IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :07.11.2025

PRONOUNCED ON :03.02.2026

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.3446 of 2025
and CMP.No.18768 of 2025

Chennai Petroleum Corporation Limited,
Having its registered Office at:
536, Anna Salai, Teynampet,
Chennai 600 018.

... petitioner

vs.

1.Micro and Small Enterprises Facilitation Council, Chennai Region,
Represented by its Secretary/Regional Joint Director of Industries and Commerce, A-30, Thiru.Vi.Ka Industrial Estate, Guindy, Chennai – 600 032.
2.M/s.M.Govindaraj Contractor and Earth Movers,
Plot No.C-1, Flat No.F2, Jansi Aishwariyam Apartments,
Thiruvallur Nagar, MKN Road, Alandur, Chennai – 600 016.

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, allow the present petition and pass urgent and appropriate orders setting aside the order dated 18.11.2024 bearing reference number RC.No.5907/A3/2022 passed by the Micro and Small Enterprises Facilitation Council, Chennai Region and to consequently quash the proceedings bearing reference number MSEFC/CR/423/2022 pending on the file of the Micro and Small Enterprises Facilitation Council, Chennai Region.

For Petitioner : Mr.Om.Prakash
Senior Advocate
for Mr.Ragavendra Ross Dirakar
for DUA Associator
for M/s.A.Ramalingam

For Respondents : Mr.C.Sathish
Government Advocate for R1
Mr.P.Saravana Sowmiyan for R2

J U D G M E N T

The Civil Revision Petition is filed challenging the order passed by the first respondent, Micro and Small Enterprises Facilitation Council, Chennai, dismissing the application filed by the petitioner under Section 16 of Arbitration and Conciliation Act, 1996.

2. The second respondent herein, filed a claim against the petitioner before the first respondent for recovery of Rs.5,76,71,471/- from the petitioner towards the amount due to the second respondent regarding the execution of works relating to piling and Civil Works for silos for coke handling system. It is not in dispute, the petitioner floated tenders for

execution of above said works and the second respondent was successful bidder. After completion of contract between the petitioner and the second respondent regarding execution of the above said work, the work site was handed over to the second respondent on 01.10.2019 and the second respondent was expected to complete the work on or before 30.09.2020. Since the work was not completed within time, the petitioner terminated the contract on 11.05.2022. In these circumstances, the second respondent laid a claim before the first respondent seeking recovery of the amount due from the petitioner towards the work already executed by it under the contract. It is also not in dispute that there was no conciliation between the petitioner and the second respondent and therefore, the arbitral proceedings has been initiated under Section 18 of Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred as MSMED Act). Objecting the jurisdiction of the arbitral Tribunal to entertain the claim of the second respondent under the provisions of MSMED Act, the petitioner filed an application under Section 16 of Arbitration and Conciliation Act, 1996. It was the specific case of the petitioner that the contract entered between the petitioner and the second respondent was a work contract and the same was

not for supply of the goods and hence the provisions of MSMED Act could not be invoked against the petitioner for the amount due under the works contract. The Council, the first respondent, which is acting as an arbitral tribunal, over ruled the objection raised by the petitioner by impugned order and dismissed the application. Aggrieved by the same, the petitioner has come before this Court.

3. The learned senior counsel appearing for the petitioner vehemently contended that the claim petition for recovery of amount due for the goods supplied or services rendered by the supplier alone could be entertained under the provisions of MSMED Act and any amount due under the works contract will not fall within the purview of MSMED Act and therefore, the first respondent had no jurisdiction to entertain the claim made by the second respondent.

4. In support of the said contention, the learned senior counsel appearing for the petitioner relied on the following decisions:

(i) ***Kone Elevator India Private Limited Vs. State of Tamil Nadu,*** reported in ***(2014) 7 SCC 1***

(ii) ***Sterling and Wilson Private Limited and others Vs. Union of India and others*** reported in ***MANU/MH/1631/2017***

(iii) ***Surya International Vs. Union of India and others*** reported in ***MANU/GJ/1943/2017***

(iv) ***Samvit Buildcare Private Limited Vs. Ministry of Civil Aviation,*** reported in ***MANU/GJ/0990/2018***

(v) ***P.L.Adke Vs.Wardha Municipal Corporation*** reported in ***MANU/MH/2179/2021***

