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

% *Date of Decision: 29th March, 2023*

+ **W.P.(C) 5056/2018 & CM No.54995/2022**

GAIL (INDIA) LIMITED

..... Petitioner

Through: Mr. Vikas Mehta & Mr. Apoorv
Khatar, Advs.

Versus

DIRECTORATE GENERAL OF GST
INTELLIGENCE & ANR.

..... Respondents

Through: Mr. Satish Aggarwala & Mr. Gagan
Vaswani, Advs. for R-1.
Mr. Ankit Parhar, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

1. The petitioner – GAIL (India) Ltd. (hereafter ‘**GAIL**’) – is a Central Public Sector Undertaking engaged in the business of transportation of petroleum and natural gas products.

2. The petitioner has filed the present petition impugning the order dated 08.03.2018 (hereafter ‘**the impugned order**’) issued by respondent no.1 under Section 87(b) of Chapter-V of the Finance Act, 1994 (hereafter the ‘**Act**’) read with Section 174(2)(e) of the Central Goods & Services Tax Act, 2017 (hereafter the ‘**CGST Act**’) calling upon GAIL to pay a sum of ₹13,13,07,485/- which, respondent no.1 believes, is owed by GAIL to respondent no.2.

3. GAIL's case as set out in the present petition is that it has not admitted that any amount is due and payable to respondent no.2; therefore, there is no question of GAIL making any payment to respondent no.1 on account of any amount due to respondent no.2. Consequently, GAIL cannot be treated as an 'assessee in default' as stated in the impugned order dated 08.03.2018.

4. Briefly stated, the relevant facts necessary to address the controversy in the present petition are as under:

4.1 GAIL invited tenders on 12.01.2011 & 24.01.2011 for laying of pipelines for the spur lines to Bilwara and Chittorgarh as well as augmentation of existing Vijaipur-Kota pipeline.

4.2 Respondent no.2, is engaged in the business of executing such works and submitted its bid pursuant to GAIL's invitation to tender for the works. Respondent no.2's bid was accepted and the contract for execution of the works was awarded to it.

4.3 GAIL claims that thereafter, sometime in August, 2013, it found that respondent no.2 had submitted certain fabricated documents for securing the contract for executing the works in question.

4.4 In view of the above, on 17.01.2014, GAIL issued a letter terminating the contract with respondent no.2. GAIL also blacklisted respondent no.2 from entering into any dealings with GAIL for a period of ten years.

4.5 The aforesaid action of GAIL led to respondent no.2 raising a dispute and seeking reference of the disputes to arbitration. Respondent

no.2 filed an application (being OMP No.83/2014) before this Court seeking interim measures of protection under Section 9 of the Arbitration & Conciliation Act, 1996 (hereafter the 'A&C Act'). Respondent no.2 sought and was granted an *ad interim* order restraining GAIL from encashing the bank guarantees amounting to ₹7 crores. Subsequently, the application under Section 9 of the A&C Act was directed to be considered by the Arbitral Tribunal as an application under Section 17 of the A&C Act.

4.6 In the meanwhile, respondent no.1 had also initiated proceedings in respect of statutory dues owed by respondent no.2.

4.7 On 26.10.2017, respondent no.1 issued summons to GAIL requiring it to submit information in respect of respondent no.2. It is relevant to note that at the relevant time, the respondents claim against GAIL was pending adjudication before the Arbitral Tribunal.

4.8 Based on the information, as submitted by GAIL, respondent no.1 issued the impugned order dated 08.03.2018 requiring GAIL to pay an amount of ₹13,13,07,485/-.

4.9 The present petition was filed on 04.05.2018 and an interim order was passed restraining respondent no.1 from recovering any amount pursuant to the impugned notice.

4.10 Respondent no.1 was also granted an opportunity to file a counter affidavit to the petition.

4.11 During the course of the present proceedings, the arbitration proceedings *inter se* GAIL and respondent no.2 culminated into arbitral

awards (three in numbers).

4.12 GAIL and respondent no.2 have entered into an understanding to settle their disputes. In terms of their settlement, GAIL has agreed to pay respondent no.2 an amount of ₹6.54 crores (approximately), subject to respondent no.2 furnishing an invoice of ₹1.01 crores (approximately). In addition, GAIL was also required to handover a Performance Bank Guarantees (thirty-four in numbers) amounting to ₹4.25 crores.

4.13 In the aforesaid context, GAIL filed an application (being CM No.54995/2022), *inter alia*, praying as under:

- “A. Permit the Petitioner to pay to the Respondent No.2 an amount of Rs.6.54 Cr. (Approximately) subject to submission of Invoice of Rs.1.01 Cr. (Approximately) by Respondent No.2 as full & final amount for all disputes between Petitioner & Respondent No.2;
- B. Permit the Petitioner to handover the 34 performance bank guarantees amounting to 4.25 Cr. (Approximately) available with Petitioner in pursuance of full & final settlement of various contracts to the Respondent No.2;”

5. Mr. Satish Aggarwala, learned counsel appearing for respondent no.1 handed over a short reply to the said application. He also drew our attention to paragraph 9 of the said reply whereby respondent no.1 has averred that it was always respondent no.1's intention to demand from GAIL any amount payable or any amount which may become payable on account of the settlement in the light of the Arbitral Awards and the impugned notice was issued for the aforesaid purpose. Respondent no.1 also prays that directions may be issued to GAIL to pay any amount

held by GAIL on account of respondent no.2, as and when it becomes payable, to the government exchequer in light of the impugned order.

6. Insofar as return of bank guarantees to respondent no.2 is concerned, clearly, they are not a subject matter of the impugned order and there is no impediment for GAIL to return the said bank guarantees to respondent no.2. It is also not respondent no.1s' case that GAIL is obliged in any manner to invoke any bank guarantees to make any payments to respondent no.1.

7. Insofar as GAIL's request to permit respondent no.2 to pay an amount of ₹6.54 crores is concerned, admittedly, the said amount is not due to respondent no.2 unless respondent no.2 issues an invoice of ₹1.01 crores.

8. The learned counsel appearing for respondent no.2 submits that its GST registration has been cancelled and respondent no.2 would require to restore the same for issuing the invoice which may take some time.

9. It is relevant to note that the impugned order is based on the premise that GAIL owes sums in excess of ₹13,13,07,485/- to respondent no.2. However, as stated above, GAIL has never admitted the said amount as due and payable. The order passed by respondent no.1 is in the nature of a garnishee order. Plainly, respondent no.1 cannot compel GAIL to pay any amount which is not due and payable by GAIL to respondent no.2. The impugned order is not open ended and directs GAIL to deposit an ascertained sum of money.

10. In the given facts, it is clear that the impugned order directing

GAIL to pay a sum of ₹13,13,07,485/- is not sustainable.

11. There is no material to show that any such amount is due and payable by GAIL. GAIL and respondent no.2 are *ad-idem* that the only amount that GAIL is required to pay is approximately ₹6.54 crores after respondent no.2 has issued the invoice of ₹1.01 crores

12. In view of the above, the impugned order is set aside. However, this Court also considers it apposite to restrain GAIL from making any payments to respondent no.2 for a period of four weeks from today.

13. It is clarified that respondent no.1 is not precluded from taking such steps as may be available in law for securing the interests of the Revenue.

14. The petition is disposed of in the aforesaid terms.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

MARCH 29, 2023

‘gsr’