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

Date of decision: 21st May, 2025

\+ **W.P.(C) 10635/2022**

DELHI METRO RAIL CORPORATION LTD .....Petitioner

Through: Ms. Rhea Verma & Ms. Kavita Chaturvedi, Advs.

versus

THE COMMISSIONER (APPEALS-II) & ANR. .....Respondents

Through: Mr Aditya Singla, SSC, CBIC with Ms. Shreya Lamba & Mr. Arya Suresh, Advs.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

JUDGEMENT

Prathiba M. Singh, J.

1. This hearing has been done through hybrid mode.

2. The present petition has been filed by the Petitioner-Delhi Metro Rail Corporation (hereinafter, referred to as *'DMRC'*) under Article 226 of the Constitution of India challenging the impugned orders dated 03rd March, 2021 and 18th May, 2021, *vide* which applications for refund filed by the Petitioner have been rejected.

3. The brief background of the case is that there was a rental agreement dated 08th May, 2015 entered into between DMRC and M/s Kamal Sponge Steel and Power Limited (hereinafter, '*KSSPL*'), under which disputes had arisen and the same was referred to conciliation.

The said dispute was resolved finally and the resolution is evident from the following two documents.

- The Minutes dated 09th October, 2020 and,
- The Conciliation Agreement dated 03rd August, 2021.

Pursuant to the settlement entered into between the parties, the payment liability of KSSPL was reduced by up to 40%, which consequently meant that DMRC had made an excess payment of tax to the tune of Rs. 83,36,182/-, which was calculated and deposited on the basis of (pre-dispute) provisions of the lease/rental agreement.

4. When DRMC filed a refund application in this regard in the year 2021, the Respondent-GST Department (hereinafter *'Department'*), rejected the refund application on the ground of limitation *vide* the impugned orders dated 03rd March, 2021 and 18th May, 2021.

5. The Department's stand was that the limitation period for filing the refund application would commence from 2017, when the tax payments were made. However, DMRC's contention was that, in the absence of conciliation, it was not possible for it to ascertain the exact amount payable by KSSPL to DMRC.

6. Today, in support of its case, ld. Counsel for the DMRC relies upon the dispute resolution which took place between the DMRC and KSSPL. Based on the said documents, it is the contention of the ld. Counsel for the Petitioner that the case would be clearly covered under Explanation 2(d) of Section 54 of the Central Goods and Services Act, 2017 (hereinafter *'CGST Act*'). On the other hand, it is the Department's contention that the same would fall within the scope of Explanation 2(h) of Section 54 of CGST Act. For ease of reference, the

said provisions are extracted below:

> *54. Refund of tax.—*
> *(1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application* ***before the expiry of two years from the relevant date*** *in such form and manner as may be prescribed:*
>
> *Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in the return furnished under section 39 in such manner as may be prescribed.*
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> ********
>
> *Explanation. —For the purposes of this section,—*
> *(2) 'relevant date' means—*
> *(d) in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court, the date of communication of such judgment, decree, order or direction;*
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> *(h) in any other case, the date of payment of tax.*

7. Ld. Counsel for the Respondents, also relies upon the counter affidavit which has been filed. The relevant portion of the said counter affidavit reads as under:-

> *13. It is humbly submitted that the content of* ***Para 3.3*** *is incorrect and denied, except to the extent of facts on record****. It is submitted that the Petitioner had initially paid the amount of GST levied in accordance with Section 9 of CGST Act, 2017 based on invoices raised for lease rentals. Further after being acknowledged the excess payment made by the appellant, there was sufficient opportunity with the taxpayer to issue Credit Notes under Section 34 of CGST Act, 2017 and adjust the excess paid tax accordingly. However, the Petitioner failed to adjust the excess paid GST by***

> ***<u>way of issuing Credit Notes to its recipient. Furthermore, Petitioner have also failed to file refund Claim within the time limit prescribed under Section 54 of CGST Act 2017. The Petitioner has lost two opportunities to adjust the excess paid GST which are provided under the provision CGST Act, 2017. Moreover, any refund claim filed before the department can only be processed if the claim is filed in accordance with the provisions of Section 54 of the CGST Act, 2017.</u>*** *The departmental authority has no jurisdiction to go beyond the provisions made under the Act and the period of Limitation provided thereunder*:

8. The Court has considered the matter. The short question is whether the refund applications filed by the DMRC were within time or not. In other words, whether the '*relevant date*' is to be read in terms of explanation 2(d) or 2(h) of Section 54 of the CGST Act. It is noticed that explanation 2(h) relied upon by the Department is a residual clause. Whereas explanation 2(d) is clear to the extent that the same shall be applicable when tax becomes refundable as a **<u>consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any Court.</u>**

9. It is a reasonable assertion that the exact extent of tax payable is not ascertainable at the initial stages in situations where the value of the subject matter contract is disputed. In such circumstances, the tax payments to the Department are made in advance by the concerned Assessee, and it is only when the dispute is subsequently resolved/settled that the exact extent of tax payable/refundable becomes ascertainable. In other words, until and unless the disputes themselves

get resolved, there is no way for the Assessee to ascertain as to whether the provisional tax payments made ad-interim are in excess or not.

10. In the present case, the Disputes Resolution Clause in the rental agreement dated 08th May, 2015 contemplated both amicable resolution and, thereafter, arbitration. For the present purpose, the amicable resolution clause is relevant and is set out below:

> *"12A Amicable Resolution*
> *12.1 1 Save where expressly stated to the contrary in this Agreement any dispute, difference or controversy of whatever nature between the Parties, howsoever arising under, out of or in relation to this Agreement (the "Dispute") shall in the first instance be attempted to be resolved amicably in accordance with the procedure set forth in the clauses below.*
> *12.1.2 Except where otherwise provided for in the Agreement, all questions and disputes arising between the parties pertaining or relating to the Agreement directly or indirectly connected with the Agreement shall in the first place be referred to a sole conciliator to be him as the case may be. There will be no objection if the sole conciliator so appointed is an official of DMRC of the rank of Deputy and above.*
> *12.1.3 The conciliator shall make the settlement agreement after the parties reach agreement and give an authenticated copy thereof to each of the parties. The settlement agreement shall be final and binding on the parties. The settlement agreement shall have the same status and effect as arbitration award.*
> *12.1.4 The views expressed, or suggestions made or the admissions made by either party in the course of conciliation proceeding shall not be introduce as evidence in any arbitration proceedings."*

11. Therefore, when a dispute arose between the parties, a Conciliator was appointed who had then held various meetings. Finally, vide the minutes of the meeting dated 24th July, 2020, the terms were

broadly agreed by the parties, which included a reduction of the lease amount by 40% and a reduction of maintenance charges as well. These minutes were approved by the Managing Director, DMRC on 8th September, 2020. Finally, on 9th October, 2020, the Conciliation Agreement was entered into between the parties. The minutes dated 09th October, 2020, and the conciliation agreement reads as under:

> *"2.3 That owing to several disputes and differences having arisen between KSSPL & DMRC, KSSPL invoked the Dispute Resolution clause as per Article 12 of the License Agreements vide letters dated 23.05.2018 & 03.07.2018. Thus, Conciliation proceedings were started by KSSPL as per the provisions of Arbitration & Conciliation Act, 1996. True copies of the Dispute Resolution Clause in both the License Agreements is enclosed as* ***Annexure-P7 (Colly.)****.*
>
> *2.4 That after several meetings in conciliation proceedings between the parties, Minutes were issued by the Conciliator on 15.07.2020, 16.07.2020 and 24.07.2020, thereby recording the proposed settlement between the parties in respect to both the 3rd Floor and 5th Floor.* ***As per the same, parties had agreed that the lease rentals for the period, July, 2017 to March, 2019, shall be reduced/revised retrospectively to 60% (reduced by 40%) and maintenance charges for the same period shall be revised to (actual expense + 20%).*** *True copies of Minutes dated 15.07.2020, 16.07.2020 and 24.07.2020 are enclosed as* ***Annexure-P8 (Colly.).***
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> *2.5 The said Minutes and the proposed Settlement was approved by the Managing Director, DMRC, on 08.09.2020. Subsequently, vide letters dated 09.10.2020, consent was received from the Contractor, KSPPL, to the settlement recorded in the Minutes by Conciliator. Thus, a binding Agreement came into existence between the parties.* ***As per the said Contract/ Agreement, the lease rentals for the period, July, 2017 to March, 2019, were reduced/revised retrospectively to 60% (reduced by 40%)***