(vi) ***National Textile Corporation Limited Vs.Elixir Engineering Pvt Limited and another*** reported in ***2023 SCC OnLine Bom 653***

(vii) ***M/s.Shree Gee Enterprises Vs. Union of India and another*** reported in ***2015 SCC OnLine Del 13169.***

5. The learned counsel appearing for the second respondent would submit that the claim petition for the amount due under works contract is also maintainable before the first respondent. In support of the said contention, he relied on the judgment in ***Hindustan Petroleum Corporation Limited and another Vs. West Bengal State Micro, Small***

Enterprises Facilitation Council and others reported in ***2023 SCC OnLine Cal 1700.*** He also submitted that if application under Section 16 of Arbitration and Conciliation Act, 1996 is dismissed by the arbitral tribunal, the petitioner is not entitled to invoke supervisory jurisdiction of this Court and the remedy for him is to wait for the passing of final award by the arbitral tribunal and challenge the same under Section 34 of Arbitration and Conciliation Act.

6. In support of the said contention, he relied on the judgment of the Apex Court in ***Deep Industries Limited Vs. Oil and Natural Gas Corporation Limited and another*** reported in ***(2020) 15 Supreme Court Cases 706.***

7. In normal course, this Court would not have entertained the Civil Revision Petition and relegated the parties to workout the remedy under Section 34 of Arbitration Act, in view of Section 16 (6) of Arbitration and Conciliation Act. However, in the case on hand, the very applicability of MSMED Act for the claim made by the second respondent is questioned

by the petitioner and the same is going to the root of the matter and hence, this Court proceeds to consider the rival submissions made by the respective parties and dispose of the revision on merits.

8. The pith and substance of the arguments made by the learned senior counsel for the petitioner is the amount due to the second respondent, if any under a work contract, will not attract the provisions of MSMED Act and hence the claim petition filed by the second respondent before the first respondent was not at all maintainable due to inherent lack of jurisdiction.

9. In order to understand the scope of the claim entertainable by first respondent under MSMED Act, it is necessary to have a close look at certain definitions and provisions under the said Act.

10. Section 2(d) of MSMED Act, defines the expression 'buyer' which reads as follows:

> *"(d) "buyer" means whoever buys any goods or receives any services from a supplier for consideration."*

(ii) Section 2(f) of MSMED Act, defines the expression 'goods', which reads as follows:

"(f) "goods" means every kind of movable property other than actionable claims and money."

(iii) Section 2(n) of MSMED Act, defines the expression 'supplier', which reads as follows:

"(n) "supplier" means a micro or small enterprise, which has filed a memorandum with the authority referred to in sub-section (1) of Section 8, and includes,—

(i) the National Small Industries Development Corporation, being a company, registered under the Companies Act, 1956 (1 of 1956);

(ii) the Small Industries Development Corporation of a State or a Union territory, by whatever name called, being a company registered under the Companies Act, 1956 (1 of 1956);

(iii) any company, co-operative society, trust or a body, by whatever name called, registered or constituted under any law for the time being in force and engaged in selling goods produced by micro or small enterprises and rendering services which are provided by such enterprises;"

11. Sections 15 and 16 of MSMED Act talk about liability of the buyer to make payments which read as follows:

"Section 15. Liability of buyer to make payment*.—Where any supplier supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day:*

Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed forty-five days from the day of acceptance or the day of deemed acceptance.

Section 16. Date from which and rate at which interest is payable*.—Where any buyer fails to make payment of the amount to the supplier, as required under Section 15, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on that amount from time the appointed day or, as the case may be, from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank."*

12. Section 18 of MSMED Act [as it stood prior to amendment by act 32 of 2023 (present claim made before amendment)] enables a party

to dispute to make reference to Micro and Small Enterprises Facilitation Council, Chennai by filing a claim, the same reads as follows:

***"Section 18. Reference to Micro and Small Enterprises Facilitation Council**.—*

(1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under Section 17, make a reference to the Micro and Small Enterprises Facilitation Council.

(2) On receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of Sections 65 to 81 of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.

(3) Where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer it to any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall then apply to the disputes as if the arbitration was in

pursuance of an arbitration agreement referred to in sub-section (1) of Section 7 of that Act.

