

(2013) 01 MP CK 0107

In the Madhya Pradesh High Court

Case No : Writ Petition No. 21923 of 2012

Sterlite Technologies Ltd.

APPELLANT

Vs

The Micro Small Enterprises Facilitation Council and others

RESPONDENT

Date of Decision : 02-01-2013

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34

Micro, Small and Medium Enterprises Development Act, 2006 — Section 18, 19

Citation : (2013) 01 MP CK 0107

Hon'ble Judges : M.A. Siddiqui, J; Krishn Kumar Lahoti, J

Bench : Division Bench

Advocate : Brian De" Silva with Mr. Sajid Akhtar, for the Appellant;

Judgement

1. The petitioner has sought following reliefs in this petition :-

(i) To issue writ/writs, order/orders, direction/ directions of appropriate directing the respondent no. 1 to consider and decide the application for recall of order dated 31.07.2010 on an early date.

(ii) To issue writ/writs, order/orders, direction/ directions of appropriate nature holding that the order dated 31.07.2010 passed by the respondent no. 1 in favour of the respondent no. 2 is non est in eyes of law for the facts and reasons mentioned in the body of the petition.

(iii) To issue any other writ, order or direction as this Hon"ble Court deem just and proper in the facts and circumstances of the case.

(iv) Costs be awarded to the petitioner.

The facts of the case are that an order Annexure P-4 dated 31.7.2010 was passed against the petitioner by respondent no. 1. Against such an order, a writ petition was filed before this Court, which was registered as W.P. No. 8653/2011 and was finally disposed of by the Single Bench on 12.4.2012 with a direction to the petitioner to raise all the grounds in appeal preferred subject to compliance

of the provisions of section 19 of the Micro Small and Medium Enterprises Development Act, 2006.

2. It appears that an appeal u/s 19 of the Micro Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as "Act" for short) read with section 34 of the Arbitration and Conciliation Act, 1996 was filed, which is pending before the Additional District Judge, Bhopal. The petitioner herein moved an application to respondent no. 1 for seeking review of order Annexure P-4 dated 31.7.2010 on the ground that the order is based on fraudulent document and this order may be reviewed/recalled. As this application was not decided by respondent no. 1, so the petitioner has filed this petition for seeking aforesaid directions.

3. Learned counsel for petitioner submitted that respondent no. 1 may be directed to consider and decide the application Annexure P-9 on page 44 of the paper book and order Annexure P-4 may be recalled/set aside by respondent no. 1 and the respondent no. 1 may be directed to decide the matter afresh.

4. From the perusal of the record, we find that the order dated 31.7.2010 Annexure P-4 was subject matter of writ petition bearing W.P. No. 8653/2011, which was finally disposed of on 12.4.2012 with following directions :-

Contention of the petitioner that the issue raised against the order dated 31-07-2010 passed by Council that it is beyond its jurisdiction to have saddled the petitioner with award of Rs. 36,32,508/- and interest thereon of Rs. 26,12,405/- in respect of the taxes and penalty with which the respondent was saddled with for late furnishing of "C" Form, is beyond the jurisdiction of the Court to examine in a proceedings u/s 18 of 2006 Act read with section 34 of the 1996 Act, has to be discarded as the petitioner has failed to establish that the Court lacks inherent jurisdiction. In case the petitioner wants to establish that the award by Council suffered from inherent lack of jurisdiction, the Court u/s 19 of 2006 Act read with 34 of 1996 Act, is competent to try the issue. Because it is a fundamental principle that invalidity of an award by an Authority could be set up whenever and wherever it is sought to be enforced or relied upon (please see : Kiran Singh and Others Vs. Chaman Paswan and Others, , Budhia Swain and Others Vs. Gopinath Deb and Others,).

In view whereof since the petitioner has already availed the statutory remedy, he would be at liberty to raise all such grounds in Appeal preferred subject to compliance of the provisions of section 19 of 2006 Act.

With these observations petition is finally disposed of.

5. As the matter has already been considered and decided by this Court, it would not be appropriate for this Court to entertain another petition merely on the ground that one application seeking review/recall of the order dated 31.7.2010 Annexure P-4 was filed before respondent no. 1. As the petitioner has already been permitted by the writ Court to raise all the grounds available to the

petitioner before the appellate Court, so we do not find any reason to entertain this petition at this juncture. If the petitioner is of the view that the aforesaid contention ought to have been taken note of by the High Court, as it was not available to the petitioner at the time of hearing of petition on 12.4.2012, it would be appropriate if the petitioner moves an application before the writ Court seeking review/recall or modification of the order dated 12.4.2012 passed in W.P. No. 8653/2011, but for the same purpose, we do not find any reason to entertain this petition.

6. With the aforesaid liberty, this petition is disposed of finally, with no order as to costs. C.C., as per rules.