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C.A.No. 1038 OF 2000

L.....T.....T.....T.....T.....T.....T.....T.....T.....T.....R
ITEM NO.104 COURT NO.10 SECTION IVA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO.1038 OF 2000@@
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M/S. KARNATAKA POWER CORPN. LTD. ... APPELLANT(S)

VERSUS

M/S. ALAGENDRAN EXPORTS LTD. ... RESPONDENT(S)

(With Office Report)

With R.P. (C) No.419/2001 in C.A. No.4290/1999 (With office report)

Date: 01/04/2003. This/These matter(s) were called on for hearing today.@@
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CORAM:

HON'BLE MR. JUSTICE S.N. VARIAVA
HON'BLE MR. JUSTICE BRIJESH KUMAR

For Appellant (s)
in CA 1038/2000

Mr. K.G. Raghavan, Adv.
Mrs. Shiraz Contractor Patodia, Adv.
Ms. Priyanjali Yadav, Adv.
Ms. Vandana Mohata, Adv.

Mr. K.K. Venugopal, Sr. Adv.
Mr. M.S. Padmarajaiah, Adv.
Mr. E.C. Vidya Sagar, Adv.

For Respondent(s)

Mr. K.K. Venugopal, Sr. Adv.
Mr. M.S. Padmarajaiah, Adv.
Mr. E.C. Vidya Sagar, Adv.

Mr. K.G. Raghavan, Adv.
Mrs. Shiraz Contractor Patodia, Adv.
Ms. Priyanjali Yadav, Adv.
Ms. Vandana Mohata, Adv.

UPON hearing counsel the Court made the following
O R D E R

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Mr. K.G. Raghavan, learned counsel commenced his arguments at 11.05 A.M. and concluded at 11.50 A.M. Thereafter, Mr. K.K. Venugopal learned senior counsel commenced his arguments and concluded at 12.45 P.M.

..2/-

Civil Appeal No.1038 of 2000 is allowed in terms of the signed order. There will be no order as to costs.

Review Petition (Civil) No.419 of 2001 in Civil Appeal No.4290 of 1999 is dismissed with no order as to costs.

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(K.K. Chawla) (Jasbir Singh) @@
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Court Master Court Master

[Two separate signed orders are placed on the file]

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

REVIEW PETITION (CIVIL) NO.419 OF 2001@@
CC

IN@@
CC

CIVIL APPEAL NO.4290 OF 1999@@
CC

M/s West Asia Trading Corporation Petitioner

Versus

Karnataka Power Corporation Ltd. Respondent

O R D E R@@
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This review petition is against a judgment of this Court dated 14th December, 1999.

Briefly stated the facts are as follows:-

The parties had entered into identical contracts for supply of coal by the petitioner to respondent. The relevant term of the contracts read as under:

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"a) Price payable will be Rs.2691/- per MT for delivery at RTPS. This price is all-inclusive including any applicable taxes, duties, levies etc. and will remain firm for the complete supply."

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.SP2

It is an admitted position that coal was supplied under the contract. In respect of the ..2/-

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earlier contracts, full price was also paid. However, from the price payable under the last contract a certain sum was sought to be deducted on the basis that the petitioner had got benefit of 4% Sales Tax by virtue of C-Form having been supplied by the respondent. The respondent claimed that it was entitled to the benefit of this reduced Sales Tax.

As the amount was sought to be deducted, the petitioner filed a writ petition in the Karnataka High Court. That writ petition was dismissed by the learned Single Judge on the ground that a Writ Petition was not an adequate remedy and that a suit should be filed. An appeal filed against that order was allowed by a Division Bench of the Karnataka High Court on the ground that no disputed question of fact arose.

The Civil Appeal against that judgment of the Division Bench was allowed by the impugned judgment dated 14th December, 1999.

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This review is on the ground that there is an error apparent on the face of the record. It is submitted that the view taken by this Court is not a possible view.

