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* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ W.P.(C) 10880/2016

SUSHILA ..... Petitioner

Through: Mr. J.K. Mittal, Mr. Rajveer Singh & Ms. Nidhi Gupta, Advocates.

versus

AIRPORTS AUTHORITY OF INDIA & ANR ..... Respondents

Through: Mr. Anil Kathuria, ASC with Mr. Neeraj Aarora, Advocate for R-1/AAI.
Mr. Sarojanand Jha & Mr. Abhinav Sharma, Advocates for R-2/DIAL.

WITH

\+ W.P.(C) 10883/2016

M/S SHRI HANS ENTERPRISES ..... Petitioner

Through: Mr. J.K. Mittal, Mr. Rajveer Singh & Ms. Nidhi Gupta, Advocates.

versus

AIRPORTS AUTHORITY OF INDIA ..... Respondent

Through: Mr. Anil Kathuria, ASC with Mr. Neeraj Aarora, Advocate for R-1/AAI.

AND

\+ W.P.(C) 10890/2016

SUSHILA ..... Petitioner

Through: Mr. J.K. Mittal, Mr. Rajveer Singh & Ms. Nidhi Gupta, Advocates.

versus

AIRPORTS AUTHORITY OF INDIA ..... Respondent

Through: Mr. Anil Kathuria, ASC with Mr. Neeraj Aarora, Advocate for R-1/AAI.

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CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
% **15.09.2017**

1. These petitions have been filed claiming return of the fixed deposit receipts retained by Delhi International Airport Limited (DIAL)/Airport Authority of India (AAI) against the service tax liability that may ultimately be imposed on the revenue generated from the contracts entered into with the petitioners.

2. The petitioners were awarded the contract for garbage disposal. It is their contention that no service tax is chargeable on the said transaction and even if the same is found payable, the same would be payable by DIAL/AAI and not the petitioners.

3. The petitioners had also filed writ petitions (W.P.(C) 15095/2006 and 15096/2006) earlier. These were disposed of by an order dated 12.04.2012, whereby this Court had, *inter alia,* held as under:-

> "The respondent AAI had awarded the contract to the petitioners for collection and disposal of garbage from IGI Airport, Delhi. The said contracts have already come to an end. Vide interim order in these petitions the respondent AAI was restrained from taken any coercive steps against the petitioners for collection/recovery of service tax. However, the respondent AAI is withholding the security deposit in the form of FDRs of the petitioners. The interest of the respondent AAI is thus fully safeguarded. The petitioners are however directed to keep the FDRs renewed from time to time. In the

event of the service tax being ultimately levied, the dispute as to who is to bear the same shall be resolved by arbitration. The parties shall be entitled to seek interim measures in the said arbitration proceedings. The petitioners to within one month also file affidavits undertaking to this court to pay the service tax amount if ultimately found due to the respondent AAI."

3. According to Mr. Mittal, learned counsel appearing for the petitioners, no service tax has been finally imposed on the revenue generated by DIAL/AAI from the contracts entered into with the petitioners and, therefore, the security withheld is liable to be refunded. He referred to the order of the Customs, Excise and Service Tax Appellate Tribunal dated 02.01.2015, passed in Appeal Nos.ST 118/2007 and ST 142/2007 captioned AAI Vs. Commissioner of Service Tax, Delhi and Commissioner of Service Tax, Delhi Vs. AAI respectively and, drew the attention of this Court to paragraph 27 of the said decision, whereby the Tribunal held that service tax was chargeable on the revenue generated from certain activities. He pointed out that the garbage collection was not included in these activities and, therefore, the Tribunal has not directed any service tax to be imposed on such revenue.

5. The aforesaid contention is disputed by the learned counsels appearing for DIAL and AAI. They have drawn the attention of this court to paragraph 27.2 of the said order which indicates that the question regarding levy of service tax from Route Navigational Facility Charges; Terminal Navigation Landing Charges and Miscellaneous income is remanded to the Commissioner for a *de novo*

adjudication. According to them, the revenue from the petitioners is accounted under the head 'Miscellaneous Income'.

6. The learned counsel appearing for AAI further submits that the entire revenue collected by AAI has been subjected to service tax and the same would also include revenue collected from the petitioners.

7. The learned counsel appearing on behalf of DIAL further submits that there is also a separate Show Cause Notice dated 22.10.2010, which is, *inter alia,* in respect of receipts from contracts for garbage disposal and the same is pending consideration before the service tax authorities.

8. It is apparent from the above that there is a dispute whether, in fact, service tax liability has been imposed on the revenue from garbage collection. This Court is not inclined to examine the controversy in the present petitions as the orders passed on 12.04.2012 and 02.01.2015 are clear. The dispute as to which party must bear the service tax would have to be decided in an arbitration. It is also apparent that other *inter se* disputes between the parties would also be subject to resolution by arbitration. The question involved is whether, in fact, any service tax liability has been imposed on the contracts in question. This has a direct bearing or whether the petitioner is entitled to the refund of security. This is plainly a matter of *inter se* disputes between the parties regarding the claim for the amount(s) withheld and, therefore, the parties are at liberty to agitate the same before the arbitral tribunal, as and when constituted.

9. Mr. Mittal had also contended that it was for AAI/DIAL to invoke the arbitration. This Court does not find the said contention to be merited. The order clearly indicates that either party could invoke the arbitration. Therefore, the petitioner is not precluded from invoking the arbitration clause and raising a dispute.

10. This Court is, thus, not inclined to entertain the controversy involved in the petition - which is, plainly, a dispute between the petitioners and DIAL/AAI - leaving it open for the parties to avail of appropriate remedies.

11. The petitions are disposed of with the aforesaid observation.

VIBHU BAKHRU, J.

SEPTEMBER 15, 2017
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