Delta Distilleries Ltd vs United Spirits Limited & Anr on 23 September, 2013

Equivalent citations: 2013 AIR SCW 5966, 2014 (1) SCC 113, 2013 (6) ABR 925, (2013) 5 MAD LW 405, (2014) 3 CIVLJ 117, (2013) 4 ARBILR 47, (2013) 12 SCALE 51, (2014) 2 ALL WC 1157, (2013) 116 CORLA 219, (2014) 1 RECCIVR 735, AIR 2014 SC (CIV) 197, (2014) 1 BOM CR 54, AIR 2014 SUPREME COURT 113

Bench: H.L. Gokhale, A.K. Patnaik

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 8426 OF 2013
(@ out of SPECIAL LEAVE PETITION (CIVIL) NO. 28418/2012)

Delta Distilleries Limited … Petitioner

Versus

United Spirits Limited & Anr. … Respondents

J U D G E M E N T

H.L. Gokhale J.

Leave Granted.

2. This appeal by Special Leave seeks to challenge the judgment and order dated 20.7.2012 rendered by a Single Judge of Bombay High Court allowing Arbitration Petition No.838 of 2011 filed by the respondent No.1 herein. The said petition sought to invoke the powers of the court under Section 27 of the Arbitration and Conciliation Act, 1996 (herein after referred to as the Act of 1996), which provides for seeking assistance of the court in taking evidence. The said petition had been moved in pursuance of the order dated 16.9.2011 passed by a three member Arbitral Tribunal permitting the respondent No.1 to file such an application. The learned Single Judge allowed the said petition, and thereby directed the appellant to produce the documents as sought by the respondent No.1 before the Arbitral Tribunal. This appeal has been filed by Special Leave to challenge the said judgment and order. The appeal raises the question with respect to the scope of Section 27, and the circumstances in which the Arbitral Tribunal or a party before the Arbitral Tribunal can apply to the court for assistance in taking evidence.
Facts leading to this appeal are this wise:-

3. The respondent No.1 herein is a company which owns certain brands of Indian Made Foreign Liquor (IMFL). The appellant is a company carrying on the business of distilling and bottling of IMFL. The predecessor of the respondent No.1 entered into an agreement with the appellant on 25.3.1997, under which the appellant agreed to manufacture and supply to the respondent No.1, IMFL of such brands and quantity, as would be specified from time to time on the terms and conditions contained therein. Under the said agreement, the contract price at which the IMFL was to be sold by the appellant to the respondent No.1, was exclusive of sales tax and other taxes, and the respondent No.1 was required to bear the same.

4. It appears that sometimes in 2001-2002, certain disputes arose between the parties. A major dispute between them related to the outstanding amount payable at the foot of the running account between them. The respondent No.1 claimed that amongst others, amounts to the tune of Rs.1,22,30,692 and Rs.70,23,107.52 were due and payable to the respondent No.1, whereas the appellant maintained that an amount of Rs.39,37,993 was payable to the appellant. According to the first respondent, the appellant had obtained from the Sales Tax Department set-off/refund on the sales tax paid on packaging material, and such set-off/refund operated to reduce the sales tax liability of the appellant, which was ultimately being borne by the respondent No.1. The respondent No.1 therefore, claimed that it was entitled to the benefit of the said set-off/refund, and accordingly debited the appellant for the amount of set-off/refund.

5. It was the case of the first respondent that although the appellant had accounted for some of these entries in its accounts, it did not account for a major portion of the same. Clause 14 of the agreement between the parties provided that any dispute or difference arising or relating to or connected with the said agreement, was to be referred to arbitration. The above dispute was, therefore, referred to the Arbitration of Hon'ble Mr. Justice D.M. Rege, former Judge of Bombay High Court. However, the Learned Judge resigned as arbitrator, and thereafter the proceedings were continued before another arbitrator Hon'ble Mrs. Justice Sujata Manohar, former Judge of the Supreme Court of India.

6. Thereafter, the advocates of the respondent No.1 gave a notice to the advocate on record of the appellant on 17.3.2007, calling upon them to give inspection and to produce the following documents before the learned Arbitrator:-

(a) All sales tax returns filed by the appellant with the sales tax authorities for the assessment years 1995-1996 to 2001-2002.

(b) All sales tax assessment orders passed with regard to the appellant for the above-mentioned period, and all appellate orders, if any passed in any appellate proceedings arising out of the same.