We heard arguments in detail. Mr. K.G. Raghavan, learned counsel for the respondent fairly stated that in case a suit is filed his clients will not contend that the suit is barred by limitation. In view of this statement, we do not go into question whether the view taken in the judgment dated 14th December, 1999 is possible or not and do not propose to entertain the Review Petition.

We do not express any opinion on the merits of the case as the same may prejudice the parties in the civil suit which the petitioner may file. We clarify that the trial court will not be influenced by any observation made in the judgments of the High Court or this Court and will decide the suit on its own merit.

We, therefore, dismiss the review petition with no order as to costs.

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The suit to be filed within three months from today. As this Court is acting on statement of respondent's counsel we are sure that the respondent will not contend that the suit is barred by limitation.

The Principal Judge, City Civil Court is requested to place the suit when filed in the same Court in which Suit No.1432/2000 is pending trial so that both can be heard one after another, the subject matter being the same.

Written statement to be filed within three months from the date of issue of summons. affidavits of documents to be filed and inspection to be completed forthwith thereafter.

The trial court is requested to dispose of the suit as expeditiously as possible and preferably within two years from today.

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.....J.
(S.N. Variava)

.....J.
(Brijesh Kumar)

New Delhi,
April 01, 2003

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1038 OF 2000@@
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M/S. KARNATAKA POWER CORPN. LTD. APPELLANT

VERSUS

M/S. ALAGENDRAN EXPORTS LTD. RESPONDENT

O R D E R@@
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This appeal is against a judgment of the High Court dated 14th October, 1999.

Briefly stated the facts are as follows:-

The appellant and the respondent entered into a contract for supply of coal by the respondent to the appellant. The relevant term of the contract read as under:

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"a) Price payable will be Rs.2691/- per MT for delivery at RTPS. This price is all-inclusive including any applicable taxes,

duties, levies etc. and will remain firm for the complete supply."

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.SP2

The coal was supplied under the contract. From time to time the appellant supplied C-Forms ..2/-

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to the respondent, as a result of which the respondent paid only 4% Sales Tax. The appellant claimed that, as there was reduction in the Sales Tax, the benefit of that reduction must go to them. They, therefore, sought to deduct amounts from the amounts payable to the respondent. The respondent thus filed a writ petition. That writ petition was dismissed on 28th July, 1998 by a Single Judge on the ground that a Writ was not an appropriate remedy and that a suit had to be filed. The appeal against that judgment was dismissed on 11th September, 1998 on the ground that there was no infirmity in the judgment of the Single Judge.

Another party, i.e., one West Asia Trading Corporation also had an identical contract with the appellant (herein). They filed a writ petition for recovery of amounts deducted from their bills on identical grounds. That writ petition was also dismissed by the Single Judge. However, the appeal filed by them was allowed on 16th April, 1999.

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After that appeal was allowed, a review was filed in the present matter. That review came to be allowed by the impugned judgment on 14th October, 1999. Hence this civil appeal.

The impugned judgment is based on the fact that under identical circumstances, the Karnataka High Court had held that there was no disputed question of fact and that a writ was maintainable. In other words the review was allowed on the basis of the judgment dated 16th April, 1999 in the matter of West Asia Trading Corporation.

In our view, the review could not have been allowed on the ground that some other court had taken a different view. Merely because two views are possible is no ground to review a judgment already passed. Even otherwise, the judgment in West Asia Trading Corporation's case has been set aside by this Court on 14th December, 1999. A review petition which was filed against the judgment dated 14th December, 1999 has been dismissed by us today.

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In this view of the matter, the impugned judgment cannot be sustained and is set aside.

It must be mentioned that the respondent has already filed Suit No.1432 of 2000 in the City Civil Court at Bangalore for the same relief. That suit is pending. As the dispute between the parties has been pending in the court for a long period of time, we request the City Civil Court to dispose of that suit as expeditiously as possible and within a period of two years from today.

The appeal is accordingly allowed. There will be no order as to costs.

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.....J.
(S.N. Variava)

.....J.
(Brijesh Kumar)

New Delhi,
April 01, 2003.