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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12-10-2026

CORAM

THE HON'BLE MR JUSTICE N. SATHISH KUMAR

AND

THE HON'BLE MR.JUSTICE GK.MUTHUKUMAAR

OSA No. 308 of 2021
CNR:{HCMA010800862020}
AND
CMP NO. 17723 OF 2021

Case QR

M/s.Siechem Technologies Pvt. Ltd.,
Rep. By Its Executive Director, G.M.Arunkumar,
RS.104/8 & 105/7, Sedarapet Main Road,
Pondicherry - 605 101.

..Appellant(s)

Vs

M/s.MMTC Ltd.,
Rep. By its Senior Manager,
Mr.D.Kabali,
Chennai House,
No.6, Esplanade,
Chennai-600 108.

[R2 Sole Arbitrator deleted vide order of court dt 01.07.2024 made in OSA.308 of 2021 and CMP 17723 of 2021]

..Respondent(s)

This original side appeal is preferred under Order XXXVI Rule 1 of the Original Side Rules read with Clause 15 of the Letters Patent and under section 37 of the Arbitration and Conciliation Act, 1996 seeking to set aside the award of the sole arbitrator dated 18.06.2015 as confirmed Judgment and Decree in O.P.No.892/2015 on the file of this Honourable Court dated 19.12.2019 and thus render justice.

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For Appellant(s): Mr.Srinath Sridevan,
Senior Advocate
for Mr.V.Balamurugane

For Respondent(s): Mr.M.Santhanaraman

Judgment

(Judgment of the Court was made by N.Sathish Kumar J.)

Challenging the order of dismissal of the original petition filed under section 34 of the Arbitration and Conciliation Act, 1996 [in short 'A and C Act'], which was filed challenging the award, dated 18.06.2015, passed by the learned Arbitrator, the present original side appeal has been filed.

2.The brief facts which are necessary for disposal of this original side appeal are as follows:

2.1.The respondent / claimant, who is the Government of India undertaking, was engaged by the appellant / respondent for the supply of CC Rods. The appellant by letter dated 12.08.2008 had requested the claimant / respondent herein to supply 50 Metric tonnes of CC rods [Cathode Copper Rods] (+/- 5%) of 8 MM CC rods as per the terms and conditions agreed between the parties. The same was reduced into writing under the agreement dated 09.10.2008. As per the terms of the said agreement, the claimant agreed to sell on high seas 47.945 Metric tonnes of 8 mm CC rods confirming to ASTM B-49/98 with 99.90% purity for the price of 7276.67 US dollar per

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metric ton which includes cost of insurance and freight and 0.75% trading margin of the claimant. Under clause 9 of the said agreement, the appellant herein has agreed to pay full value of the consignment within seven days from the date of intimation from the claimant or two days prior to expected time of arrival of the vessel whichever is earlier. The appellant has also issued a cheque for a sum of Rs.16,00,000/- towards earnest money deposit. The respondent claimant has arranged for shipment of the consignment in the vessel which sailed from Russian port on 15.09.2008. The claimant immediately intimated the appellant about the consignment having sailed out and calling upon to remit the value of the consignment which was a sum of Rs.1,70,82,129/-. However, the appellant had sent a letter dated 25.10.2008 raising quality issue for the first time. The said statement was made even before the appellant received the consignment. The claimant has also sent an email dated 17.11.2008 calling upon the appellant to have a joint inspection for checking the quality through a mutually acceptable internationally reputed/LME approved independent surveyor. However, the appellant did not evince any interest and therefore, the claimant had issued a legal notice dated 26.02.2009 calling upon the appellant to pay a sum of Rs.2,17,33,764/- being the total consideration of the stocks along with the other ancillary expenses.

2.2.As the claimant had incurred heavy costs for importing copper rods by relying on the order of the appellant, they had no other option but to sell the copper rods in the open market calling for tenders and the same was sold on ex-

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godown basis which fetched a sum of Rs.1,28,81,287/- and after giving credit to the said amount, the appellant was due and liable to pay a sum of Rs.91,37,927/-. Further, the claimant also claimed Rs.10,00,000/- as damages. Accordingly, the claimant has filed a claim petition before the Arbitral Tribunal claiming the amount together with interest totalling Rs.1,80,79,393.00 and further interest at 18% per annum and a sum of Rs.10,00,000/- as damages for breach of contract along with costs.

