* IN THE HIGH COURT OF DELHI AT NEW DELHI

% **Judgment reserved on: 07.07.2026**

Judgment pronounced on: 23.07.2026

\+ O.M.P. (COMM) 64/2025 & I.A. 2952/2025

SPECTRUM POWER GENERATION LIMITED .....Petitioner

Through: Mr. Saurabh Kirpal, Sr. Adv. with Mr. Rudra Pratap, Mr. Rajat Chaudhary, Mr. Tushar Randhawa, Mr. Rahul Sharma & Mr. Ali Ibrahim, Advs.

versus

GAIL INDIA LIMITED .....Respondent

Through: Mr. Ratan Kumar Singh, Sr. Adv. with Mr. Anish Chawla & Mr. Prateek, Advs.

CORAM:
HON'BLE MR. JUSTICE AVNEESH JHINGAN

J U D G M E N T

1. This petition under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') against the award dated 30.09.2024 (for brevity 'the award') is filed by the petitioner/claimant.

BRIEF FACTS

2. The brief facts are that the petitioner, a limited company, is engaged in the business of generation of power and operates a natural gas-based power plant. The respondent a limited company, is engaged in the business of selling natural gas and other gases. The parties entered into a Gas Sale Agreement dated 18.12.2015 (hereinafter referred to as the 'GSA') for the supply of natural gas to the petitioner till 05.07.2021. Pursuant to implementation of Goods and Services

Tax (for short 'GST') the respondent raised invoices for reimbursement of GST on the transmission charges of natural gas (hereinafter referred to as the 'tax paid').

2.1 The arbitration proceeding was initiated claiming refund of the GST amount reimbursed to the respondent. The case set up by the petitioner is that the sale of natural gas was governed by the Andhra Pradesh Value Added Tax Act, 2005 (hereinafter referred to as the 'AP VAT Act') and no GST was leviable. Further that there was no transmission of gas by the respondent to the petitioner, rather the movement of gas was from one unit of the respondent to another unit.

2.2 The tribunal rejected the claim holding that as per the clauses of GSA, the tax paid was to be reimbursed by the petitioner and the Value Added Tax (for short 'VAT') was payable on the price inclusive of tax paid. It was considered that the petitioner under Clause 12.6 of GSA had not challenged the quantification of the bill within fourteen days of receipt of the invoice. The principle of estoppel was invoked and the tribunal further held that the petitioner waived right to raise objections after having reimbursed the tax paid for three years. The interpretation of GSA by the respondent was held to be bona fide. A factual finding was recorded that the GST amount collected from the petitioner and other similarly situated customers was deposited by the respondent with the GST authorities and it was not a case of undue enrichment but of reimbursement of the tax paid.

<u>SUBMISSIONS OF THE PARTIES</u>

3. Learned senior counsel for the petitioner contends that the

tribunal without any evidence recorded that the respondent deposited the tax paid. The submission is that the respondent adduced evidence by filing the affidavit of RW-2, Ankur Daruka, annexing the receipts of deposit of GST and the admissibility of tax receipts was challenged. The tribunal vide email dated 01.05.2024, informed that the admissibility of the documents would be decided after the conclusion of the cross-examination of witnesses of the claimant. The tribunal without deciding the issue of admissibility relied upon the tax deposit receipts. The submission is that production of receipts of tax deposited in August 2017, September 2017, February 2021 and March 2021 does not prove the payment of GST on the transmission of gas supplied to the petitioner.

3.1 Reliance is on the decision of the Supreme Court in ***Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P.,*** (1979) 2 SCC 409 to fortify the submission that the prerequisites for invoking estoppel were not fulfilled. Reliance is on Clause 18.1 of GSA to submit that the waiver had to be in writing and there was no waiver by the petitioner to object to reimbursement of tax paid.

4. *Per contra*, the tax paid was proved by filing the affidavit of RW-2 and annexing the tax deposit receipts along with it. The submission is that the petitioner failed to highlight before the tribunal that the issue of admissibility of tax deposit receipts was not decided. The petitioner chose not to cross-examine RW-2 on the tax deposit receipts. The submission is that the email dated 01.05.2024 of the tribunal is being read in part, the tribunal stated that the rigours of

Code of Civil Procedure, 1908 (CPC) are not applicable to arbitration proceedings.

