roles had been reversed. he further submitted that since the respondent had been following a consistent policy in construing tenders, there was no arbitrariness and unreasonableness in the view taken by the respondents 1 to 4 so as to warrant interference under Article 226 of the Constitution.

5. In my view the plea of the capacity of one lakh litre has not been stated in the NIT. By reference to the repayment of delivery as immediate, the NIT cannot be construed to mean that the capacity of the tendered was required to be one lakh litres. If this was so it would have been clearly stated in the tender. No condition can be inferred by implication to be a part of the tender condition. Accordingly this plea of the petitioner qua capacity of respondent No. 4 has no merits and is rejected. Accordingly I am not considering the plea of the respondent No. 4 that it has in fact the requisite capacity though the petitioner pleads to the contrary.

6. On the plea of the construction of the price bid, the petitioner's bid in response to the clause regarding CDE is not unambiguous and clearly capable of two constructions. The petitioner's plea may have had some substance if it had clearly added after the figure of Rs.6,85,134/- that this was not to be considered as a part of the petitioner's price and was merely an evaluation of the CDE. Since this was not done, the interpretation put on the financial bid of the petitioner by the respondent cannot be said to be unreasonable or an impossible one and certainly cannot be termed as so arbitrary or perverse so as to invite interference by this Court under Article 226 even proceeding on the assumption that the view canvassed by the petitioner was a possible one. In *Tata Cellular Vs. Union of India*, it has been held that interference is not warranted unless the

decision is such which no reasonable person on proper application of mind could take and whether the wrong is of such a nature as to require intervention. In the present case in view of the foregoing discussion, none of the aforesaid two conditions are satisfied.

7. In this view of the matter this writ petition has no merit and is dismissed with no order as to costs.