

(2008) 03 DEL CK 0090

In the Delhi High Court

Case No : FAO No"s. 317 and 319 of 2006

Union of India (UOI)

APPELLANT

Vs

Hardeep Engineers P. Ltd.

RESPONDENT

Date of Decision : 17-03-2008

Acts Referred:

Citation : (2008) 148 DLT 562

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : J.K. Singh, for the Appellant; D.S. Chauhan and Ruchi Singh, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—At the outset learned Counsel for the parties state that except for the date of the impugned orders, being order dated 11.8.2006 passed by Ms. Shalinder Kaur, ADJ, Delhi disposing of S. No. 96/2005 "Union of India v. Hardeep Engineers" challenged in FAO No. 317/2006 and order dated 26.7.2006 passed by Mr. Babu Lal, ADJ, Delhi disposing of S. No. 129/2005 challenged in FAO No. 319/2006 "Union of India v. Hardeep Engineers Pvt. Ltd.", all other facts are identical and hence for the purposes of noting the facts reference may be made to FAO No. 317/2006.

2. A short point arises for consideration in both the appeals and hence both have been heard together and are being disposed of by a common order.

3. The respondents in the 2 appeals were the successful tenderers and managed to obtain acceptance of their offer in respect of manufacture and supply of Elastic Rail Clips to the Railway authorities. Different quantities of item pertaining to the same commodity were offered for supply by the respondents in the 2 appeals. Both quoted the same rate of Rs. 23.4 per piece. Quantities being different and all other terms of the offer being same, the offer of the respondents was accepted vide purchase order issued by the Railway authorities. Inter alias the

purchase order recorded as follows:

(a) Rate : Rs. 23.4 per piece

(b) Other terms and : Excise duty conditions of the (Inclusive in rates up to 16% ad-valorem) purchase order

4. The case of the respondents is that the rate quoted by them being Rs. 23.4 was inclusive of excise duty up to 16% ad-valorem, meaning thereby that if excise duty exceeded 16% they would be entitled to extra. The respondents elaborated that their offer did not stipulate or state that the price as ex-factory price with taxes as applicable to be paid extra. They claimed that the price offered by them was an inclusive price but limited to impact of excise duty up to 16%.

5. On the other hand the appellants relied upon Clause 9.2 of the General Conditions of Contract as per which the tenderers were supposed to quote at the ex-factory price with taxes to be reimbursed by the Railway authorities on actuals.

6. The effect of the dispute was that while releasing payment the Railway authorities did not release the full payment by alleging that the excise duty paid by the respondents was @ 9.6%.

7. The learned Arbitrator held in favor of the respondents on 2 counts. Firstly that there was a noting on the file to the effect that full payment be released. Secondly by noting the terms of the purchase order.

8. With respect to the nothings on the file, case of UOI is that the nothings were subject to the approval of the Competent Authority and this vital fact has been ignored, in that, the Competent Authority never gave the approval.

9. Eschewing any reference to the nothings on the file it has to be noted that the manner in which the price is quoted becomes relevant to determine the consideration forming the contract. Where goods are offered at an ex- factory price, stating that taxes as applicable on date of supply would be payable extra, the consideration which has to flow from the recipient of the goods is the ex-factory price + reimbursement of the taxes paid by the supplier to the government. But, where the offer is a lump sum and offer i.e. the price quoted is not split into a basic price and taxes separately shown, irrespective of the taxes applicable, price has to be paid unless the term of the acceptance records otherwise.

10. A contract concludes when the offer is unconditionally accepted. The offer and unconditional acceptance thus conclude the terms of the bargain.

11. What better evidence would one have other than the letter of acceptance issued by U.O.I i.e. the purchase order which itself specifies the unit rate to be Rs. 23.4 per piece with a term that the aforesaid quoted price is inclusive of excise duty up to 16% ad-valorem, meaning thereby, if the supplier claimed

excise duty beyond 16% then alone same had to be paid additionally on proof of it being paid in excess. But if the supplier did not ask for any differential extra payment on account of excise duty, there arises no occasion to look into the element of excise duty actually paid for the reason the offer does not list the price at ex-factory price + taxes as applicable.

12. This is the reasoning, though in brief, by the Arbitrator. The Arbitrator nominated by the Railway Authorities is the Deputy Chief Engineer/Construction-II, Northern Railway, a senior officer who understands what a price is.

13. Before concluding I would regretfully note that the Additional District Judges before whom objections were filed have unfortunately not dealt with the objections in the manner required to be looked into by law. I am noticing many such orders being passed by learned ADJs, which is a matter of concern.

14. In the instant case, the learned Additional District Judges have not dealt with the award in relation to how the arbitrator has dealt with the purchase order and its language. The learned Additional District Judges have not referred to the award in the context of a contract concluding when an offer is unconditionally accepted. The learned Additional District Judges have not considered the issue with respect to the lumpsum price vis-a-vis the ex-factory price, listing the taxes applicable to be reimbursed extra. The learned Additional District Judges have also not dealt with the issue with reference to the lump sum price being limited to excise duty at a certain percentage, reserving right to claim further reimbursement if excise duty exceeds, as in the instant case, 16%.

15. It is hoped and expected that objections to the award are dealt with by specific reference to the case projected by the parties.

16. Rather than having remitted the matter to the learned Additional District Judges, as noted hereinabove, I have considered the merits of the objections.

17. Finding none, the appeals are dismissed.

18. The amount deposited pursuant to the award is directed to be paid over to the respondents.

19. Costs shall follow.