4.1 The invocation of the principles of estoppel and waiver is defended relying on the invoices raised indicating the GST payable and the petitioner without any demur continued to pay for more than three years and also after raising objection. The decision of the Supreme Court in ***Sepco Electric Power Construction Corporation vs. GMR Kamalanga Energy Ltd***., 2025 INSC 1171 and ***Abdulla Ahmed v. Animendra Kissen Mitter***, 1950 SCC OnLine SC 2 are pressed into service to buttress the argument that despite Clause 18.1 of GSA, there can be a waiver of rights otherwise than expressly in writing.

4.2 It is contended that the petitioner during the subsistence of GSA never challenged the leviability of GST on transmission of Gas. Moreover, the issue of taxability of the transmission of gas under the GST regime was never in issue in arbitration and this was taken note of by the Court while appointing the arbitrator.

4.3 It is submitted that the view taken by the tribunal is a plausible one and does not warrant interference merely for another possible view. Reliance is placed on the decision of the Supreme Court in ***Consolidated Construction Consortium Limited v. Software Technology Parks of India***, (2025) 7 SCC 757.

4.4 The contention is that scope under Section 34 of the Act is limited and the interpretation of the terms of the contract and appreciation of evidence fall within the exclusive domain of the tribunal. Reliance is placed on the decisions of the Supreme Court in ***Prakash Atlanta (JV) v. National Highways Authority of India***, 2026 INSC 76 and ***Ssangyong Engineering and Construction Company Ltd. v. National Highway Authority of India***, (2019) 15 SCC 131.

4.5 The argument is that interference under Section 34 of the Act cannot be made for every factual or legal error, the decision of the Supreme Court in ***Sepco Electric*** (supra) is relied upon.

5. In rebuttal, learned senior counsel for the petitioner submits that the tax deposit receipts were not admissible. The tribunal kept the issue of admissibility of tax deposit receipts pending, the issue was not decided and there was no occasion for the petitioner to cross-examine RW-2 on tax receipts. It is reiterated that GST on transmission of gas was not paid by respondent and reliance is placed on Question No. 24 of cross-examination of RW-2, wherein to the question *"Have you ever deposited GST to the account of the claimant in terms of form GSTR-1 for the claimed GST cost on transmission charges?"* the reply was in the negative.

6. Learned counsel for the parties submitted that no synopsis or written submissions are to be filed and argued the matter at length. No issues other than those noted above were pressed.

RELEVANT CLAUSES

7. Before proceeding further it would be appropriate to reproduce the relevant clauses of GSA:

> "**4.2 Title and Risk**

(a) The facilities up to the Delivery Point shall be continued to be maintained/constructed, operated and maintained by the SELLER at their own risk and cost

(b) The facilities downstream from the Delivery Point onwards shall continue to be constructed, operated and maintained by the BUYER at their own risk and cost;

(c) Title, control and risk of the Gas shall pass from the SELLER to the BUYER at the Delivery Point.

Clause 12.6

In case of any discrepancy/dispute, regarding the invoices, the BUYER shall not return the bills or withhold or disallow part of full payment. After making the full payment the BUYER shall lodge a quantified claim with the SELLER within a period of 14 (Fourteen) days from the date of receipt of the related invoice. To the extent the claim is admitted by the SELLER, the SELLER shall issue a credit note in favour of the BUYER and adjust the same in the next invoice to be raised. The SELLER undertakes to consider the claim of the BUYER within a period of 30 (Thirty) days from the receipt of such claim, if found acceptable. Failure of the BUYER to put forward any claim within the time above specified shall be an absolute waiver of any claim.

Clause 18.1

Waiver

No breach of any provisions of this Agreement will be waived except with the express written consent of the party not in breach. Any waiver or delay by any Party of any default by any of the other party or Parties in the performance of this Agreement shall not operate as a waiver of any other default of that Party or those Parties."