> ***and maintenance charges for the same period were revised to (actual expense + 20%), on grounds of deficiency in provision of services on part of DMRC during the said period.*** *As a result, the actual transaction value of monthly lease rent and maintenance charges was reduced from the initial agreed value which led to the Petitioner ending up making excess payment to the government to the tune of Rs.83,36,182/- (Rupees Eighty Three Lacs Thirty Six Thousand One Hundred and Eighty Two Only) for the period from July, 2017 to March, 2019. True copies of letters dated* ***09.10.2020*** *are enclosed as* ***Annexure-P9 (colly.)****."*

12. The conciliation agreement conclusively determined the contractual value and, in effect therefore, enabled crystallisation of the quantum of excess tax paid to the Department. According to the Petitioner, it was only at this juncture that the exact amount of tax refundable became ascertainable. The refundable amount, as estimated, stood at ₹83,36,182/- for the period between July 2017 and March 2019.

13. It can be seen that the refund application in form RFD-01 was, thereafter, filed on 21st March, 2021, which was rejected. Aggrieved by the said rejection, the Petitioner preferred an appeal before the Commissioner (Appeals). In the meantime, the final conciliation agreement was duly executed on 3rd August, 2021 under Section 73 of the Arbitration and Conciliation Act, thereby converting the same into a settlement agreement. Finally, on 1st February, 2022, the Commissioner (Appeals) rejected the refund applications.

14. It is relevant to note that under Section 89 of the CPC, the Arbitration & Conciliation Act applies to conciliation proceedings. The settlement agreement in this case is one which is therefore recognised

under Section 73 of the Arbitration and Conciliation Act, which reads as under:

> *"73. Settlement agreement.—(1) When it appears to the conciliator that there exist elements of a settlement which may be acceptable to the parties, he shall formulate the terms of a possible settlement and submit them to the parties for their observations. After receiving the observations of the parties, the conciliator may reformulate the terms of a possible settlement in the light of such observations.*
> *(2) If the parties reach agreement on a settlement of the dispute, they may draw up and sign a written settlement agreement. If requested by the parties, the conciliator may draw up, or assist the parties in drawing up, the settlement agreement.*
> *(3) When the parties sign the settlement agreement, it shall be final and binding on the parties and persons claiming under them respectively.*
> *(4) The conciliator shall authenticate the settlement agreement and furnish a copy thereof to each of the parties."*

15. As per the above provisions, the settlement agreement becomes binding and final between the parties upon them signing it. The status of such a settlement is set out in Section 74 of the Arbitration and Conciliation Act, is as under:

> *"74. Status and effect of settlement agreement.—The settlement agreement shall have the same status and effect as if it is an arbitral award on agreed terms on the substance of the dispute rendered by an arbitral tribunal under section 30."*

16. In view of the above provisions and discussion, the conciliation agreement is like an arbitral award, which is in effect, equivalent to a decree of the Civil Court as per Section 36 of the Arbitration and Conciliation Act. Therefore, the date of finalisation of the settlement

agreement shall be the deemed date of communication of the judgment/decree under Section 54 explanation 2(d) of the CGST Act .

17. In view thereof, this Court is of the opinion that Section 54 explanation 2(d) of the CGST Act would be the correct provision that would apply in this case as against explanation 2(d) which is, clearly, a residual provision that is to be applied only when none of the other explanations are applicable.

18. Therefore, in the present case, the refund applications could be filed within two years from 03rd August, 2021 or even 09th October, 2020. The refund applications filed by DMRC are dated 17th January, 2021 and 21st March, 2021 and thus are well within time.

19. In view of the above, the impugned orders are set aside. Let the refund of the DMRC be processed along with applicable interest in accordance with the statute. The refund be credited to DMRC within one month.

20. The petition is disposed of in the aforesaid terms. Pending application(s), if any, is also disposed of.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

MAY 21, 2025
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