NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. OF 2020
(@SPECIAL LEAVE PETITION (C) DIARY NO. 1321 OF 2020)

Commissioner, Directorate of Logistics ...Petitioner(s)

Versus

M/s. Almighty Techserv, Proprietor
Mr. Manish Dalmia & Anr. ...Respondents(s)

O R D E R

Deepak Gupta, J.

Delay condoned.

2. The Central Board of Excise and Customs (CBEC), through the Directorate of Logistics floated an e-tender for supply, installation and maintenance of 74 videoscopes at various field formations of CBEC. Various bids were received. The tender was awarded in favour of M/s. ASVA Power Systems India Pvt. Ltd.

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MADHU BALA
Date: 2020.12.24
16:14:42 IST
Reason:

The award of this tender was challenged by the unsuccessful bidder M/s. Almighty Techserv on various counts. The High Court vide impugned judgment has held that the award of tender in favour of M/s. ASVA Power Systems India Pvt. Ltd. is illegal and according to the calculation of the High Court, the tender of the writ petitioner should have been treated as the lowest tender and the loss caused to the Government is roughly about 63 lakhs. The order of the High Court has been challenged by the Department as well as by M/s. ASVA Power Systems India Pvt. Ltd.

3. At this stage, we are only dealing with the issue of interim relief. Mr. Aman Lekhi, learned Additional Solicitor General appearing for the Department urges that 74 videoscopes are urgently required by the Department. He submits that the judgment of the High Court is wholly incorrect. He also submits that since these equipments are urgently required by the Department and have already been imported into India and are ready for installation, the order of the High Court be stayed.

4. Shri K.V. Viswanathan, learned senior counsel appearing for M/s. ASVA Power Systems India Pvt. Ltd. has not only

supported the arguments of Mr. Lekhi, but has also highlighted the fact that the tender of his client was the lowest tender since it was inclusive of all customs charges and that the High Court erred in holding that the landing charges could not have been added to the bid price of M/s. Almighty Techserv.

5. On the other hand, Mr. Gopal Sankaranarayanan, learned senior counsel submits that the judgment of the High Court is absolutely correct. There is no error in the same. He also submits that the successful bidder has made various false statements in the High Court from time to time and therefore, is not entitled to any discretionary relief.

6. At this stage, we are not going into the merits of the case which will require detailed hearing. We, however, cannot lose sight of the fact that the tender in question was floated in the year 2018. The High Court has cancelled the tender and ordered re-tender. The tender has not been awarded in favour of M/s. Almighty Techserv. Fresh tendering may lead to long delay in procuring all these videoscopes which are urgently required by customs authority to scan the imported goods. If a fresh tender for supply of videoscopes is floated we are not even sure whether

the Government will gain or lose in monetary terms. In our view, public interest requires that the Government be permitted to procure the videoscopes from M/s. ASVA Power Systems India Pvt. Ltd. and we permit the Department to do so. However, we direct that out of the payment to be made to M/s. ASVA Power Systems India Pvt. Ltd., a sum of Rs.63 lakhs shall be deducted and orders with regard to that amount shall be passed after hearing the parties in detail at the time of final hearing. In case M/s. ASVA Power Systems India Pvt. Ltd., insists on full payment at this stage then there shall be no interim stay and the Department will have to float fresh tender.

7. The interim relief is granted in the aforesaid terms.

.....J.
(Deepak Gupta)

.....J.
(Aniruddha Bose)

New Delhi
February 28, 2020