(4) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.

(5) Every reference made under this section shall be decided within a period of ninety days from the date of making such a reference."

13. A close scrutiny of the above mentioned provisions would make it clear that any amount due to supplier from a buyer in respect of goods supplied or services rendered can be recovered by the supplier by making a reference before the first respondent council. In the case on hand, the second respondent agreed to carryout certain works relating to piling and Civil Works for silos for coke handling system for the petitioner as per the tender conditions. Therefore, the second respondent did not sell or supply any goods to the petitioner. The crux of the question is whether, the works agreed to be done by the second respondent for the petitioner can be treated

as services rendered by him, so as to attract the provisions of MSMED Act. A close scanning of above extracted provisions would make it clear, the supplier is not only entitled to recover the amount due for the goods supplied by him, but he is also entitled to recover the amount due to him for the service rendered by him to the buyer. Whether the works which the second respondent undertook to execute for the petitioner under the contract can be treated as a service is the question to be decided.

14. The learned senior counsel appearing for the petitioner by relying on ***Kone Elevator case*** cited supra vehemently contended that the works contract will not attract the provisions of MSMED Act. In ***Kone Elevator case***, which arose out of case under Orissa Sales Tax Act, the question that had been taken up for consideration was whether the manufacture, supply and installation of lifts had to be treated as sale or work contract. If it is treated as sale then entire sale consideration would be taxable under the Sales Tax Act or Value Added Tax enactments. On the other hand, if it is a work contract, the consideration payable or paid for labour and service element would have to be excluded from the total

consideration received and the sales tax would be chargeable only on the balance amount [i.e goods sold] . Kone Elevator, the manufacturer of lift, manufactured it, supplied it to the end user and also installed it in the building of the end user as per the contract. The installation of lift in the building of the end user involves special skill and labour, any amount charged for supply of labour and skilled persons for the purpose of installation cannot be treated as a sale of a good. Therefore, the question involved in that case was whether the composite contract for manufacture, supply and installment of lift could be treated as a sale or it should be treated as a work contract.

15. The Apex Court, after analysing the contract held that installation of lift involves special skill and labour, therefore, it could not be treated as a sale of goods and it should be treated only as a work contract. Even if it is held as a work contract, still the cost of the lift supplied for installation shall be treated as consideration for sale of goods and the same is

taxable. The same can be gathered from the observations of the Apex Court in the said judgment which reads as follows:

> "*3. The seminal controversy which has emerged in this batch of matters is whether a contract for manufacture, supply and installation of lifts in a building is a "contract for sale of goods" or a "works contract". Needless to say, in case of the former, the entire sale consideration would be taxable under the sales tax or value added tax enactments of the State Legislatures, whereas in the latter case, the consideration payable or paid for the labour and service element would have to be excluded from the total consideration received and sales tax or value added tax would be charged on the balance amount."* (emphasis supplied by this court)

16. The portion of the consideration mentioned in the contract which covers supply of skilled personal and labour for installation of the lift falls outside the purview of the sales tax and hence that portion is not

taxable. Merely, because the contract involved was composite contract or work contract, the supplier cannot escape from payment of sales tax, so far as value of the goods supply is concerned. In other words, the supplier cannot claim total exemption in respect of entire consideration mentioned in the composite work contract. However, the portion of the consideration towards goods supply [i.e., lift] always comes within the purview of the sales tax for the purpose of taxation.

17. In the said decision, the taxability of the services rendered by the manufacturer of the lift was not at all considered because the question before the Apex Court in the decision was whether entire consideration mentioned in the contract should be treated as sale consideration, so as to attract the provisions of sales tax or value added tax. As far the as the case on hand is concerned, it arises under MSMED Act and as mentioned earlier, the supplier is not only entitled to recover the cost of the goods supplied to the buyer, but he is also entitled to recover the cost or value of the services rendered to the buyer. Therefore, even if the contract between the supplier

and buyer is a work contract which involves supply of goods and rendering of services, the cost of both the components (cost of goods supplied and cost of services rendered) are recoverable by the supplier. In the case on hand, the second respondent agreed to execute certain works for the petitioner, as per the terms of tender floated by him, therefore, he agreed to render certain services to the petitioner. In the case on hand, the contract between petitioner and the second respondent does not involve any manufacture and supply of goods. The petitioner never entered into the contract with the second respondent for purchase of any goods from the second respondent. The petitioner only entered into a contract with the second respondent for execution of certain works in their site, as per the terms of agreement. Therefore, it is a service contract, the second respondent is entitled to recover the cost of the service rendered by it to the petitioner under the provisions of MSMED ACT in view of the express wordings under Sections 15 and 17 of the said Act extracted supra.