(c) The objection, if any, filed by the appellants against the Notice in Form 40, and proposed order at pages 123 & 124 of Volume VI of the documents filed in the arbitration, the order, if any, passed thereon, and the appellate proceedings, if any, therein.

(d) The letter dated 26th May 2000 mentioned in the letter at page 32 of Volume III of the documents filed in the arbitration.

7. The advocate of the appellant vide his reply dated 21.3.2008, protested and objected to the production of these documents, since according to the appellant the same were being sought at a late stage when

the proceeding had reached the stage of cross-examination of the witnesses of the respondent No.1. In paragraph 3 of this reply the learned advocate stated as follows:-

> "3. As regards the inspection of documents sought by your clients, my clients repeat that your clients are not entitled to inspection of any documents at this belated stage. In any event, my clients are not relying on any of the documents referred to in paragraphs (a), (b) and (c) of your letter. As regards the documents referred to in paragraph (d) of your letter, the said document is already on record before the Hon'ble Arbitrator and hence a copy of the said document is already available with you."

8. Inasmuch as the appellant declined to give inspection / and produce the document as sought for, the respondent No. 1 made an application on 26.3.2007 before the learned Arbitrator, and in paragraph No. 5 thereof, sought a direction to produce the documents mentioned at Sl. Nos.(a) to (c) in the notice dated 17.3.2007. The learned Arbitrator by her order dated 27.3.2007 allowed the application only to the extent of the assessment orders relating to the period 1995-1996 to 2001-2002 and the appellate orders mentioned in paragraph 5(b). The prayer for producing the sales tax returns mentioned in paragraph 5(a) was not entertained. Similarly, the prayer to produce the documents as sought in paragraph 5(c) was not entertained. The learned Arbitrator held in paragraph 4 of her order as follows:-

> "4. …. The documents in paragraphs 5 (a) and 5 (b) relate to Sales Tax Returns filed by the Respondents for Assessment Years 1995-1996 till 2001-2002 and Sales Tax Assessment Orders passed in respect of the Respondents for this period including any Appellate Orders. One of the claims made by the Claimants in these proceedings against the Respondents related to the benefit of any sales tax set-off granted to the Respondents in connection with the goods in question which, according to the Claimants, should accrue to their benefit. Therefore, Sales Tax Assessment Orders relating to the period in dispute passed in respect of the Respondents are relevant for the purpose of determination of this aspect of the dispute. Mr. Savant, learned counsel for the Respondents has contended that these Sales Tax Assessments are not relevant because in any case, the Claimants have quantified the set-off which they are claiming, and hence, it is not necessary to look at Sales Tax Assessments to ascertain the quantum of set-off. However, the quantification is done by the Claimants on the theoretical basis that full set-off must have been granted to the Respondents and hence, 75% of the value of the set-off until May 2000 and the full value of such set-off thereafter should be considered as having accrued for the benefit of the Claimants. A hypothetical calculation on such basis should not be resorted to when actual Sales Tax Assessments are available which show the quantum of set-off allowed. This is in the interest of both the parties. Hence, the argument of Mr. Savant cannot be accepted."

9. The appellants were dissatisfied with the order passed. In

their subsequent correspondence they made certain allegations against the learned Arbitrator, who therefore, resigned from the said proceeding. The parties therefore, appointed an Arbitral Tribunal consisting of three Judges, Hon'ble Mr. Justice M. Jagannadha Rao (Presiding Arbitrator) and Hon'ble Mr. Justice S.N. Variava (both former Judges of the Supreme Court of India), and Hon'ble Mr. Justice M.S. Rane (Former Judge of Bombay High Court). On reconstitution of the Arbitral Tribunal the respondent No.1 pointed out that the order passed by the earlier Arbitrator dated 27.3.2007 had not been complied with. The Tribunal, therefore, called upon the appellant to state their position on an affidavit. Thereupon the Chairman of the appellant filed an affidavit before the Tribunal on 16.9.2011 stating that the appellant would not produce the sales tax assessment orders. In paragraph 3 of his affidavit he specifically stated as follows:-

> "3. I humbly and most respectfully submit before this Hon'ble Tribunal that, Sales Tax Returns are the documents which are highly confidential and hence the same cannot be subject matter to be produced before this Hon'ble Tribunal especially when, sales tax set off is already quantified by the Claimants and the same is forming a part of their claim in the present arbitration proceedings. I say that, it is not necessary to inspect the said sales tax assessment orders in order to ascertain the quantum of set off. I say that, the Claimants' demand of sales tax set off to an extent of 75% and somewhere also 100% is completely vague and arbitrary and that the same is completely de hors the contents of the agreement dated 25.03.1997. I therefore say that, disclosure of any such sales tax assessment orders shall be completely detrimental to the rights and interest of the Respondent Company."

