

2023/DHC/001473

\$~25

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

%

Date of Decision: 17.02.2023

+

W.P.(C) 2083/2023, CM Nos. 7918/2023, 7919/2023 & 7920/2023**GLOBUS REAL INFRA PVT LTD**

..... Petitioner

Through: Mr. Jayant Mehta, Sr. Adv. with
Ms. Ranjana Roy Gawai, Ms.
Vasudha Sen, Mr. Vineet
Wadhwa & Ms. Nikita Sethi,
Advs.

Versus

**ADDITIONAL COMMISSIONER,
CGST APPEALS II**

..... Respondent

Through: Ms. Anushree Narain & Mr.
Mayank Srivastava, Advs.

CORAM:**HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MR. JUSTICE AMIT MAHAJAN****VIBHU BAKHRU, J.**

1. The petitioner has filed the present writ petition impugning an Order-in-Appeal No. 345/2021-2022, dated 31.03.2022 (hereafter '**the impugned order**') passed by the Commissioner of Central Tax Appeals-II, New Delhi (hereafter '**the Appellate Authority**'). By the impugned order, the Appellate Authority dismissed the appeal filed by

2023/DHC/001473

the petitioner against the order-in-original dated 06.04.2021, whereby the petitioner's application for refund of ₹4,24,16,574/- under Section 54 of the Central Goods and Services Tax Act, 2017 (hereafter '**CGST Act**') was rejected.

Brief Facts

2. On 01.04.2015, the petitioner had entered into a "Memorandum of Agreement for Lease" with Bhushan Steel Limited (now known as Tata Steel BSL Limited). In terms of the said agreement, the petitioner leased its property, Farm House no. 20, 19th Avenue Mulsari, Village Rajokri, Tehsil Vasant Vihar, New Delhi (hereafter '**the property**'), to Bhushan Steel Limited (BSL).

3. On 26.07.2017, State Bank of India, a financial creditor of BSL, initiated Corporate Insolvency Resolution Process (CIRP) against BSL under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereafter '**the Code**') as it had defaulted in repayment of financial assistance availed from the said bank. The said petition was admitted and an Interim Resolution Professional was appointed.

4. During the Corporate Insolvency Resolution Process (CIPR), the Resolution Professional identified the petitioner as a connected identity of BSL (the corporate debtor), on the ground that the employees of BSL were directors of the petitioner at the material time. According to the Resolution Professional, the lease in terms of the Memorandum of Agreement for Lease dated 01.04.2015, was of a nature of preferential transaction under Section 43 of the Code.

2023/DHC/001473

5. Tata Steel Limited, a prospective resolution applicant, submitted a resolution plan in respect of BSL. The same was approved by a committee of creditors at its meeting held on 20.03.2018. The resolution plan was also approved by the National Company Law Tribunal by its order dated 15.05.2018.

6. The petitioner states that since the lease rentals were not being paid, it was compelled to sell the property to pay the dues of the bank. The property was sold on 12.09.2018.

7. On 18.11.2020, the petitioner filed a Refund Application under Section 54 of the CGST Act (ARN No. AA07112009694H) before the Assistant Commissioner, Central Goods and Services Tax, Commissionerate, South Delhi (hereafter '**the Adjudicating Authority**') seeking refund of GST paid on lease rentals "*on account of assessment/provisional assessment/appeal/any other order*" for the period of 01.07.2017 to 30.07.2018.

8. The Adjudicating Authority did not process the petitioner's application and issued a show cause notice (hereafter '**SCN**') dated 11.01.2021, calling upon the petitioner to show cause as to why its refund claim should not be rejected under the provisions of Section 54 of the CGST Act. Further, the petitioner was directed to furnish a reply to the SCN in FORM-GST-RFD-09 within 15 days from the date of service of the SCN and to appear before the Adjudicating Authority for a personal hearing on 15.11.2020 at 13:00 hrs.

9. The petitioner responded to the SCN by a letter dated

2023/DHC/001473

23.01.2021. The contention advanced by the petitioner were not accepted by the Adjudicating Authority and by an order dated 06.04.2021, the petitioner's application for refund of ₹4,24,16,574/- was rejected.

10. The Appellate Authority rejected the petitioner's appeal by the impugned order. This led the petitioner to file the present petition.

Reasons and Conclusions

11. The petitioner has assailed the impugned order, principally, on the two grounds.

12. First, that the impugned order was passed in violation of principles of natural justice; and second, that the Appellate Authority had failed to appreciate that the lease was nullified in terms of the resolution plan.

