

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 4262 of 2024**

With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2024
In R/FIRST APPEAL NO. 4262 of 2024

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SWAMINARAYAN VIJAY CARRY TRADE PVT. LTD.

Versus

GENERAL MANAGER POWER & ORS.

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Appearance:

MR MRUGEN K PUROHIT(1224) for the Appellant(s) No. 1

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CORAM: HONOURABLE MS. JUSTICE SANGEETA K. VISHEN
and
HONOURABLE MR. JUSTICE SANJEEV J. THAKER

Date : 10/12/2024

ORAL ORDER

(PER : HONOURABLE MS. JUSTICE SANGEETA K. VISHEN)

1. Heard Mr Mrugen K. Purohit, learned advocate appearing with Ms Krishna Shah, learned advocate for the appellant. It is submitted that the suit was filed for recovery of the amount which was retained by the respondent. The issue of service tax was raised relying upon clause 18 of the tender document. The learned Judge, was of the opinion that payment of service tax was a liability of the plaintiff and is not entitled to recover the sum. It is submitted that the written statement of the respondent, which has been filed, does not speak about as to how and why the amount has been retained. In fact, all through out, the work was completed satisfactorily and the bills were also cleared. It appears that it is only when the department raised claim of service tax and the respondent was asked to make the payment, that amount has been retained. As claimed in the written statement that they will be taking steps, that

the suit was filed for recovery of the service tax wherein, application Order VII Rule 11 of the Code of Civil Procedure, 1908 was filed which came to be rejected; however, in the proceedings before this Court, the suit proceedings have been stayed and the matter, is pending consideration.

2. Considered the submissions. Issue notice to the respondents, returnable on 21.01.2025.
3. Direct service is permitted.

(SANGEETA K. VISHEN,J)

(SANJEEV J.THAKER,J)

RAVI P. PATEL