18. In ***Kone Elevator case***, the Court considered whether the contract involved in that case was a pure contract for sale of goods or work contract which involves sale of goods and rendering of service. In the said case, no occasion arose for the Apex Court to consider, whether the contract could be treated as the one for rendering any service to the buyer. The relevant taxing statute charged tax only on the goods sold. On the other hand, in the case on hand, MSMED Act not only enables the supplier to recover cost of the goods, it also enables supplier to recover the cost of the services rendered by him. Therefore, the submission made by the learned senior counsel for the petitioner that the contract between the petitioner and the second respondent is a work contract and therefore, it is outside the purview of MSMED Act is not acceptable to me.

19. The learned Senior Counsel also submitted by relying on Section 15 of MSMED Act that the buyer is entitled to recover the cost of the goods supplied or the cost of the service rendered and in case of combination of both, he is not entitled to recover the cost of goods as well as cost of services

in view of employment of the word "or" in Section 15 of MSMED Act. The Section 15 of MSMED Act which reads as follows:

"***15. Liability of buyer to make payment****.—Where any supplier supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day:*

Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed forty-five days from the day of acceptance or the day of deemed acceptance."

20. Normally the conjunction "or" is used as disjunctive but not as conjunctive. The true effect of the word "or" shall be understood in the context of the purpose and object of the enactment. In ***Indore Development Authority Vs.Manoharlal and others reported in AIR 2020 SC1496=MANU/SC/0300/2020,*** while considering true effect of word "or" used in a statute, the Apex Court observed as follows:

"105. In Prof. Yashpal (supra), the word "or" occurring in the expression "established or incorporated" was read as "and" so that the State

enactment did not come in conflict with the Central legislation and create any hindrance or obstacle in the working of the latter. This court has observed:

> *"59. Shri Rakesh Dwivedi has also submitted that insofar as private universities are concerned, the word "or" occurring in the expression "established or incorporated" in Sections 2(f), 22 and 23 of the UGC Act should be read as "and." He has submitted that the normal meaning of the word "established" is to bring into existence. In order to avoid the situation which has been created by the impugned enactment where over 112 universities have come into existence within a short period of one year of which many do not have any kind of infrastructure or teaching facility, it will be in consonance with the constitutional scheme that only after establishment of the basic requisites of a university (classrooms, library, laboratory, offices, and hostel facility, etc.) that it should be incorporated and conferred a juristic personality. The word "or" is normally disjunctive and "and" is normally conjunctive, but at times, they are read vice versa to give effect to the manifest intentions of the legislature, as disclosed from the context. If literal reading of the word produces an unintelligible or absurd result, "and" maybe read for "or" and "or" maybe read for "and." (See Principles of Statutory*

Interpretation by G.P. Singh, 7th Edn., p. 339 and also State of Bombay v. R.M.D. Chamarbaugwala, AIR 1957 SC 699, AIR at p. 709 and Mazagaon Dock Ltd. v. CIT, AIR 1958 SC 861) We are of the opinion that having regard to the constitutional scheme and in order to ensure that the enactment made by Parliament, namely, the University Grants Commission Act is able to achieve the objective for which it has been made and UGC is able to perform its duties and responsibilities, and further that the State enactment does not come in conflict with the Central legislation and create any hindrance or obstacle in the working of the latter, it is necessary to read the expression "established or incorporated" as "established and incorporated" insofar as the private universities are concerned." (Emphasis supplied by this Court).

21. In this regard, it would be appropriate to consider the discussion on the effect of words "and" and "or" in maxwell on the Interpretation of statutes, Twelfth Edition P.232. The portion reads as follows.

" In ordinary usage, "and" is conjunctive and "or" distinctive. But to carry out the intention of the legislature it may be

necessary to read "and" in place of the conjunction "or" and vice versa.