10. In view of this affidavit of the Chairman of the appellant, the Tribunal noted that the party in possession of the concerned documents was refusing to produce them, even though it had been directed to do so. The Tribunal vide its order dated 16.9.2011, held that the earlier order dated 27.3.2007 passed by the previous arbitrator could not be reviewed, nor did the Tribunal have any jurisdiction to do so. The Tribunal, therefore, permitted the respondent No.1 to apply to the court under Section 27 of the Act of 1996, and to seek production of the sales tax assessment order for the period 1995-1996 to 2001-2002, including any appellate orders in support thereof. The Tribunal observed as follows:-

> "7.……One would have expected the Respondent to obey the directions of this Tribunal and produce the above said documents. However, in as much as they have not been produced for more than four years and now there is categorical statement by the Chairman of the Respondent Company that they will not produce these documents, the Tribunal is compelled to exercise the powers under Section 27 of the Act and grant permission to the Claimant to apply to the Court for production of the documents from the Respondent and/or the Sales Tax Authorities……"

11. Pursuant to the said permission granted by the Tribunal, the respondent No.1 filed the Arbitration Petition before the Single Judge of Bombay High Court invoking the powers of the Court under Section 27 of the

Act of 1996, to seek a direction to the appellants to produce the earlier mentioned assessment orders and appellate orders. The Assistant Commissioner of Sales Tax, Pune was joined as respondent No. 2, and a direction to produce those documents from his records was as well sought. The appellant herein, opposed the said Arbitration Petition. Now for the first time, in paragraphs 5 and 6 of the reply the appellants stated as follows:-

> "5. The Petitioner's demand pertains to records for the period 1995-1996 to 2001-02. I say and submit that these are very old records. The same are not available with the Respondent No. 1. I say and submit that Respondent No. 1 is not able to trace these old records. I say that in fact when I made my Affidavit dated 16th September, 2011, I had in fact not searched the Company's records to ascertain whether the sales tax orders were in fact available with it. I say that accordingly I had made the said Affidavit dated 16th September, 2011 opposing the disclosure on the grounds stated therein. I say that during the pendency of the present petition, I have checked in order to ascertain whether these records were in fact available with the Company and have discovered that they cannot be traced."
>
> 6. Without prejudice to the aforesaid, I further say that the information that is being requested for by the petitioner is confidential and accordingly the same ought not be disclosed."

12. The learned Single Judge thereupon heard the parties. It was submitted on behalf of the appellant before the Learned Single Judge, that the provisions of Section 27 of the Act of 1996 were analogous to Section 43 of the Arbitration Act, 1940. A judgment of the Delhi High Court in the case of Union of India v. Bhatia Tanning Industries reported in AIR 1986 Delhi 195, on the said Section 43 was relied upon to submit that the said section applies only to calling witnesses, and not for giving any direction to the parties. It was further submitted that at the highest, an adverse inference may be drawn against the appellant under Order 21, Rule 11 of Code of Civil Procedure (hereinafter referred as CPC). Reliance was also placed on the provision of Section 71 of Maharashtra Value Added Tax Act, 2002 (hereinafter referred as the Maharashtra Act) which is pari materia with Section 64 of the Bombay Sales Tax Act, 1959, and it was contended that the assessment orders were confidential, and could not be directed to be produced. The Assistant Commissioner of Sales Tax who was respondent No.2 to the Writ Petition (and who is respondent No. 2 to this appeal also), submitted that the old record of the relevant period was not available with the Sales Tax Department, and was already destroyed. In any case it was submitted that in view of the above referred Section 71, such a direction could not be issued.