13. It is important to note that the SCN dated 11.01.2021 had proposed rejection of the petitioner's application on the premise that the lease of the property was required to be considered as supply of the services and the same were required to be valued in terms of Section 15 of the CGST Act. The Adjudicating Authority had reasoned that there was no specific exclusion under Section 15 of the CGST Act from the value of the supply in respect of "non-recovery of payments of bad debts". Thus, according to the Adjudicating Authority, the fact that the petitioner had not recovered the lease rentals on which GST had been paid, it did not entitle it to any refund

2023/DHC/001473

because a liability to pay GST would not stand extinguished on that ground.

14. The Adjudicating Authority passed the order dated 06.04.2021 adjudicating the petitioner's application on the lines as proposed in the SCN. The relevant extract of the said order setting out the reason for the same reads as under:

“12. From the above stated facts, it is established that the taxpayer is involved in taxable supplies as per Section 7 of CGST Act, 2017, therefore, liable to discharge tax liability u/s 9 of CGST Act, 2017 read with Section 13 & Section 15 of the COST Act, 2017. In accordance with these provisions, the tax liability established on the taxpayer which they have discharged rightly. Hence, whether both the parties are related or not, if there is a supply for a consideration in the course or furtherance of business, GST will be levied whether the consideration is realized or not.”

15. The Appellate Authority upheld the aforesaid decision of the Adjudicating Authority. The contention that the impugned order was passed in violation of principles of natural justice is not persuasive. The record indicates that the petitioner was given an opportunity of a personal hearing but none had appeared on behalf of the petitioner. The Appellate Authority had fixed the hearing on 23.02.2022 but the petitioner's advocate could not attend the hearing due to a bereavement in his family. He had, therefore, sought an adjournment of the scheduled hearing, which was granted. The hearing of the appeal was adjourned to 14.03.2022, however, on that date as well, the

2023/DHC/001473

petitioner's advocate did not appear on the ground that he was engaged in a matter before the Supreme Court. He requested that the hearing be scheduled after a period of thirty days. The Appellate Authority adjourned the hearing but did not accede to the request of deferring it for a period of thirty days; the hearing was adjourned to 24.03.2022. The petitioner's advocate, once again, requested for an adjournment but the said request was not accepted.

16. It is clear from the above that the Appellate Authority had granted sufficient opportunity of personal hearing to the petitioner but the petitioner had failed to avail the same. The assumption that the Appellate Authority was bound to accede to repeated request for adjournment is erroneous. The contention that the impugned order has been passed in violation of principles of natural justice is bereft of any merit.

17. The key question to be addressed is whether the petitioner was liable to pay GST in respect of the lease of the property in view of the resolution plan terminating all agreements/arrangements between BSL and other related parties. Clause 10.1.6 of the resolution plan is relevant and set out below:-

“Clause 10.1.16:

“The Adjudicating Authority shall direct termination of all agreement/arrangements between the Company and the persons classified as related parties (in accordance with the Applicable Laws), including without limitation the agreements/arrangements, with no Liability to the

2023/DHC/001473

company. All the claims of the company against such related parties and liabilities of such related parties towards the company shall remain outstanding, due and payable in accordance with their terms.”

18. There is no dispute that the resolution plan was sanctioned by the National Company Law Tribunal and is binding. It is the petitioner’s contention that, in terms of the sanctioned plan, the ‘Memorandum of Agreement for Lease’ dated 01.04.2015 was terminated without any liability on the part of BSL to pay or make any payment.

19. It is contended on behalf of the petitioner that the transaction, being a related party transaction, was nullified and this was not a case of supply of services where its value was required to be determined on an arm’s length basis. The entire transaction of lease was brought into question and was terminated under the resolution plan. Thus, according to the petitioner, there was no supply of services. This contention has not been considered by the Appellate Authority. The impugned order largely proceeds on the basis that the supply of services was admitted and the refund of GST was sought on account of non-recovery of the lease rentals.

20. In the circumstances, we consider it apposite to set aside the impugned order and remand the matter to the Appellate Authority to consider the aforesaid contention and pass a speaking order after affording the petitioner a reasonable opportunity to be heard.

2023/DHC/001473

21. This petition is disposed of in the aforesaid terms. All pending applications are also disposed of.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

FEBRUARY 17, 2023
Ch