ANALYSIS

8. The tribunal dealt three facets of the controversy. Firstly, whether the burden of tax paid, including the transmission from one unit of the respondent to another unit could be passed on to the petitioner? Secondly, whether the respondent deposited the tax on the cost of transmission of gas with GST authorities? Lastly, whether the petitioner was estopped from raising the issue after having reimbursed the tax paid for more than three years and had in fact waived the right to object?

FIRST FACET

9. The dispute pertains to post implementation of the GST laws. The foundation of the entire dispute as noted by the tribunal is the assertion that there is no levy or collection of GST on the sale of gas and the transactions is taxable under AP VAT Act. The issue of exigibility of GST on the transmission of gas falls within the exclusive domain of the GST authorities and cannot be decided in arbitration. The controversy confined to the contractual obligations of the parties and the findings recorded thereon.

10. The tribunal, though not decided the issue of exigibility of GST on the transmission of gas but relied upon Notification No. 11/2017 - Central Tax (rate) issued on 28.06.2017 wherein the rate of tax on transportation of natural gas was stipulated. The reliance of the petitioner on an interim order of the CESTAT, Delhi to contend that the respondent had stopped collecting service tax on transmission of gas after passing of this order was rejected as the tax regime had

changed and the order was interim in nature. Clause 4.2(c) of GSA was noted that the ownership of the gas shall be transferred to the petitioner at the delivery point and held that the VAT would be payable on the price inclusive of GST components on transmission of gas. The interpretation placed by the respondent on the clauses of the GSA was held to be bonafide.

11. The tribunal after considering the clauses of GSA and the evidence adduced, recorded a detailed finding to conclude that the tax paid was to be reimbursed by the petitioner. The tribunal rightly noted that the changes in the subsequent contract cannot be considered while interpreting the clauses of GSA. The view taken by the tribunal is plausible and calls for no interference.

12. The law is well settled that the interpretation of the clauses of a contract falls within the exclusive domain of the tribunal and interference is warranted where the conclusion is such that no reasonable person would arrived at or where the relevant clauses have been ignored or the tribunal travelled beyond the terms of the contract. Reference in this regard be made to:

12.1 In ***Prakash Atlanta (JV)*** (supra) it was held as under:-

> "59. (vi) If an arbitral tribunal‟s view is found to be a possible and plausible one, it cannot be substituted merely because an alternate view is possible. Construction and interpretation of a contract and its terms is a matter for the arbitral tribunal to determine. Unless the same is found to be one that no fair-minded or reasonable person would arrive at, it cannot be interfered with. If there are two plausible

> interpretations of the terms of a contract, then no fault can be found if the arbitrator accepts one such interpretation as against the other. To be in conflict with the public policy of India, the award must contravene the fundamental policy of Indian law, which makes it narrower in its application."

12.2 In ***Parsa Kente Collieries Limited. v. Rajasthan Rajya Vidyut Utpadan Nigam Limited***, (2019) 7 SCC 236 held as under:-

> "9.1. In Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , this Court had an occasion to consider in detail the jurisdiction of the Court to interfere with the award passed by the Arbitrator in exercise of powers under Section 34 of the Arbitration Act. In the aforesaid decision, this Court has considered the limits of power of the Court to interfere with the arbitral award. It is observed and held that only when the award is in conflict with the public policy in India, the Court would be justified in interfering with the arbitral award. In the aforesaid decision, this Court considered different heads of "public policy in India" which, inter alia, includes patent illegality. After referring Section 28(3) of the Arbitration Act and after considering the decisions of this Court in McDermott International Inc. v. Burn Standard Co. Ltd. [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181] , SCC paras 112-113 and Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran [Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran, (2012) 5 SCC 306] , SCC paras 43-45, it is observed and held that an Arbitral Tribunal must decide in accordance with the terms of the contract, but if an Arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground. It is further observed and held that construction of the terms of a

contract is primarily for an Arbitrator to decide unless the Arbitrator construes the contract in such a way that it could be said to be something that no fair-minded or reasonable person could do. It is further observed by this Court in the aforesaid decision in para 33 that when a court is applying the "public policy" test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the Arbitrator on facts has necessarily to pass muster as the Arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. It is further observed that thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score."