13. The learned Judge repelled all these arguments. He held that the appellant was misreading the judgment of Delhi High Court, and that it could not be anybody's case that a party in a proceeding can not be examined as a witness. With respect to Section 71 of the Maharashtra Act, the learned Judge held that it barred only the production of statements and returns, and it was not applicable to the assessment orders. The learned Judge also noted that in the earlier affidavit filed before the Tribunal,

the appellant had not taken any such plea that the assessment orders were not available, but within ten months thereafter in another affidavit before the High Court it was being contended that the said documents were not traceable. The learned Judge therefore, allowed the said petition invoking Section 27 of the Act of 1996, and directed the appellant herein to produce the documents sought for. Being aggrieved by this judgment and order the present SLP has been filed.

14. We have heard Mr. Ravindra Srivastava, learned senior counsel in support of this appeal, and Mr. Chander Uday Singh, learned senior counsel for the respondent no. 1. Respondent no. 2 is a proforma respondent. The challenge in this appeal is principally on two grounds. Firstly, that the type of order which was sought under Section 27 of the Act of 1996, against the appellant was not within the competence of the court, and at the highest the Arbitral Tribunal should have drawn an adverse inference against the appellant under Order 11 and Rule 21 of CPC for non-production of the documents, the production of which was sought by the respondent no.1. The second challenge was that in any case, the documents which were sought were confidential documents, and in view of the provision contained in Section 71 of the Maharashtra Value Added Tax 2002, and the order compelling the appellant to produce such documents could not have been passed.

15. As far as the first ground of challenge is concerned, as pointed out earlier, reliance was placed by the respondent no. 1 on the judgment of a Division Bench of Delhi High Court in Bhatia Tanning Industries (supra). Now, what had happened in this matter was that the respondent/industries were to supply certain material to the appellant, and since the respondent had committed default in making the supply, the appellant had raised a claim on account of risk purchase which was referred to arbitration. The arbitrator sent notices to the address of the respondents on record twice, and on both occasions the registered notices were returned to the arbitrator stating that the addressee was not available. It was in these circumstances that the arbitrator ordered that there shall be a publication of the notice in a newspaper. That having being done, nobody appeared for the respondent thereafter also, and the arbitrator made an ex-parte award. After the award was filed in court, and notice was sent to the respondent, an objection was raised that the arbitrator had no power to order service by means of publication in the newspaper. The learned Single Judge who heard the matter, set aside the award on the ground that the arbitrator should have gone to the court under Section 43 of the Arbitration Act, 1940 (Act of 1940 for short), and obtained an order from the Court for service by publication which had not been done.

16. This order was challenged in appeal, and a Division Bench of the High Court allowed the said appeal. The Division Bench held that the there are two separate sections in the Act of 1940. One was Section 42 which provided service of notice by a party or arbitrator, and the other was Section 43. Section 43 of the Act of 1940 reads as follows:-

> "43. Power of Court to issue processes for appearance before arbitrator – (1) The Court shall issue the same processes to the parties and witnesses whom the arbitrator or umpire desires to examine as the Court may issue in suits tried before it.

(2) Person failing to attend in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitrator or umpire during the investigation of the reference, shall be subject to the like disadvantages, penalties and punishments by order of the Court on the representation of the arbitrator or umpire as they would incur for the like offences in suits tried before the Court

(3) In this section the expression "processes" includes summonses and commissions for the examination of witnesses and summonses to produce documents."

The Division Bench in paragraph 9 of its judgment noted that Section 42 provides for the service of a notice by the arbitrator on a party before he proceeds to hear the case. On the other hand in paragraph 11, the court held that Section 43 is confined to cases where a person, whether a party or a third person, is required to appear as a witness before the arbitrator. Such witnesses whom the arbitrator or umpire desires to examine may be summoned
through court.

17. We, therefore, fail to see as to how this judgment can advance the submission of the appellant, though it was contended that Section 27 of the Act of 1996 is similar to Section 43 of the Act of 1940. On the other hand, as stated above, the Division Bench judgment of Delhi High Court clearly lays down that Section 43 of the pre-cursor Act permitted the arbitrator to call a third person as well as a party as a witness, and the section was not confined only to calling third persons as witnesses.

