

[2022 LiveLaw \(SC\) 774](#)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
DR. DHANANJAYA Y. CHANDRACHUD; J., HIMA KOHLI; J.

September 12, 2022

Civil Appeal No 6539 of 2022 (Arising out of Special Leave Petition (Civil) No 13125 of 2018)
M/s Shree Enterprise Coal Sales Pvt. Ltd. versus Union of India & Anr.

Arbitration and Conciliation Act, 1996 - Relief related to tax concessions are not arbitrable.

(Arising out of impugned final judgment and order dated 15-03-2018 in WT No. 850/2016 passed by the High Court of Judicature at Allahabad)

For Petitioner(s) Mr. Rohit Amit Sthalekar, AOR Mr. Anish Choudhury, Adv. Mr. Anand Kamal, Adv. Mr. Akash Agarwal, Adv.

For Respondent(s) Mr. Vikramjit Banerjee, ASG Mr. B.K. Satija, Adv. Ms. Aakanksha Kaul, Adv. Mr. Ankur Talwar, Adv. Mr. Chinmaee Chandra, Adv. Ms. Swati Ghildiyal, Adv. Mr. Aman Sahani, Adv. Mr. Manik Singh, Adv. Mr. D. Duta, Adv. Mr. Siddhartha Sinha, Adv. Mr. Tathagat Sharma, Adv. Mr. Raman Yadav, Adv. Mr. Kartik Dey, Adv. Mr. G.S. Makker, AOR Ms. Devyani Bhatt, Adv. Gp. Capt. Karan Singh Bhati, AOR Mr. Hemendra Sharma, Adv. Ms. Gunjan Negi, Adv. Mr. Manvendra Singh, Adv. Mr. Dashrath Singh, Adv. Mr. Aditya Pratap Singh Chauhan, Adv.

ORDER

1 Leave granted.

2 The appeal arises from the judgment dated 15 March 2018 of a Division Bench of the High Court of Judicature of Allahabad in Writ Tax No 850 of 2016.

3 The appellant is a private limited company with a Head Office in Kolkata and branches in other States, including Uttar Pradesh. The branch in Uttar Pradesh is situated in the District of Bulandshahar and is registered since 18 July 2001. The appellant is involved in the trading of coal which it obtains from e-auctions conducted, inter alia, by the subsidiaries of Coal India Limited. The appellant has stated that after purchasing coal from the second respondent, Northern Coal Fields Limited, through e-auction, the appellant took certain consignments through the Railways of which the destination was the State of Madhya Pradesh. Initially, the second respondent charged a concessional rate of tax at two per cent. The grievance of the appellant is that the second respondent did not issue Form E-1 and did not grant the benefit of Form C while charging tax at the rate of four per cent. In this backdrop, the appellant moved a writ petition before the High Court seeking, inter alia, the following reliefs:

“(i) Issue a suitable writ, order or direction in the nature of mandamus commanding the respondent no.2 to accept, Form C and issue Form E-1 to the petitioner for the goods distained from one State to another [i.e. from their premises to Madhya Pradesh].

(ii) Issue a suitable writ, order or direction in the nature of mandamus commanding the respondent no.2 to grant the benefit of concessional rate of tax to the petitioner after accepting Form C on record.”

4 The High Court dismissed the writ petition on the ground that:

- (i) The terms of e-auction provided that any dispute is arbitrable; and
- (ii) The appellant was virtually seeking the enforcement of a contract through a writ petition for raising a claim for refund.

5 On both these aspects, we are of the view that the High Court was in error. The appellant is not asserting a contractual claim in pursuance of the e-auction. Undoubtedly, a contractual dispute would be amenable to be resolved by arbitration. However, in the present case, as the reliefs which have been extracted above indicate, the dispute was not of that nature. Hence, we are inclined to set aside the impugned judgment and order dated 15 March 2018 and remand the proceedings back to the High Court for consideration on merits. The appeal is allowed. The impugned judgment and order dated 15 March 2018 is set aside. Writ Tax No 850 of 2016 is restored to the file of the High Court for consideration afresh.

6 However, we clarify that we have not expressed any opinion on the merits of the respective rights and contentions of the parties in the writ petition.

7 Since the writ petition was filed in 2016, we request the High Court to endeavour an expeditious disposal preferably within a period of four months from the date of receipt of a certified copy of this order. The respondents shall file their reply within four weeks.

8 Pending application, if any, stands disposed of.

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