**16.01.2023**

Court : 04
Item : 02
Matter : **FMA**
Status : **DISMISSED**
Transcriber: nandy

**FMA 1389 of 2022**
with
**CAN 1 of 2022**

Prakash Chandra Mohanty
Vs.
M/s. BBTA-RCPL (JV)

**Mr. Sanjoy Bose, Advocate**
**Mr. Priyankar Basu Mallick, Advocate**

……for the Appellant

**Mr. Asish Bagchi, Senior Advocate**
**Mr. Anirban Majumdar, Advocate**
**Mr. Shamit Sanyal, Advocate**
**Mr. Somnath De, Advocate**

……for the Respondent

The instant appeal arises from an order passed under Section 17 of the Arbitration and Conciliation Act, 1946 by the Arbitrator directing a sum of Rs.17,35,827/- on account of GST liability to be appropriated from the bank account with SBI Main Branch, Jamtara. Amidst pendency of the arbitral proceeding, an application for withdrawal of a sum of Rs.1,05,88,187/- was taken out claiming to be due. A supplementary affidavit was affirmed and filed disclosing various documents including the order of the Joint Commissioner of Revenue of Appeal, crystallizing the liability towards GST or IGST. The said appeal was filed when the GST registration was cancelled for non-furnishing of the return as well as payment towards the GST, but was eventually allowed subject to the payment of the liability. It appears that on the basis of the invoice, there is a liability towards GST to the extent of Rs.17,35,827/- .

The Arbitrator permitted the respondent to withdraw the entire amount as claimed in the said application but was conscious of the liability towards GST and directed the said amount to be appropriated from the said bank account.

According to the learned Advocate for the respondent, there is no liability accrued upon him and the GST was in fact, paid by the respondent and therefore, the appellant cannot seek an order of such nature from the Tribunal.

Various documents have been filed before us evincing the accrual of the liability upon the respondents towards the GST as well as the GST having paid to the credit of the Government which includes liability of GST in respect of the appellant. It is submitted by the Counsel appearing for the respondent, on instruction, that the said sum of Rs.17,35,827/- has, in fact, been credited to the GST department in accordance with law and, therefore, the contention of the appellant is unfounded and untrue.

In view of the fact that the GST is a statutory liability and, therefore, nobody can escape such liability as it attracts various penal consequences. The moment the respondents attempted to have cleared off the GST liability, as permissible in law which includes the liability for the instant transaction, we do not find any justification in the submission of the appellant that the aforesaid amount is not recoverable legally, as long as the same is not paid to the GST department.

We thus do not find any ground to interfere with the impugned order at this stage.

The appeal being **FMA 1389 of 2022** is thus **dismissed**. No order as to costs.

**(Harish Tandon, J.)**

**(Prasenjit Biswas, J.)**