The Disabled Soldiers Act 1601, for example, in speaking of property to be employed for the maintenance of "sick and maimed soldiers", referred to soldiers who were either sick or maimed, and not only to those who were both."

22. The preamble portion of the MSMED Act, 2006, reads that it was an act to provide for facilitating the promotion and development and enhancing the competitiveness of Micro, Small and Medium Enterprises and for matters connected therewith or incidental thereto. If we see the scheme of the act, it provides a less cumbersome and easy procedure for recovery of amount due to the Micro, Small and Medium Enterprises registered under Section 8 of the Act. The suppliers registered under the Act are entitled to file a claim before Micro and Small Enterprises Facilitation Council, seeking recovery of the amount due to them in respect of the goods supplied by them or services rendered by them. Section 18 also fixes an outer time limit for the decision on the claim made by the supplier. Therefore, the main aim of

the Act is to give a lesser cumbersome remedy for Micro, Small and Medium Enterprises to recover the amount due to them in respect of the goods supplied by them or services rendered by them as distinguished from regular legal procedure which is cumbersome and time consuming. When Section 15 r/w Sections 17 and 18 of MSMED Act, enables supplier to make a reference to the council for recovery of cost of the goods supplied or services rendered, in order to achieve the full object of the enactment, the conjunction "or" employed in Section 15 shall be read as "and" in appropriate cases. Where the contract is for supply of goods simpliciter or the contract is for rendering of services simpliciter, there may not be any problem to come to the conclusion that the claim under MSMED Act is maintainable. On the other hand, in case of hybrid contract, where it involves supply of goods as well as rendering of services, if we read the conjunction "or" as "or" instead of "and", it will defeat the very object of the enactment and the supplier of goods and services under the same contract will be deprived of the less cumbersome procedure contemplated under the Act. In other words, any interpretation to the effect that supplier of goods or supplier of services under separate contracts are entitled to maintain a

claim under the MSMED Act, whereas supplier of both goods and services under a single contract is not entitled to the benefit of the act will defeat the very object of the act.

23. In this regard, the reference may be had to the judgment of the Apex Court in ***Gujarat State Civil Supplies Corporation Limited Vs. Mahakali Foods Private Limited (Unit 2) and another,*** reported in ***(2023) 6 SCC 401***, which reads as follows:

> "*31.2. Section 18 is a substantive law and not a procedural law, as it provides a right and the remedy on the MSE for resolution of disputes.*
>
> *31.3. Beneficial or Welfare statutes should be given a liberal and not a strict interpretation. If the words used in the beneficial statute are capable of two constructions, the one which is more in consonance with the object of the Act, and the interpretation for the benefit of the persons for whom the Act is made, should be preferred. In this regard, reliance is placed on the decision of this Court in Union of India Vs. Prabhakaran Vijaya Kumar reported in (2008) 9 SCC 527; and in Regional Provident Fund Commissioner Vs. Hooghly Mills Company Limited, reported in (2012) 2 SCC 489."*

24. Therefore, whenever there is a hybrid contract for supply of goods and also services by a Micro, Small and Medium Enterprises

registered under Section 8(1) of MSMED Act, the conjunction "or" employed in Section 15 of MSMED Act shall be read as "and" in order to advance the object of the enactment. Otherwise, the supplier will be prevented from recovering the cost by following the less cumbersome procedure contemplated under the Act and he will be pushed to follow the regular legal procedure. However, in the case on hand, contract does not contemplate supply of any goods, it only contemplates rendering of services by the second respondent. Therefore, there may not be any difficulty in coming to the conclusion that the claim petition filed by the second respondent before the first respondent is very well maintainable. Even assuming the contract involves supply of goods along with rendering of services, in view of the conclusion reached by me that the word "or" employed in Section 15 will have the force of "and" in case of hybrid contracts, I hold that the claim petition filed by the second respondent before the first respondent is maintainable under MSMED Act.

25. In view of the discussion made earlier, I am unable to accept the arguments of learned Senior Counsel appearing for the petitioner and accordingly, the Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

03.02.2026

Index : Yes
Speaking order:Yes
Neutral Citation:Yes
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S.SOUNTHAR, J.

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To

The Micro and Small Enterprises Facilitation Council,
Chennai Region.

CRP.No.3446 of 2025

03.02.2026