(Emphasis supplied)

SECOND FACET

13. The stand of the petitioner that the respondent had not proved the deposit of GST on the transmission charges was noted by the tribunal. It would be relevant to note that the petitioner vide email dated 01.05.2024 objected to the admissibility of tax deposit receipts annexed with the affidavit of RW-2. The tribunal vide email dated 01.05.2024, after taking note that CPC is strictly not applicable to arbitration proceedings, kept the issue of admissibility of the documents pending till the conclusion of the cross-examination of the evidence of petitioner.

14. The issue of admissibility of the documents and the objection raised by the petitioner were not decided. The tribunal in order dated 15.05.2024, recorded that the petitioner had not cross-examined RW-2

qua the tax deposit receipts. The tribunal further recorded that the petitioner stated that the tax receipts produced along with the affidavit were not admissible and were not being subject matter of cross-examination. The tribunal without deciding the issue of admissibility erred in recording the finding that GST was deposited, more so when except for the annexed tax receipts no evidence was produced by respondent to prove deposit of tax.

15. The division bench of Bombay High Court in ***Bi-Water Penstocks Ltd. v. Municipal Corporation Of Gr. Bombay***, 2010 SCC OnLine Bom 1784 held that the admission of documents without having been proved is not only a procedural defect but also a violation of the principles of natural justice. Relevant paragraph is reproduced:

> "18. Considering the case law on the subject and facts and circumstances of the case, in Our view, admitting certain documents in evidence by the Arbitrator, without the same being proved, is an act of legal misconduct. In our view, in blatant breach of the principles of natural justice the Arbitrator permitted the documents to be admitted in evidence, in spite of repeated objections raised by the respondent. By receiving such documents, therefore, amounts to a procedural error which can also be said to in breach of principles of natural justice. The learned single Judge has given appropriate reasons in this behalf and considering the facts of the case, we are in agreement with the view taken by the learned single Judge on the aforesaid aspect."
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> (Emphasis supplied)

16. It would be apposite to note that though it was stated in the affidavit that the GST returns were filed depicting the transmission of

gas but no returns were produced. There is no evidence to prove tax paid. The admissibility of four GST receipts for the tax paid in August 2017, September 2017, February 2021 and March 2021 was not decided and tax receipts could not have been relied upon.

17. Matter needs to be considered from another aspect. The receipts in themselves are not evidence of the tax paid, much less on the gas transmitted to the petitioner. The respondent had not produced the purchase list, sale list, documents filed along with the GST returns or the books of account to substantiate the tax paid.

18. In the absence of the issue of admissibility having been decided by the tribunal, non cross-examination of RW-2 on the tax receipts produced shall not prove fatal to the case of the petitioner. The respondent has to stand on its own legs to prove the tax paid. In other words, production of the tax receipts without having been held to be admissible cannot form the basis for concluding that GST on the transmission of gas was deposited by the respondent.

19. The findings of the tribunal in paragraphs 74 and 75 reproduced below are perverse in the absence of evidence much less admissible evidence on record: -

> "74. The interpretation put by the respondent to the agreement in question is a bonafide one. The GST amounts, not only in respect of the claimants but also for all other similarly situated persons, have been deposited with the GST authorities. Therefore, the respondent's action in collecting the GST amount was not for their benefit, as they have deposited the amount collected with the relevant authorities. There has been

no wrongful gain accrued to the respondent by claiming the GST amount on the transmission and other components of tax, as the respondent was duty bound to claim GST amount.

75. The argument raised by the claimant that no GST invoice has been raised by the respondent on the claimant, therefore, the claimant has been deprived of claiming input credit. The product - electricity produced by the claimant is exempt from payment of GST; therefore, the claimant may not be eligible for input tax credit. This Tribunal has not been apprised of the fact whether the transmission of gas by the transmission pipeline was exclusively for the claimant or if the gas was being supplied to the other entities by a common pipeline, with the last delivery point specific to the unit. The question as to whether a GST invoice was required to be issued or the consequences arising from the non-issuance of GST invoices is an issue that could have been raised or should have been raised before the GST authorities during the contract period. The claimant, having accepted the situation of GST being levied on the transmission charges and paid voluntarily the GST and Vat amount as claimed by the respondents, for more than three years, cannot now argue that because GST invoices were not issued, therefore, the amount of GST is not payable. It is too late for the claimant to raise such an argument after having accepted the interpretation put forth by the respondent on the terms of the GSA. This interpretation was not one of undue enrichment of the respondent; rather, the tax amount collected from the claimant has been deposited with the GST authorities."