18. It was contended on behalf of the appellant that whereas Section 43 used the phrase "parties and witnesses", Section 27 did not contain such a phrase, and it speaks of calling 'any person' as a witness. Section 27(2) (c) does provide that an application under this section seeking assistance of the court shall specify the name and address of any person to be heard as a witness or as an expert witness. As far as the appearance of a party in pursuance to a notice of the arbitrator is concerned, there is a specific provision for proceeding in the event of default of a party under Section 25. We may refer to Sections 25 and 27 in this behalf which read as follows:-

"25. Default of a party.- Unless otherwise agreed by the parties, where, without showing sufficient cause,----

(a) the claimant fails to communicate his statement of claim in accordance with sub-section (1) of section 23, the arbitral tribunal shall terminate the proceedings;

(b) the respondent fails to communicate his statement of defence in accordance with sub-section (1) of section 23, the arbitral tribunal shall continue the proceedings without treating that failure in itself as an admission of the

allegations by the claimant.

(c) a party fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the arbitral award on the evidence before it."

"27.Court assistance in taking evidence.- (1) The arbitral tribunal, or a party with the approval of the arbitral tribunal, may apply to the Court for assistance in taking evidence.

(2) The application shall specify----

(a) the names and addresses of the parties and the arbitrators.

(b) the general nature of the claim and the relief sought;

(c) the evidence to the obtained, in particular,----

(i) the name and address of any person to be heard as witness or expert witness and a statement of the subject-matter of the testimony required;

(ii) the description of any document to be produced or property to be inspected.

(3) The Court may, within its competence and according to its rules on taking evidence, execute the request or ordering that the evidence be provided directly to the arbitral tribunal.

(4) The Court may, while making or order under sub-section (3), issue the same processes to witnesses as it may issue in suits tried before it.

(5) Persons failing to attend in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitral tribunal during the conduct of arbitral proceedings, shall be subject to the like disadvantages, penalties and punishments by order of

the Court on the representation of the arbitral tribunal as they would incur for the like offences is suits tried before the Court.

(6) In this section the expression "Processes" includes summonses and commissions for the examination of witnesses and summonses to produce documents."

19. As seen from these two sections, Section 25 (c) provides that in the event a party fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings, and make the arbitral award on the evidence before it. This evidence can be sought either from any third person or from a party to the proceeding itself. The substitution of the phrase "parties and witnesses" under Section 43 of the earlier act by the phrase 'any person' cannot make any difference, or cannot be read to whittle down the powers of the Arbitral Tribunal to seek assistance from the court where any person who is not cooperating with the Arbitral Tribunal or where any evidence is required from any person, be it a party to the proceedings or others. It is an enabling provision, and it has to be read as such. The term 'any person' appearing under Section 27 (2) (c) is wide enough to cover not merely the witnesses, but also the parties to the proceeding. It is undoubtedly clear that if a party fails to appear before the Arbitral Tribunal, the Tribunal can proceed ex-parte, as provided under Section 25 (c). At the same time, it cannot be ignored that the Tribunal is required to make an award on the merits of the claim placed before it. For that purpose, if any evidence becomes necessary, the Tribunal ought to have the power to get the evidence, and it is for this purpose only that this enabling section has been provided.

20. The counsel for the appellant tried to take advantage of the first sentence of paragraph 12 of the Delhi High Court judgment, which reads as follows:-

"(12) Section 43 has no application where the party to an arbitration agreement has to be summoned for appearance before the arbitrator so that he may participate in the proceedings and state his defense."

We must however note, what the Division Bench has stated thereafter, in the very paragraph which is to the following effect.

"The learned judge seems to have been misled by the expression 'parties' appearing in section 43. The word 'parties' is used in the sense where the party itself is desired to be examined as a witness by the arbitrator or umpire. The expression 'witnesses' used along with the word 'parties' makes the meaning of the legislature abundantly clear. The principle of construction is that words of the same feather flock

together."

As can be seen from the paragraph, the paragraph itself says that Section 43 has no application for summoning a party to appear to participate in the proceeding. It is meant for securing the presence of third persons as well as parties as witnesses. This position cannot be said to be altered due to the absence of these words and use of the words 'any person' in Section 27 of the Act of 1996.

21. It was contended that if the necessary documents are not produced, at the highest an adverse inference may be drawn against the appellant. That is a power, of course available with the Arbitral Tribunal, and if necessary the same can be used. However, as observed by the learned Arbitrator in her order dated 27.3.2007, the documents sought in the present matter were required to arrive at the decision on the claim of the respondent no. 1, since, the quantification in support of the claim had been done by the respondent no. 1 on a theoretical basis. A hypothetical calculation should not be resorted to when actual Sales Tax Assessments are available, which would show as to whether the quantum of set-off allowed and claimed was in fact justified.

