

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.812 OF 2008

UNION OF INDIA
.....APPELLANT

VERSUS

M/S BATLIBOI LTD.
.....RESPONDENT

O R D E R

It is not a matter of dispute, that the determination rendered by the Arbitrator, in respect of the second contract dated 18.09.1992, related to three aspects of the matter.

Firstly,

the payment of liquidated damages on account of delayed delivery.

Secondly, the bearing of the tax liability, again on account of the

delayed delivery, and thirdly, the interest payable by the appellant to the respondent.

Insofar as third aspect of the matter is concerned, the issue

on being examined by the High Court, was remanded for

re-determination to the Arbitrator.

The High Court vide its impugned order dated 17.05.2006

decided the first two issues in favour of the respondent by
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holding, that the respondent was not liable to pay any liquidated damages.
Digitally signed by Satish Kumar Yadav
Date: 2014.06.03 14:24:25 IST
Reason:

Even the second issue was decided in favour of the respondent, with the High Court's conclusion, that the liability to

pay additional tax, if any, on account of delayed delivery, should not be borne by the respondent.

The above two issues, are subject matter of consideration in the instant civil appeal. During the course of hearing, learned counsel for the appellant on being asked, acknowledged, that the finding recorded by the High Court, that the delayed delivery of goods by the respondent, was on account of the change of specification in the goods. And also that, the said change was made by the appellant after the execution of the second agreement. There is therefore no room for any doubt, that the appellant itself was responsible for the delayed delivery of goods. It is on account of the changed specification that a fresh order had to be placed by the respondent, to the suppliers in U.K., and therefore, delivery of the goods to the appellant, was delayed. Once this aspect of the matter is clear, namely, that the delayed delivery of goods to the respondent, was on account of changed specification, we are of the view that the High Court was fully justified in arriving at the conclusion, that the respondent could not be burdened with liquidated damages. Likewise, the respondent could not be made responsible to pay any additional tax liability based on such delay.

For the reasons recorded hereinabove, we find no merit in the appeal, and the same is accordingly dismissed. Needless to mention that the instant order should not be taken as a determination on the subject of liability of interest, which is still pending consideration.

3

The disposal of the instant civil appeal will naturally discharge the bank guarantee furnished by the respondent with the High Court.

.....J.
(JAGDISH SINGH KHEHAR)

.....J.
(C. NAGAPPAN)

NEW DELHI;
MAY 29, 2014.

4

ITEM NO.106

COURT NO.3

SECTION XVI

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(s). 812 OF 2008

UNION OF INDIA

Appellant (s)

VERSUS

M/S BATLIBOI LTD.

Respondent(s)

(With prayer for interim relief and office report)

Date: 29/05/2014 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE JAGDISH SINGH KHEHAR
HON'BLE MR. JUSTICE C. NAGAPPAN

For Appellant(s)

Mr. D.S. Mahra, Adv.

For Respondent(s)

M/S. Victor Moses & Associates, Adv.

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

(Satish K.Yadav)
Court Master

(Renuka Sadana)
Court Master