(1977) 07 MAD CK 0015

In the Madras High Court

Case No : Appeal No. 570 of 1973

Tamil Nadu Electricity Board APPELLANT

Vs

Larsen and Toubro Ltd. RESPONDENT

Date of Decision : 11-07-1977

Acts Referred:

Citation : (1978) 42 STC 63

Hon'ble Judges : Sethuraman, J;Balasubrahmanyan, J

Bench : Division Bench

Advocate : D. Raju, for Government Pleader, for the Appellant; Government Pleader, K.J. Chandran, for the Respondent

Final Decision : Dismissed

Judgement

Sethuraman, J.—The defendant is the Tamil Nadu Electricity Board and the plaintiff, Messrs. Larsen and Toubro Ltd., filed against it O. S. No. 3999 of 1969 in the City Civil Court, Madras, on the following facts : The plaintiff carrying on business as engineers entered into a contract with the defendant for the supply of materials and for erection of induced drought cooling tower of 18,00,000 G. P. H. capacity specification C962. The price quoted by the plaintiff was Rs. 13,53,600 and this was accepted by the defendant. There was subsequently a modification of the price to Rs. 14,10,400 and this was also agreed to. As regards sales tax, it was provided that it was to be paid for the materials including timber components but excluding all other construction materials for civil works, by reimbursement, if applicable, on production of duly certified documents by the company''s auditors showing the actual payment to the Government. The defendant agreed also to furnish C forms provided under the Central Sales Tax Act for the materials and such C form declarations had also been given by the defendant. The plaintiff raised debit notes against the defendant in respect of the materials supplied under the contract and charged appropriate rate of sales tax and sent the debits to the defendant. The total sum so charged came to Rs. 29,058.53. The plaintiff further produced proof of payment of sales tax to the Government and asked for reimbursement. As the defendant did not pay the amount the plaintiff came forward with the present suit for recovery of a sum of Rs. 29,712.33, which includes interest at 6 per cent per annum on the amount claimed. The defendant Electricity Board contested the suit on the ground that the contract that was performed was only a works contract and that there was no liability to sales tax. It was, therefore, contended that the plaintiff was not entitled for reimbursement of the said amount.

2. The I Assistant Judge, City Civil Court, framed the necessary issues arising out of the pleadings and the main issue was whether the defendant was liable to pay the sales tax as claimed by the plaintiff. After discussing the terms of the contract and the evidence let in, the learned Assistant Judge, City Civil Court, came to the conclusion that the supply of materials under the contract would attract sales tax and that the defendant was liable to pay sales tax as claimed by the plaintiff. Therefore, a decree was granted for the amount of Rs. 29,058.53 excluding interest. The judgment and decree so passed is now the subject of the present appeal by the defendant.

3. In the contract that was entered into, which is a very bulky file and which is marked as exhibit A-l, there are the following provisions as found in a letter from the Chief Engineer, Electricity Board, to the plaintiff company :

(9) The price quoted by you shall be firm in rupees till the completion of the contract except for variation in customs duty. You will not be paid any extra for other Government levies or any other taxes excepting sales tax as detailed below:

(10) Sales Tax : Sales tax for materials, including timber components but excluding all other construction materials for civil works, will be reimbursed, if applicable and on production of duly certified documents by the company''s auditors showing actual payment by the company to the Government. Form C declaration may be obtained from the Paying Officer concerned wherever the concessional rate of 1 per cent Central sales tax is admissible.

4. These two clauses clearly go to show that the Chief Engineer, Electricity Board, had undertaken to pay the sales tax for the materials including the timber components. The learned counsel for the appellant submitted that Clause (10), as extracted above, under the expression "if applicable", thereby showing that unless the provisions regarding the Sales Tax Act were actually attracted, there was no liability on the part of the defendant to reimburse the sales tax paid in this case. It is not in dispute that the plaintiff company had returned the relevant turnover in its return submitted to the sales tax authorities and it was assessed thereon. Though, apparently, there was some dispute in regard to the assessment as such, this turnover was not in dispute before the appellate authority. The result is that the plaintiff returned the turnover and paid tax thereon. As regards the payment of tax, there is no dispute. In these circumstances, the question that arises is whether the words "if applicable" will, in any manner, show that the plaintiff would be entitled to reimbursement if the

defendant was not satisfied that tax could be assessed on the transactions. As far as the sales tax authorities are concerned they have actually assessed the amount of tax. Though the defendant contends that the contract is a works contract, the contract documents themselves go to show that the defendant has undertaken to pay sales tax on the supply of the materials. It, therefore, follows that the construction and the supply of materials cannot be said to be an indivisible contract so as to be eligible for consideration as works contract in accordance with the provisions of the Sales Tax Act. At any rate, so long as there is supply of materials and so long as the amount assessed on such turnover has actually been paid and has been certified by the company''s auditors as having been paid, we consider that on the terms of the contract the defence put forward by the defendant cannot be accepted as valid. If, really, the defendant is allowed to get away with the stand that has now been taken, it would be open to the civil court to go into the question as to whether the liability of the plaintiff had been actually attracted. The hierarchy of authorities under the Sales Tax Act has been specifically provided for the purpose of determining such disputes. Liability to tax cannot be agitated in collateral proceedings. If civil courts can also go into such matters, the result will be that there will be parallel proceedings raising identical issues, one before the civil courts and the other before the tax authorities with the possibility of conflicting decisions. At any rate, Clause (10) does not envisage such parallel proceedings. In these circumstances, we consider the court below acted rightly in granting the decree. against the defendant. The appeal fails and is dismissed with costs.

