

RG  
C.A.No. 9883 OF 1995

Item No.105

Court No. 7

Section XV

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. 9883 of 1995@@  
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State of Rajasthan & Anr.

Appellant (s)

Versus

Ergan Plastic Industries

Respondent (s)

( With appln. for stay )

Dated: 21/01/2003: This matter was called on for hearing today.

CORAM:

HON'BLE MR. JUSTICE Y.K. SABHARWAL  
HON'BLE MR. JUSTICE H.K. SEMA

For Appellant (s) Mr. Vijay Bahuguna, Sr.Adv.  
Mrs. Bharati Upadhyaya, Adv.  
Mr. DK. Thakur, Adv.  
Mr. VN. Raghupathy, Adv.

For Respondent (s) Mr. BD. Sharma, Adv.

UPON hearing counsel the Court made the following  
O R D E R@@  
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.....L.....I.....T.....T.....T.....T.....T.....T.....T.....J  
.SP2

Mr. Vijay Bahuguna, the learned senior counsel commenced arguments at 2-55 p.m. and concluded his arguments at 3-05 p.m. Thereafter Mr. BD. Sharma, the learned counsel appearing for the respondent argued till 3-20 p.m. Hearing concluded. Appeal allowed.

.SP1

(S.Thapar) (V.P. Tyagi) @@  
AA  
PS to Registrar Court Master@@  
AA

The signed order is placed on the file.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9883 OF 1995 @@  
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State of Rajasthan & Anr.

Appellant (s)

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Ergan Plastic Industries

Respondent (s)

O R D E R@@  
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.....L.....I.....T.....T.....T.....T.....T.....T.....T.....J....J  
.SP2

On a Writ Petition filed by the respondent, a learned Single Judge of the High Court on 2nd May, 1983 passed the following order:

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.SP1

"A quarry was made from the learned Dy.G.A. Whether there is a specific denial in the counter filed by the State that duty has not been increased during the period of the contract. Learned Dy.G.A. failed to show any such specific denial in the reply and prays for time to study the reply. He orally submits that the duty has not been increased. Such oral submissions cannot be accepted.

In these circumstances, the writ petition, is allowed and it is directed that the respondents shall pay the amount of increased duty, if any, to the petitioner and will treat the petitioner at par with others similarly situated in the matter. There will be no order as to costs."

.....L.....I.....T.....T.....T.....T.....T.....T.....T.....J....J  
.SP2

A Writ Appeal preferred by the State was dismissed by the Division Bench of the High Court on 26th March, 1984. The concluding paragraph of the order of the Division Bench reads thus:

.....L.....T.....T.....T.....T.....T.....T.....J....R  
.SP1

"In view of the aforesaid clause, no exception can be taken to the finding recorded by the learned Single Judge that the appellants are liable to pay the amount, if any. In view of the material referred to above, we are satisfied that the order of the learned Single Judge does not suffer from any infirmity or error."

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.SP2

A Special Leave Petition preferred by the State was dismissed on 25th October, 1984 by passing the following order:

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"The Special Leave Petition is dismissed with the following observations:

The interest of the state is sufficiently protected by the insertion of the words 'if any' in both orders of the learned Single Judge and the Division Bench of the High Court."

.....L.....I.....T.....T.....T.....T.....T.....T.....T.....J  
.SP2

The dispute pertains to the period 23rd October, 1978 to 31st August, 1979 in regard to payment for supply of polythene bags. It appears that there was a contract for supply of the said bags by the respondent to the appellants. On account of non-payment by the State, in terms of the aforesaid orders, Contempt Proceedings were initiated (Contempt Petition No.106/1984) by impugned order dated 2nd February, 1985 disposing of the Contempt Petition, the High Court directed the appellant to make the payment to respondent at the enhanced rate of Rs.5/- per k.g. + sales tax on the polythene bags which were supplied after 23rd October, 1978 to 31st August, 1979 within a period of 4 months with 6% interest

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per annum. Further directions were issued giving opportunity to the respondent to move the Court again in case payment within the prescribed period is not made. The High Court has mentioned in the impugned order that the appellants were under a wrong impression that they have only to make payment of the increased duty, if the duty is raised on the polythene finished bags. In view of the High Court, the payment had to be made to the respondent despite non-increase of the duty. Reference has also been made by the High Court to similar payment having been made by the State to one M/s Lokesh Industries and the absence of any explanation having been furnished, in that regard, by the State.

Taking the last reasoning first, it seems evident from the reply filed by the appellant before the High Court that by mistake certain payments in respect of 5 quintals out of 35 quintals were made at higher rates to said M/s Lokesh Industries and steps had been taken by the State to recover back the excess over payment. Therefore, the reasoning of the High Court that the payment was made to M/s Lokesh Industries and this respondent is also entitled to be similarly treated, on facts, cannot be sustained. The High Court is also correct in observing that in respect of payments to M/s Lokesh Industries, the State has not furnished any explanation.

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Reverting to the other reason about the wrong impression of the appellant, the order of the learned Single Judge & Division Bench and also of this Court reproduced hereinbefore clearly stipulate that the respondent was to be paid amount of increased duty if there was any. In short the orders contemplate reimbursement by the appellant to the

respondent in case of increased payment of duty by it. There is nothing on record to show that the respondent made payment of any increased duty. Therefore, there is no question of any reimbursement by the appellant to the respondent. Under these circumstances, it is not necessary to decide whether there was any exemption from payment of duty or not, insofar as polythene bags are concerned.

For the aforesaid reasons, we set aside the impugned order and dismiss Contempt Petition No.106 of 1984. The appeal is thus allowed in these terms.

.SP1

.....J  
(Y.K. Sabharwal)

New Delhi,  
January 21, 2003

.....J  
(H.K. Sema)