20. It is important to note that it is recorded that the tribunal was not apprised whether the transmission of gas through the pipeline was exclusively for the petitioner. The foundation for holding that claim was for reimbursement of the tax paid and was not the case of undue

enrichment is eroded once the finding that the GST was deposited with the authorities is held to be without any basis and perverse.

THIRD FACET

21. The tribunal held that the petitioner after having reimbursed the tax paid up to September 2020 was estopped by the act and conduct from raising the dispute. The stand of the petitioner that the agreement was examined during the COVID-19 period and it was then noticed that GST had been wrongly reimbursed, was found to be unbelievable. It was held that the petitioner waived the right to object as the parties were *ad idem* regarding the levy of GST on transmission charges.

22. The tribunal erred in recording that the petitioner waived the right to object to the reimbursement of the tax paid as the parties were *ad idem* regarding the transmission charges attracting GST. The issue of the exigibility of GST on the transmission of natural gas was not before the tribunal and could be decided by statutory authorities. The bone of contention was that tax paid was not reimbursable by the petitioner and dispute pertained to clauses of GSA.

23. It is trite law that waiver and estoppel cannot be used interchangeably. For waiver, there has to be an intention to abandon a right whereas intention is not significant for estoppel. Reference be made to the following authorities: -

23.1 In ***Provash Chandra Dalui v. Biswanath Banerjee***, 1989 Supp (1) SCC 487 it was held:

> "24. The essential element of waiver is that there must

be a voluntary and intentional relinquishment of a known right or such conduct as warrants the inference of the relinquishment of such right. It means the forsaking the assertion of a right to the proper opportunity. The first respondent filed suit at the proper opportunity after the land was transferred to him, and no covenant to treat the appellants as thika tenants could be shown to have run with the land. Waiver is distinct from estoppel in that in waiver the essential element is actual intent to abandon or surrender right, while in estoppel such intent is immaterial. The necessary condition is the detriment of the other party by the conduct of the one estopped. An estoppel may result though the party estopped did not intend to lose any existing right. Thus voluntary choice is the essence of waiver for which there must have existed an opportunity for a choice between the relinquishment and the conferment of the right in question. Nothing of the kind could be proved in this case to estop the first respondent."

23.2 In **Article 1175 at p. 637 of *Halsbury's Laws of England*, 3rd Edn., Vol. 14**, it is stated:

> "1175. Waiver is the abandonment of a right, and is either express or implied from conduct. A person who is entitled to the benefit of a stipulation in a contract or of a statutory provision (a) may waive it…."'
>
> "The essence of waiver is 'estoppel' and where there is no 'estoppel' there can be no 'waiver', the connection between 'estoppel' and 'waiver' being very close. But, in spite of that, there is an essential difference between the two and that is whereas estoppel is a rule of evidence, waiver is a rule of conduct. Waiver has reference to man's conduct, while estoppel refers to the consequences of that conduct."

23.3 In ***Krishna Bahadur v. Purna Theatre***, (2004) 8 SCC 229, it was held:

> "9. <u>The principle of waiver although is akin to the principle of estoppel; the difference between the two, however, is that whereas estoppel is not a cause of action; it is a rule of evidence; waiver is contractual and may constitute a cause of action; it is an agreement between the parties and a party fully knowing of its rights has agreed not to assert a right for a consideration.</u>
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> 10. A right can be waived by the party for whose benefit certain requirements or conditions had been provided for by a statute subject to the condition that no public interest is involved therein. Whenever waiver is pleaded it is for the party pleading the same to show that an agreement waiving the right in consideration of some compromise came into being. Statutory right, however, may also be waived by his conduct."

