Dr.Ramanathan Vs. State of Kerla

Dr.Ramanathan Vs. State of Kerla

SooperKanoon Citation : sooperkanoon.com/1128863

Court : Kerala

Decided On : Feb-13-2014

Judge : Honourable Mr.Justice T.R.Ramachandran Nair

Appellant : Dr.Ramanathan

Respondent : State of Kerla

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR & THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW THURSDAY, THE13H DAY OF FEBRUARY201424TH MAGHA, 1935Q AS.No. 458 of 2000 ( ) ----------------------- AGAINST THE

JUDGMENT
IN OS13731992 of I ADDL.SUB COURT,TRIVANDRUM APPELLANT(S)/PLAINTIFF ------------------------ DR.RAMANATHAN, S/O RANGANATHAN CHETTIAR PROPRIETOR, M/S. RMR & CO., PAZHAVANGADI THIRUVANANTHAPURAM REP. BY ITS LAWFUL ATTORNEY, VAIRAVAN MANAGER, RMR & CO. THIRUVANANTHAPURAM BY ADVS.SRI.L.MOHANAN SRI.D.SAJEEV RESPONDENT(S):DEFENDANTS ---------------------------- 1. STATE OF KERALA, REP. BY DISTRICT COLLECTOR, COLLECTORATE, THIRUVANANTHAPURAM2 CONTROLLER OF STATIONERY, STATE OF KERALA OFFICE OF STATIONERY DEPARTMENT THIRUVANANTHAPURAM

R1 & R2 BY SR.GOVERNMENT PLEADER SRI.RANJITH THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON1302-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: T.R.RAMACHANDRAN NAIR & K.ABRAHAM MATHEW,JJ.

- A.S.No.458 OF2000- Dated this the 13th day of February, 2014

JUDGMENT

Ramachandran Nair, J.

This appeal is filed by the plaintiff aggrieved by the judgment and decree in O.S.No.1373/1992 of the I Addl. Sub Court, Thiruvananthapuram.

2. We heard Sri.L.Mohanan and Sri.D.Sajeev, the learned counsel for the appellant and Sri.Ranjith, the learned Government Pleader appearing for the respondents.

3. The plaintiff filed the suit for realization of money under a contract. The offer of the plaintiff to supply unbleached printing paper as per tender notification No.19/89-90 was accepted. The plaintiff executed two agreements and pursuant to the delivery order, he supplied the materials on time. According to the plaintiff, at the time of submitting the quotation, the excise duty was basic excise duty at the rate of ` 315/- per metric tonne and special excise duty at 5% A.S.No.458/2000 2 making it a total of ` 330.75. It was contended that the said rates were substantially increased by the Government to ` 985/- per metric tonne of basic duty and accordingly it became ` 719/- per metric tonne, which was effective from 17.08.1989. In the quotation submitted by the plaintiff, the old rate was mentioned. The plaintiff, for taking delivery from the manufacturer M/s. Servalakshmi Paper and Boards, Dindigul, had to pay the enhanced excise duty. After payment of the entire excise duty, delivery was completed to the defendants. Thus, the plaintiff claimed an amount of ` 2,03,020/-, which represents the additional amount paid towards the enhanced excise duty. Accordingly, the suit was filed.

4. In the written statement, the defendants contended that there was no increase in the rate of excise duty. Such was not the case of the plaintiff. When they made the offer on 2.7.1989, in the offer, there was a clause that, if there was any increase in the excise duty or C.S.T., the increase in the rate was to be met by the department. But there was no statutory increase in the excise duty or special excise duty or C.S.T. by the Government during the contract period. The payment A.S.No.458/2000 3 of enhanced rate of excise duty by M/s. Servalekshmi Paper and Boards was necessitated due to their increase in the production slab and not due to any change in the rate of excise duty by the Government. The supply order dated 13.9.1989 accepted by the plaintiff also formed a part of the agreement and it did not accept a clause for the payment of increase in excise duty. It was also mentioned in paragraph 1 of the supply order that special conditions, if any, printed on the quotation sheet or attached to the tender will not be applicable to the order, unless they have been expressly accepted in the list appended. In that view of the matter, it is contended that there was no contract between the defendants and M/s. Servalekshmi Paper and Boards and the terms and conditions agreed by the parties alone will govern the matter.

5. The power of attorney holder of the plaintiff was examined as PW1 and exhibits A1 to A14 were marked. DW1 was examined and Ext.B1 was marked on the side of the defendants. In paragraph 7 onwards, the issues have been considered.

6. Sri.D.Sajeev, the learned counsel for the appellant submitted that the finding of the court below that there was no increase A.S.No.458/2000 4 in the rate of excise duty is not correct. It is submitted that the amount claimed in the plaint represents the amount which was paid by the plaintiff to the manufacturer towards the claim raised by the manufacturer representing the additional excise duty charged on them. It is therefore submitted that the same is payable by the respondents herein.

7. Sri.Ranjith, the learned Government Pleader submitted that the additional liability which was fastened on the plaintiff by the manufacturer is not due to any revision of rate of excise duty by the Government. When the production slab of the manufacturer was changed, the said liability was incurred by them, which was fastened on the plaintiff who paid it. It cannot be passed on to the defendants in

the suit in the absence of any clause in the agreement. It was specifically agreed by the parties that there will not be any revision of rates of the materials.

8. We have considered the rival submissions and gone through the evidence in the matter. Ext.A1 is a letter dated 14/3/1990 issued by M/s. Servalakshmi Paper and Boards to the plaintiff requesting to send A.S.No.458/2000 5 balance amount due to the increase in the excise duty. Even though the plaintiff by Ext.A2 letter demanded the second defendant to reimburse the same, in Ext.A5 reply given by the second defendant, it was pointed out that there is no increase in the duties and taxes during the period in question, statutorily by the Government.

9. Apart from the same, the evidence of DW1 will show that there was no statutory increase in the excise duty as ordered by the Central Government. Ext.B1 is the letter dated 9.2.1998 of the Superintendent of Central Excise to the defendant stating that during the period i.e. 1989-1990, there was no statutory increase in the excise duty. The plaintiff has not adduced any evidence to show that there was any increase in the statutory excise duty during the said period. Therefore, before the court below, the evidence available as per Ext.B1 concluded the matter.

10. What has happened in this case is the revision of excise duty payable by the manufacturer company due to the change in the production slab of the said company. Regarding the said component, there was no express clause in the agreement enabling the plaintiff to A.S.No.458/2000 6 claim the amount paid to the manufacturer from the defendants. There was no tripartite agreement also between the parties. In that view of the matter, unless there was any such clause in the agreement between the plaintiff and the Government to recover the said liability incurred by the manufacturer which was passed on to the plaintiff, the plaintiff will not be entitled to claim the same from the defendants. Admittedly, there was no statutory increase in the excise duty also. Therefore, the change in the production slab alone has resulted in the claim raised by the manufacturer against the plaintiff to the tune of ` 2,20,000/- Therefore, we find nothing wrong in the view taken by the court below that the plaintiff is not entitled for a decree as sought for. Hence, the appeal is dismissed. The parties will suffer their costs, in this appeal. T.R.RAMACHANDRAN NAIR, JUDGE K.ABRAHAM

MATHEW,JUDGE sv.