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

% **Date of Decision : 10.09.2024**

+ **W.P.(C) 12511/2024 & CM APPL. 51976/2024**

ASSOCIATION OF POWER PRODUCERS

.....Petitioner

Through: Mr. Shri Venkatesh, Advocate
alongwith Mr. Ashutosh K.
Srivastava and Mr. Aashwyn Singh,
Advocates.

versus

**SOLAR ENERGY CORPORATION OF
INDIA LIMITED & ORS.**

.....Respondents

Through: Ms. Shikha Ohri, Ms. Ritika Singh
and Mr. Kartik Sharma, Advocates
for respondent no.1.
Mr. Ravi Prakash, CGSC along with
Mr. A. Khandelwal, Ms. Isha Kanth,
Mr. Rishabh Kashyap and Mr. Sanad
Dobwal, Advocates for R-2, 3 and 4.
Mr. Anurag Ojha, Sr. SC along with
Mr. Subham Kumar, Advocates for
R-5 and R-6.

**CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE SACHIN DATTA**

VIBHU BAKHRU, J. (ORAL)

1. The petitioner claims to be an Association of Power Producers and



states that it has filed the present petition on behalf of its members.

2. The petitioner prays that an appropriate writ or order or directions be issued to respondent no.1 [Solar Energy Corporation of India Limited (SECI)] and respondent no.2 (Union of India, through Ministry of Power) to decide on the clarifications sought by the petitioner in terms of its representation dated 27.08.2024 in a time bound manner.

3. The petitioner also prays that directions be issued to the Central Board of Indirect Taxes (CBIC) to clarify the applicability of the Goods and Services Tax (GST) on Battery Energy Storage Systems (BESS).

4. On 26.06.2024, respondent no.1 invited Request for Selection (RfS) for setting up of 1000 MW/2000 MWh standalone BESS in India under Tariff-Based Global Competitive Bidding. Clause 30.2 (III)(e) of the said RfS, which is the centre of the controversy in the present petition, expressly provides that tariff to be quoted in the Financial Bid by bidders would be exclusive of GST. The GST on the said service (BESS) would be passed through to the Buying Entity. The said clause is set out below :-

“(e) Tariff to be quoted in the Financial Bid shall be exclusive of GST (for providing the storage as a service). GST levied on the storage service being provided by the Project, if any, shall be passed through to the Buying Entity.”

5. According to the petitioner, the said clause has created some confusion in the minds of the bidders. The learned counsel submits that if GST is leviable on BESS service then, the bidders would be entitled to input tax credit (ITC), however, if GST is not leviable on the service in question, then the bidders would not be entitled to ITC on their input supplies. He



submits that the same would make a difference of as much as 20% in the value of the bids. He also contends that there was no ambiguity in the applicability of the GST at the time of the issuance of RfS, however, the same has arisen on account of the Government of India, Ministry of Power issuing the Draft 'Tariff based competitive bidding guidelines for procurement of storage capacity/stored energy from Pumped Storage Plants' (Draft PSP Guidelines), which were issued on 22.08.2024. In terms of the Draft PSP Guidelines, GST is applicable to the service of storage of energy from Pumped Storage Plants.

6. He submits that but for the issuance of the Draft PSP Guidelines, there was no ambiguity that the service of BESS would not be exigible to GST.

7. It is in the aforesaid context that the petitioner prays that clarifications be issued by respondent no.1, Government of India, Ministry of Power, as well as the CBIC.

8. The learned counsel for respondent no.1 points out that the RfS was issued on 26.06.2024. The last date of submitting of the bids was 12.08.2024 and the pre-bid meeting for clarifying any issue was held on 12.07.2024. She submits that the petitioner has approached this Court on the eve of the opening of the bids which is scheduled for tomorrow (11.09.2024) and therefore, the petition ought to be rejected.

9. She also states that the Draft PSP Guidelines issued by the Government of India, Ministry of Power on 22.08.2024 are not applicable to RfS. Therefore, the entire premise on the basis of which the petitioner has approached this Court, is erroneous.



10. We have briefly heard the counsel for the parties.

11. The petitioner's prayer that directions be issued to CBIC to clarify the applicability of GST cannot be acceded to. GST is chargeable by virtue of the Central Goods and Services Tax Act, 2017 (hereafter *the CGST Act*), the State Goods and Services Tax Act, 2017 (hereafter *the SGST Act*) and the Integrated Goods and Services Tax Act, 2017 (hereafter *the IGST Act*).

12. Any contentious issue as to whether Central GST, State GST, or Integrated GST is leviable on services is required to be answered with reference to the said statutes and the rules made thereunder. There is no provision in the said statutes requiring the CBIC to entertain queries from taxpayers or to provide clarifications regarding the statutory provisions pursuant to queries posed by taxpayers.

13. In terms of Section 168 of the CGST Act/ SGST Act, the CBIC, if it considers it expedient for the purpose of uniformity in the implementation of the CGST Act/SGST Act, may issue orders, instructions or directions to the Central Officers as it may deem fit. However, there is no provision where CBIC is required to issue clarifications on separate queries raised by taxpayers directly.

14. Insofar as the RfS is concerned, there is no ambiguity in the provisions of the RfS that the bids would be evaluated on the basis of tariff *sans* GST.

15. The petitioner as well as its members have to ascertain whether GST is payable in reference to the relevant GST statutes (the CGST Act/ the SGST Act/ the IGST Act and the Rules made thereunder). Respondent no.1



cannot issue any binding clarification as to the chargeability of the BESS service to tax.

16. We also find merit in the respondents' contention that the present petition is highly delayed. If the bidders had entertained any apprehension regarding the terms and conditions of RfS, the same were required to be clarified in the Pre-Bid Meeting held on 12.07.2024.

17. In view of the above, we are unable to accept that the prayers as sought for by the petitioner can be granted.

18. The petition is, accordingly, dismissed.

19. The pending application is also disposed of.

VIBHU BAKHRU, J

SACHIN DATTA, J

SEPTEMBER 10, 2024

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