IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NOS.10821, 6135 & 6136 & 6236 OF 2015
AND
W.M.P.NOS.1 TO 3, 1 TO 4, 1 TO 4 & 1 TO 3 OF 2015

M/s.Lanco Tanjore Power Company Ltd
3rd Floor, 25 GN Chetty Road,
T.Nagar, Chennai - 600 017.

.. Petitioner in
W.P.No.10821 of 2015

M/s.OPG Energy Pvt.Ltd,
New No.36, Knowledge Towers,
4th floor, Sanjeevarayanpettai,
Anna Salai, Little Mount, Saidapet,
Chennai - 600 015

... Petitioner in
W.P.No.6135 of 2015

M/s.Saheli Exports Pvt ltd,
No.25, Sri Madhavan Nair Road,
Mahalingapuram, Nungambakkam,
Chennai - 600 034.

... Petitioner in
W.P.No.6136 of 2015

M/s.MMS Steel and Power Pvt. Ltd,
Represented by its
Assistant General Manager Mr.R.Srinivasan,
No.11, Balaji Avenue, 1st Street, 1st Floor,
T.Nagar, Chennai - 600 017.

... Petitioner in
W.P.No.6236 of 2015

Vs.

1. Union of India
   represented by the Secretary,
   Ministry of Petroleum and Natural Gas,
   Sastri Bhavan, New Delhi.

2. GAIL (India) Limited,
   GAIL Building, 16, Bhikaji Cama Place,
   R.K.Puram, Ring Road,
   New Delhi 110 066.

3. GAIL (India) Limited,
   Chief Manager (F & A),
   4th Floor, Saitha Plaza,
   Indira Gandhi Square, 10 Ft.Road,
   Puducherry 605 005.

4. State of Tamil Nadu represented by its Secretary,
   Commercial Tax Department,
   Fort St.George,
   Chennai.

5. Commissioner of Service Tax,
   G2/G, LTU, NBCC Plaza,
   Pushp Vihar, Saket,
   New Delhi - 110 017.

6. Tamilnadu Generation and Distribution
   Corporation (TANGEDCO),
   Rep by its Chairman,
   144, Anna Salai,
   Chennai - 600 002.

... Respondents in
W.P.No.10821 of 2015

1. Union of India
   represented by the Secretary,
   Ministry of Petroleum and Natural Gas,
   Sastri Bhavan, New Delhi.

2. GAIL (India) Limited,
   GAIL Building, 16, Bhikaji Cama Place,
   R.K.Puram, Ring Road,
   New Delhi 110 066.

3. GAIL (India) Limited,
   Chief Manager (F & A),
   4th Floor, Saitha Plaza,
   Indira Gandhi Square, 10 Ft.Road,
   Puducherry 605 005.

4. State of Tamil Nadu represented by its Secretary,
   Commercial Tax Department,
   Fort St.George, Chennai.

5. Commissioner of Service Tax,
   G2/G, LTU, NBCC Plaza,
   Pushp Vihar, Saket,
   New Delhi - 110 017.

... Respondents in W.P.Nos.
6135 & 6136 & 6236 of 2015

Prayer in W.P.No.10821 of 2015:

Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the third respondent in provisional debit note No.GAIL/PDY/F&A/2014-15/VAT/148 dated 25.02.2015 and the consequential communication of the third respondent vide email dated 07.04.2015 quash the same and consequently forbear the Second to Fifth Respondents from levying and collecting service tax as well as VAT in respect of the transmission charges payable by the petitioner for the gas being supplied to the petitioner.

Prayer in W.P.No.6135 of 2015:

Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records of the third respondent in provisional debit note No.GAIL/PDY/F&A/2014-15/VAT/167 dated 25.02.2015 and quash the same.

Prayer in W.P.No.6136 of 2015:

Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records of the third respondent in provisional debit note No.GAIL/PDY/F&A/2014-15/VAT/175 dated 25.02.2015 and quash the same.

Prayer in W.P.No.6236 of 2015:

Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records of the third respondent in provisional debit note No.GAIL/PDY/F&A/2014-15/VAT/163 dated 25.02.2015 and quash the same.

For Petitioners (in all W.ps.)	:	Mr.Vinod Kumar
For Respondents (in all W.Ps.)	:	Mr.A.P.Srinivas Standing counsel for R1 & R5 Mr.Joseph Prabakar for R2 & R3 Mr.A.N.R.Jaya Prathap Government Advocate for R4 No appearance for R6 (in W.P.No.10821 of 2015)

COMMON ORDER

By this common order all the writ petitions are being disposed. The respective petitioners are aggrieved by the impugned provisional debit notes issued to them by the 2nd/3rd respondent and have prayed for quashing the same.