23.4 In ***Hindustan Construction Co. Ltd. v. Bihar Rajya Pul Nirman Nigam Ltd.***, (2026) 3 SCC 264 it was held:

> "68. <u>Though waiver, acquiescence, and estoppel are often discussed together in arbitral jurisprudence, they occupy distinct conceptual spaces. Waiver is the intentional relinquishment of a known right; acquiescence arises from passive acceptance or delay; and estoppel precludes a party from resiling from a representation on which the other has relied.</u> The Act, however, incorporates only the doctrine of waiver — presuming parties to be conscious of their conduct and its consequences. The Act elevates silence to waiver by importing an element of intent, thereby preventing parties from approbating and reprobating. A party who has actively participated or consented to continuation of the proceedings cannot later challenge the same process merely because the result is adverse. The legislative design thus discourages tactical objections

and multiplicity of proceedings."

(Emphasis supplied)

24. For waiver, the party fully aware of the right intentionally agree not to assert it. The onus is on the party pleading waiver. Reference be made to the following decisions of the Supreme Court:

24.1 In ***Kalpraj Dharamshi v. Kotak Investment Advisors Ltd***., (2021) 10 SCC 401 it was held:

> "121. It has been held, that a waiver cannot always and in every case be inferred merely from the failure of the party to take the objection. Waiver can be inferred, only if and after it is shown that the party knew about the relevant facts and was aware of his right to take the objection in question. The waiver or acquiescence, like election, presupposes, that the person to be bound is fully cognizant of his rights, and that being so, he neglects to enforce them, or chooses one benefit instead of another.
>
> 122. As such, for applying the principle of waiver, it will have to be established, that though a party was aware about the relevant facts and the right to take an objection, he has neglected to take such an objection.
>
> 127. <u>Thus, for constituting acquiescence or waiver it must be established, that though a party knows the material facts and is conscious of his legal rights in a given matter, but fails to assert its rights at the earliest possible opportunity, it creates an effective bar of waiver against him. Whereas, acquiescence would be a conduct where a party is sitting by, when another is invading his rights. The acquiescence must be such as to lead to the inference of a licence sufficient to create a new right in the defendant. Waiver is an intentional relinquishment of a right. It involves conscious abandonment of an existing legal right, advantage,</u>

benefit, claim or privilege. It is an agreement not to assert a right. There can be no waiver unless the person who is said to have waived, is fully informed as to his rights and with full knowledge about the same, he intentionally abandons them."

24.2 In ***Galada Power & Telecommunication Ltd. v. United India Insurance Co. Ltd.***, (2016) 14 SCC 161 it was held:

> "15. In Manak Lal v. Prem Chand Singhvi [Manak Lal v. Prem Chand Singhvi, AIR 1957 SC 425] , it has been held : (AIR p. 431, para 8)
>
> "8. … It is true that waiver cannot always and in every case be inferred merely from the failure of the party to take the objection. Waiver can be inferred only if and after it is shown that the party knew about the relevant facts and was aware of his right to take the objection in question. As Sir John Romilly, M.R. has observed in Vyvyan v. Vyvyan [Vyvyan v. Vyvyan, (1861) 30 Beav 65 : 54 ER 813] : (Beav p. 75 : ER p. 817)
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> '… Waiver or acquiescence, like election, presupposes that the person to be bound is fully cognizant of his rights, and that being so, he neglects to enforce them, or chooses one benefit instead of another, either, but not both, of which he might claim."
>
> (Emphasis supplied)

25. Every failure to raise an objection or to assert right cannot lead to an inference of waiver. It must be established that the petitioner was aware of its right to object yet consciously chose not to raise the issue. The respondent raised the plea that the petitioner had waived the right to contend that there was no liability of the petitioner to shoulder the burden of tax paid and the onus to prove waiver is on party pleading waiver but no evidence was produced to discharge the onus. The

contention that despite Clause 18.1 of GSA an express waiver in writing is not mandatory need not be dilated upon. The fundamental requirements for invoking waiver were neither gone into by the tribunal nor proved. The award suffers from patent illegality in holding that the petitioner waived the right to object.

