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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ LPA 686/2017 & CM Nos. 38332-38333/2017

SUSHILA ..... Appellant

Through: None

versus

AIRPORT AUTHOURITY OF INDIA ..... Respondent

Through: Mr. Anil Kathuria, Standing Counsel with Mr. V.K. Nagpal, Advocate for AAI
Mr. Atul Sharma & Mr. Abhinav Sharma, Advocates for DIAL

WITH

\+ LPA 688/2017& CM Nos. 38450-38451/2017

SUSHILA ..... Appellant

Through: None

versus

AIRPORTS AUTHORITY OF INIDA ..... Respondent

Through: Mr. Anil Kathuria, Standing Counsel with Mr. V.K. Nagpal, Advocate for AAI

WITH

\+ LPA 697/2017 & CM No.38943/2017

HANS ENTERPRISES ..... Appellant

Through: Mr. Natwar Rai, Advocate

7

versus

AIRPORTS AUTHORITY OF INIDA ..... Respondent

Through: Mr. Anil Kathuria, Standing Counsel with Mr. V.K. Nagpal, Advocate for AAI

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER

% **02.08.2018**

The appellants herein had entered into a contract for garbage disposal with the Delhi International Airport Ltd.('DIAL')/Airports Authority of India Ltd. ('AAI').

2. Issues and question arose whether service tax was chargeable on garbage disposal charges payable to the appellants. Consequently, security deposits furnished by the appellants in the form of FDRs were withheld.

3. The appellants had earlier filed WP(C) Nos.15095/2006 and 15096/2006, which were disposed of vide order dated 12.4.2012, the operative portion of which reads 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."

4. Contention of the learned counsels for the appellants is that service tax was not applicable on garbage disposal charges. However, the Service Tax Department was not impleaded as a party before the learned single Judge. They are not a party before us in the present appeal.

5. Learned counsel appearing for AAI states that they have already paid service tax on garbage disposal charges, as demanded. He also submits that the dispute in this regard stands adjudicated and decided by the Central Excise and Service Tax Appellate Tribunal (CESTAT), where the appellants were also impleaded as party.

6. Learned counsel appearing for the appellants states that, as per the pronouncement by the CESTAT, service tax was not payable on garbage disposal charges. Thus, two conflicting and divergent statements are made. We hesitate and would not venture into and decide which statement is correct in ~~a writ petition~~ an appeal and that too, in the absence of the Service Tax Department.

7. Learned counsel appearing for DIAL in LPA No.686/2017

states that a show cause notice has been issued by the Service Tax Department on levy of service tax on garbage disposal charges and the proceedings are pending.

8. In view of the aforesaid factual position, the learned single Judge had rightly observed that in a writ petition, it would not be appropriate to decide the question whether service tax ~~can~~ could be imposed on the garbage collection charges and if imposable who was liable to pay service tax.

9. There is an arbitration clause between the appellants and the DIAL/AAI. Impugned order leaves it open to the appellants to avail of other remedies as per law.

10. Learned counsel for the appellants states that they would write to the AAI and the DIAL to ascertain the present position regarding service tax dues and demand. If demand cannot be raised being barred by limitation or the issue has been decided, DIAL/AAI should inform and return the FDRs. It is open to the appellants to write letters to DIAL/AAI and we hope and trust that DIAL and the AAI will reply to the appellants and inform them of the correct factual position of the pending proceedings and disposal.

11. Recording the aforesaid, the appeals are dismissed with no order as to costs. All ~~the~~ pending applications are disposed of.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

AUGUST 02, 2018/tp