2.3.According to the appellant/ respondent in the claim petition, the claim is not maintainable since the claimant has sold the 8 MM copper rods before invoking the arbitration proceedings. The dispute is related to the quality of the goods imported and intended to be supplied by the claimant to the appellant and the selling of goods to third parties which resulted in termination of the contract and had also resulted in denying the appellant / respondent an opportunity to prove that the goods imported were of an inferior quality. It is their further contention that despite their mails and letters dated 01.11.2008, 18.11.2008 and 10.12.2008, the claimant had not come forward to send the product for testing. The respondent / appellant further stated that though they had paid the EMD on 12.08.2008, the agreement was entered only on 09.10.2008 that too after the goods were loaded in the ship and hence, the claimant is not entitled to any claim as per their claim petition. Further, a counter claim was also raised by the appellant / respondents.

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3.The learned Arbitrator has framed the following issues for consideration in the claim petition:

'1.Whether the claim petition filed by Mr.D.Kabali, Senior Manager, on behalf of the Claimant is maintainable in the absence of any authorization?

2.Whether the agreement dated 09.10.2008 is a valid agreement or it has been entered into between the parties only for the purpose of clearing the goods from the Chennai Port and Customs Department?

3.Whether the claim of the Claimant is maintainable in as much as the Claimant has sold the goods before invoking the arbitration proceedings.

4.Whether the claimant is entitled to Award as prayed for in the claim petition?

5.Whether the respondent is justified in rejecting the goods for the reasons set out in their counter statement, which has been imported at their instance?

6.Whether the respondent is entitled to counter claim?

7.Is the counter claim barred by limitation

8.To what relief the parties are entitled to?'

4.No oral evidence was adduced on either side. On the side of claimants, Exs.C.1 to C.28 documents were marked and on the side of the respondents, Exs.R.1 to R.11 were marked. Based on the materials available and considering the submissions, the learned Arbitrator has allowed a claim for a sum of Rs.75,05,051/- which includes the balance amount payable by the respondent / appellant after deducting the value of goods sold, customs charges and CHA charges paid by the claimant for the goods imported and interest at the rate of

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9% per annum on Rs.28,43,416/- from 20.02.2009, the date of notice under Ex.C.20 till payment and Rs.10,000/- towards costs. The learned Arbitrator rejected the counter claim made by the respondent / appellant.

5.Aggrieved over the award, the appellant has filed a petition under section 34 of the A and C Act. The award was mainly attacked on two grounds that the claimant despite requests by the appellant/ respondent had failed to send the consignment for testing and therefore, refusal on the part of the appellant was justified. The next ground that was urged as against the award is with regard to the interest awarded by the learned Arbitrator. The learned Single Judge taking note of the fact that Exs.C.14, C.15 and C.16 clearly established the fact that the claimant repeatedly called the appellant to have the joint inspection of the consignment by the reputed government agencies, however the appellant did not come forward to cooperate with the claimant and hence, held that it was the responsibility of the appellant to take charge of the goods immediately which they have failed to do so and further the learned single judge has also found that the learned Arbitrator has given a clear reasoning for the award of interest, thereby the learned Single Judge dismissed the original petition challenging the award.

6.Feeling aggrieved, the respondent / appellant herein has filed the present appeal.

7.The learned Senior counsel Mr.Srinath Srideven for the appellant would fairly submit that he confines his submissions only with regard to the award in

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relating to the customs duty payable. According to him, admittedly, the goods were sold in ex-godown basis which fetched a sum of Rs.1,28,81,287/-. Therefore, it is his contention that once goods were sold on ex-godown basis, it is buyer's responsibility to pay the customs duty. Neither the learned Arbitrator nor the learned Single Judge considered this issue. That apart, absolutely there is no evidence to show that the claimant has paid the customs duty while importing the CC rods. In the absence of any evidence to prove the payment for customs duty, the learned Arbitrator awarding customs duty is erroneous. Hence, according to the learned senior counsel, the award suffers from patent illegality. As far as the payment of customs duty, absolutely, there is no evidence available on record. Therefore, the learned senior counsel confines his submission only with regard to the award in relation to the customs duty alone.