26. For invoking estoppel there has to be a representation with the intention that it be acted upon by the other party; the representation must be relied upon and the promisee should alter its position. There was no unequivocal representation by the petitioner for reimbursement of the tax paid. Moreover, it is not a case of the respondent that it changed its position by acting upon any representation if any made by the petitioner.

26.1 In ***Motilal Padampat Sugar Mills Co. Ltd.*** (supra) the Supreme Court examined the doctrine of prmomissory estoppel. The principles emerging from the decision are: (i) definite and unequivocal representation or promise; (ii) the representation must be intended, or made with knowledge, that it would be acted upon by the promisee; (iii) the promisee must have actually relied upon the promise; (iv) the promisee must have altered his position on the basis of such reliance, though proof of detriment is not required; and (v) being an equitable doctrine, it can be defeated only where overriding public interest so demands, are missing.

26.2 The Supreme Court in ***Chhaganlal Keshavlal Mehta Mehta v. Patel Narandas Haribhai***, (1982) 1 SCC 223 held that pre-requisites for estoppel under Section 115 of Evidence Act are:

"23. To bring the case within the scope of estoppel as defined in Section 115 of the Evidence Act : (1) there must be a representation by a person or his authorised agent to another in any form — a declaration, act or omission; (2) the representation must have been of the existence of a fact and not of promises de futuro or intention which might or might not be enforceable in contract; (3) the representation must have been meant to be relied upon; (4) there must have been belief on the part of the other party in its truth; (5) there must have been action on the faith of that declaration, act or omission, that is to say, the declaration, act or omission must have actually caused another to act on the faith of it, and to alter his former position to his prejudice or detriment; (6) the misrepresentation or conduct or omission must have been the proximate cause of leading the other party to act to his prejudice; (7) the person claiming the benefit of an estoppel must show that he was not aware of the true state of things. If he was aware of the real state of affairs or had means of knowledge, there can be no estoppel; (8) only the person to whom representation was made or for whom it was designed can avail himself of it. A person is entitled to plead estoppel in his own individual character and not as a representative of his assignee."

27. The respondent was liable to pay the GST leviable on transmission of gas, irrespective of whether the burden could have been passed on to the petitioner or not. Meaning thereby, even for the sake of argument if the payment made by the petitioner up to September 2020 is treated as a representation, it was neither acted upon nor was there alteration of position by respondent, the liability to deposit GST was not dependent upon reimbursement by the petitioner. There is a patent illegality in invoking the principle of estoppel against

the petitioner.

28. The entire claim of the petitioner was rejected for failure to raise objections under Clause 12.6 of the GSA. The defence set up by the petitioner that the payments were made under coercion as non-payment would have resulted in disruption of the supply of natural gas and could have affected the operation of the power generation plant was rejected for failure to prove coercion.

29. Clause 12.6 of GSA relied upon by the tribunal against the petitioner in fact supports the defence of the petitioner that non-payment of the amount would have disrupted the supply of natural gas. It provides that payment of the invoice raised shall not be withheld and only after making full payment the buyer could lodge a discrepancy or quantified claim within fourteen days from the date of receipt of the invoice. This indicates that the petitioner had to make payment of invoiced amount to ensure an uninterrupted supply of gas.

30. Another aspect to be considered is that the dispute regarding reimbursement of the tax paid gave rise to a recurring cause of action with the issuance of each invoice claiming reimbursement of tax paid. Consequently, the entire claim could not have been rejected by pressing into service Clause 12.6 of the GSA. It is apposite to note that the invoices were also raised after the petitioner had raised objections in September 2020.

31. The tribunal has not ousted the petitioner on the ground of limitation. The payment of the earlier invoices shall not take away the cause of action accruing to the petitioner upon issuance of the

subsequent invoices. The payment made by the petitioner in itself shall not be the sole factor to debar the petitioner from raising an issue regarding reimbursement of tax paid.

32. The findings of the tribunal that the petitioner had waived its right, was estopped from raising the dispute and the respondent had proved deposit of GST on the transmission charges cannot be sustained. The award is set aside and the petition is allowed. Pending application stands disposed of.

AVNEESH JHINGAN, J.

JULY 23, 2026
'JK'/KP

Reportable:- **Yes**