22. In the circumstances, there is no substance in the first objection viz. an order passed by the earlier Arbitrator dated 27.3.2007, and the subsequent enabling order passed by the Arbitral Tribunal dated 16.9.2011 permitting the respondent to apply under Section 27 could not have been passed.

23. The second objection was that the assessment orders were confidential documents, and Section 71 of the Maharashtra Value Added Tax, 2002 and its pre-cursor Section 64 of the Bombay Sales Tax Act, did not permit production of these documents, and a direction as sought could not have been granted. Since, these two sections are invoked, the relevant part of both the sections are quoted below.

> "Section 71 (1) – All particulars contained in any statement made, return furnished or accounts or documents produced in accordance with this Act, or in any record of evidence given in the course of any proceedings under this Act (other than proceeding before a Criminal Court) or in any record of any assessment proceeding, or any proceeding relating to the recovery of a demand, prepared for the purposes of this Act shall, save as provided in sub-section (3), be treated as confidential; and notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), no court shall save as aforesaid, be entitled to require any servant of the Government to produce before it any such statement, return, account, document or record or any part thereof, or to given evidence before it in respect thereof."

> "Section 64 (1) – All particulars contained in any statement made, return furnished or accounts or documents produced in accordance with this Act, or in any record of evidence given in the course of any proceedings under this Act

> (other than proceeding before a Criminal Court) or in any record of any assessment proceeding, or any proceeding relating to the recovery of a demand, prepared for the purposes of this Act shall, save as provided in sub-section (3), be treated as confidential; and notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), no court shall save as aforesaid, be entitled to require any servant of the Government to produce before it any such statement, return, account, document or record or any part thereof, or to given evidence before it in respect thereof."

24. If we look at the words used in these two sections, they very clearly state that particulars contained in any return or statement made by a party, or document produced along therewith are confidential, and no court shall pass any order requiring the Government or a Government servant to produce any such statement, document or return. It is a settled principle of law that the words used in a statute are to be read as they are used, to the extent possible, to ascertain the meaning thereof. Both these provisions contained a bar only against the Government officers from producing the documents mentioned therein. There is no bar therein against a party to produce any such document. In Tulsiram Sanganaria and Another v. Srimati Anni Rai and Ors. reported in 1971 (1) SCC 284, a bench of three Judges of this Court interpreted an identical provision in Section 54(1) of the Income Tax Act, 1922, and held that the said provision created a bar on the production of the documents mentioned therein by the officials and other servants of the Income Tax Department, and made it obligatory on them to treat as confidential the records and documents mentioned therein, but the assessee or his representative-in-interest could produce assessment orders as evidence, and such evidence was admissible. Thus, if a claim is to be decided on the basis of an order of assessment, the claimant as well cannot be denied the right to seek a direction to the party concerned to produce the assessment order. It is this very prayer which has been allowed by the earlier order dated 27.3.2007 passed by the then Arbitrator, and also by the subsequent order dated 16.9.2011 passed by the Arbitral Tribunal, and in our view rightly so. There is no substance in the second objection as well.

25. There is one more aspect which we must note, i.e., when the first respondent made an application for production of the assessment orders, the defence taken by the appellant in their affidavit dated 16.9.2011 was that those documents were confidential documents, and could not be directed to be produced. It was not stated at that time that the said documents were not available. It is ten months thereafter, that when the second affidavit was filed in the High Court, that the respondent for the first time contended that the said documents were not available. This was clearly an after thought, and this attitude of the Respondent in a way justified the earlier order permitting an application under Section 27 passed by the Arbitral Tribunal. The Assistant Commissioner of Sales Tax of the concerned area was also joined as respondent so that he could be directed to produce the required documents. However, he reported that those documents were old records, and were destroyed. The learned Single Judge did not pass any order against the respondent No.2 to produce the documents, as sought. However, the learned Single Judge rightly allowed the petition as against the appellant in terms of prayer clause 'A',

directing the appellant to produce the documents which were sought by the respondent no. 1.

26. In the circumstances, there is no merit in the appeal. The appeal is, therefore, dismissed.

……..……..J.
[A.K. Patnaik]

……..J.
[H.L. Gokhale]

New Delhi
Dated : September 23, 2013