8.The learned counsel for the respondent / claimant Mr.M.Santhanaraman would submit that as per the clause 5 of the agreement, it is specifically agreed between the parties that the customs / import duty or other levy/duty to be paid by the buyers. The learned Arbitrator has clearly considered the evidence, particularly Ex.C.20 in this regard and passed an award. Therefore, the learned counsel submitted that when the said point has not been canvassed before the learned single judge in a section 34 petition, for the first time, the same cannot be urged before this court. In any event, the learned Arbitrator has awarded the customs duty by considering the Ex.C.20 document. Therefore, merely because the payment receipt was not filed, that cannot be ground to hold that there was

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no customs duty payable by the appellant. Further, the learned counsel would submit that for any goods which were imported, customs duty is mandatory. Therefore, as per the terms of the agreement, when the appellant agreed to pay the customs duty, now it cannot be urged in appeal to the effect that only the buyer who purchased the goods in distress sale is liable to pay the customs duty and such a ground cannot be urged.

9.In the light of the above submissions, now the point that arise for consideration in this appeal is whether the award suffers from any patent illegality?

10.It is well settled that the power under section 37 of the A and C Act is exercisable only to find out court exercised its power within the limits prescribed in the provisions of section 34 of the A and C Act or whether failed to exercise its power so conferred. While exercising the power under section 37 of the A and C Act, the appellate court has no authority to go into the matter in dispute on merits. Similarly, while exercising the powers, the appellate court cannot reappreciate the entire evidence to record a contrary finding. When the Arbitral Tribunal has given a plausible view and merely because an alternate view is possible, that cannot be a ground to interfere with the award.

11.The main contention of the learned senior counsel is that there is no evidence for payment of customs duty by the claimant, namely the respondent herein. The said contention cannot be countenanced for the simple reason that the very agreement entered into between the parties dated 09.10.2008 makes it

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clear that it is the duty of the buyer to pay the customs duty. Clause 5 of the said agreement says: 'Duty Customs/Import Duty or other levy/duty to be paid by the Buyers'. Further, the learned Arbitrator considered the document, namely Ex.C.20, which is the legal notice dated 26.02.2009 issued by the claimant, wherein the appellant herein was called upon to pay the customs duty also which was not repudiated. Further, in Ex.C.22, legal notice dated 08.06.2009, the claimant has made a similar request and it was also made it clear that the customs duty was paid by the claimants. When the said documents were not repudiated, the learned Arbitrator has clearly awarded the customs duty. Therefore, now it is too late for the appellant to contend that absolutely there is no evidence whatsoever for the payment of customs duty by the claimant.

12.The learned Arbitrator has considered all the documents and has given plausible reasons. Therefore, this court finds there is no patent illegality in the order passed by the learned Arbitrator. The award passed by the learned Arbitrator is based on the documents available and that apart, as per the terms of the agreement, it is the duty of the buyer to make the customs duty and accordingly, the award has been passed. The learned Arbitrator has considered the relevant provisions in the agreement and has passed a reasoned award with the materials available on record. The point raised by the learned senior counsel would amount to reappreciation of evidence which cannot be done in section 37 appeal proceedings and that the reappreciation of evidence is forbidden in respect of patent illegality.

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13.In this regard, it is relevant to quote the decision of Hon'ble Supreme Court in ***Ssangyong Engg. & Construction Co. Ltd. v. National Highways Authority of India, (2019) 15 SCC 131***, wherein the Hon'ble Supreme Court in paragraph 38 has held as follows:

> '**38**. Secondly, it is also made clear that reappreciation of evidence, which is what an appellate court is permitted to do, cannot be permitted under the ground of patent illegality appearing on the face of the award.'

14.Further, the Hon'ble Supreme Court in ***Punjab State Civil Supplies Corporation Limited Vs. Sanman Rice Mills*** reported in ***2024 SCC OnLine SC 2632*** with regard to the appellate power under section 37 of the A and C Act has held in paragraph 14 as follows:

> '**14**. It is equally well settled that the appellate power under Section 37 of the Act is not akin to the normal appellate jurisdiction vested in the civil courts for the reason that the scope of interference of the courts with arbitral proceedings or award is very limited, confined to the ambit of Section 34 of the Act only and even that power cannot be exercised in a casual and a cavalier manner. '

15.In the light of the above, this court is of the view that this court has no option but to hold that the appellant has not made out any ground to interfere with the impugned order passed by the learned single judge and the award passed by the learned Arbitrator.

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16.In the result, this original side appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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(N.S.K.,J.) (G.K.M.,J.)
12-10-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

VVK

To
SENIOR MANAGER
M/s.MMTC Ltd.,
CHENNAI HOUSE,
NO.6, ESPLANADE,
CHENNAI - 600 108.

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