2. Respective petitioners have signed Gas Sales and Transmission Agreement (GSTA) with the 2nd respondent a supplier of natural gas for production of electricity. Under the agreement the 2nd/3rd respondent were charging transmission charges for delivery of the natural gas up to the point of delivery of the respective petitioners power plant.

3. On these charges, the 2nd respondent was also being service tax and passing on the incidence of such tax to the petitioners. This amount was being charged on a fixed on the basis. However, in 2014 the Petroleum and Natural Gas Regulatory Board passed an order which enjoined 2nd/3rd respondent to charge transmission charges on the proportionate value of the gas supply only.

4. In the light of the above development, the 2nd respondent represented by the 3rd respondent issued credit notes to the respective petitioners on the transmission charges and the proportionate service tax paid on collected. However, the 3rd respondent has proceeded to issue the provisional debit notes to the respective petitioners by including the same into the taxable turnover for the VAT paid under the provisions of the Tamil Nadu VAT Act, 2006 and the interest thereon retrospectively.

5. It is the contention of the petitioner that the 4th respondent being a “State” within the meaning of Article 12 of the Constitution of India cannot act unfairly by unilaterally debiting the respective petitioners so as to dilute the order of the Petroleum and Natural Gas Regulatory Board and debit their accounts. It is further submitted that after the writ petition was filed, the 3rd respondent has also issued a letter dated 7.4.2015 to the respective petitioners wherein they have stated that they are discontinuing with the practice of collection service tax on transmission charges for the sale of gas with effect from 1.4.2015 and that such amounts would be charged subject to outcome of their service tax appeal that is pending before the Customs Excise Service Tax Appellate Tribunal, New Delhi.

6.In support of the present writ petitions, the learned counsel for the petitioners has relied on the following cases:-

I. HarbanslalShahnia and Another Versus Indian Oil Corporation Ltd. (2003) 2SCC107;

II. Popcorn Entertainment Another versus City Industrial Development Corporation and Another (2007) 9SCC 493.

7. The $2^{nd}/3^{rd}$ respondents have contested the maintainability of the present writ petitions and submit that these writ petitions are liable to be dismissed.

8. I have heard the learned counsel for the petitioners and the learned counsel for the 2^{nd} and 3^{rd} respondent who are contesting the present writ petitions. The GSTA agreement signed between the respective petitioner and the 2^{nd} respondent contains an arbitration clause for resolution of dispute between them. The clause is reads as under :-

> 15.1. GAIL (India) Limited has framed GAIL (India) Ltd Conciliation Rules 2010 in conformity with supplementary to Part-III of the Indian Arbitration and Conciliation Act 1996 for speedier, cost effective and amicable settlement of disputes through conciliation. A copy of the said rules is made available on GAIL's web site www.gailonline.com for reference. Unless specified otherwise in the Agreement all disputes shall be settled in accordance with the said GAIL (India) Ltd Conciliation Rules 2010.

9. Since the dispute between the respective petitioners and the the $2^{nd}/3^{rd}$ respondents are purely a commercial dispute which can be resolved in an arbitration proceeding in terms of the arbitration clause, I am of the view that these present writ petitions are liable to be dismissed as the petitioners have an alternate remedy which is more efficacious. The respective petitioners should therefore invoke the arbitration clause as per the respective agreement and proceed to resolve the dispute with the 2^{nd} respondent.

10. Therefore, these writ petitions are liable to be dismissed. Since the petitioners had obtained an interim relief which was in operation all along during the pendency of these writ petitions, same shall continue for a period of another 6 months from the date of receipt of copy of this order.

11. Petitioner may file appropriate application under Section 179 of the Arbitration and Conciliation Act, 1996 to continue the same under the provisions of the aforesaid Act if desired. These writ petitions thus stand dismissed with the above observations. Consequently, connected miscellaneous petitions are closed. No cost.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary, Union of India,
   Ministry of Petroleum and Natural Gas,
   Sastri Bhavan, New Delhi.

2. The Secretary,
   Commercial Tax Department, Fort St.George, Chennai.

3. The Commissioner of Service Tax,
   G2/G, LTU, NBCC Plaza, Pushp Vihar, Saket,
   New Delhi - 110 017.

4. The Chairman, Tamilnadu Generation and Distribution
   Corporation (TANGEDCO),
   144, Anna Salai, Chennai - 600 002.

+4cc to Mr.Joseph Prabakar, Advocate, S.R.No.7968
+1cc to Mr.Vinod Kumar, Advocate, S.R.No.6956
+1cc to the Special Government Pleader(T), S.R.No.7744

W.P.Nos.10821, 6135 &
6136 & 6236 of 2015
and W.M.P.Nos.1 to 3, 1 to 4,
1 to 4 & 1 to 3 of 2015

MR(CO)
CS/28/05/2020