

GAHC010138932022



**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : WP(C)/4649/2022**

M/S SCHLUMBERGER SOLUTION PRIVATE LIMITED  
REGISTERED OFFICE AT 37 RAJPUR ROAD, DEHRADUN, UTTARAKHAND  
-248001 AND ITS PALCE OF BUSINESS AT NEW INDUSTRIAL AREA, OIL  
INDIA LIMITED, DULIAJAN, ASSAM- 786602.

VERSUS

OIL INDIA LIMITED AND 3 ORS  
REP. BY ITS CHAIRMAN AND MANAGING DIRECTOR, REGISTERED  
OFFICE AT DULIAJAN, DIBRUGARH, ASSAM- 786602.

2:OIL INDIA LTD.  
REP. BY GENERAL MANAGER (CONTRACTS)  
CONTRACTS DIVISION  
REGISTERED OFFICE AT DULIAJAN  
DIBRUGARH  
ASSAM- 786602.

3:YOKOGAWA INDIA LIMITED  
REGISTERED OFFICE AT 96  
ELECTRONIC CITY COMPLEX  
HOSUR  
BENGALURU- 560100.

4:CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS  
NORTH BLOCK  
CENTRAL SECRETARIAL  
NEW DELHI  
DELHI- 110001

**Advocate for the Petitioner : MRS. R BORAH**

**Advocate for the Respondent : SC, OIL**

Linked Case : WP(C)/4657/2022

M/S SCHLUMBERGER SOLUTIONS PRIVATE LIMITED  
HAVING ITS REGISTERED OFFICE AT 37 RAJPUR ROAD  
DEHRADUN  
UTTARAKHAND- 248001 AND ITS PLACE OF BUSINESS AT NEW  
INDUSTRIAL AREA  
OIL INDIA LIMITED  
DULIAJAN  
ASSAM- 786602.

VERSUS

OIL INDIA LTD AND 3 ORS  
REP. BY ITS CHAIRMAN AND MANAGING DIRECTOR  
HAVING REGISTERED OFFICE AT DULIAJAN  
DIBRUGARH  
ASSAM- 786602.

2:OIL INDIA LTD.  
REP. BY ITS GENERAL MANAGER (CONTRACTS)  
CONTRACTS DIVISION  
HAVING REGISTERED OFFICE AT DULIAJAN  
DIBRUGARH  
ASSAM- 786602.

3:TELESTO ENERGY LIMITED  
HAVING REGISTERED OFFICE AT 116  
ELYSIUM FLUSHING MEADOWS  
KAIKOLAMPALAYAM  
COIMBATORE  
TAMIL NADU- 641062.

4:CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS  
HAVING ITS ADDRESS AT NORTH BLOCK  
CENTRAL SECRETARIAT  
NEW DELHI  
DELHI- 110001.

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Advocate for : MRS. R BORAH  
Advocate for : SC  
OIL appearing for OIL INDIA LTD AND 3 ORS

Linked Case : WP(C)/4656/2022

M/S SCHLUMBERGER SOLUTIONS PRIVATE LIMITED

HAVING ITS REGISTERED OFFICE AT 37 RAJPUR ROAD  
DEHRADUN  
UTTARAKHAND- 248001 AND ITS PLACE OF BUSINESS AT NEW  
INDUSTRIAL AREA  
OIL INDIA LIMITED  
DULIAJAN  
ASSAM- 786602.

VERSUS

OIL INDIA LTD AND 3 ORS  
REP. BY ITS CHAIRMAN AND MANAGING DIRECTOR  
HAVING REGISTERED OFFICE AT DULIAJAN  
DIBRUGARH  
ASSAM- 786602.

2:OIL INDIA LTD.  
REP. BY ITS GENERAL MANAGER (CONTRACTS)  
CONTRACTS DIVISION  
HAVING REGISTERED OFFICE AT DULIAJAN  
DIBRUGARH  
ASSAM- 786602.

3:YOKOGAWA INDIA LIMITED  
HAVING ITS REGISTERED OFFICE AT 96  
ELECTRONIC CITY COMPLEX  
HOSUR ROAD  
BENGALURU- 560100.

4:CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS  
HAVING ITS ADDRESS AT NORTH BLOCK  
CENTRAL SECRETARIAT  
NEW DELHI  
DELHI- 110001.

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Advocate for : MRS. R BORAH  
Advocate for : SC  
OIL appearing for OIL INDIA LTD AND 3 ORS

**BEFORE**

**HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI**

Advocates for the petitioner : Shri SK Bagaria, Sr. Adv. [WP(C)/4649/2022]  
Shri D. Bora [WP(C)/4656/2022]  
Shri Omkar [WP(C)/4657/2022]

Advocates for the respondents : Shri SN Sarma, Sr. Adv., SC, OIL  
Shri K. Kalita  
Shri R. Shah [respondent no. 3 in  
WP(C)/4649/2022 and WP(C)/4656/2022]  
Shri A. Kalita [R-3 in WP(C)/4657/2022]

Date of hearing : **22.09.2022**

Date of Judgment : **28.09.2022**

**ORDER**

These three writ petitions are connected in the sense that the challenge is on a common plank mainly connected with the aspect of Goods and Services Tax (GST) as a part of the price bid quoted against Tender notices issued by the Oil India Limited (OIL) for hiring of services for Realtime Production Monitoring and Analysis (RTPM) Project at the various OIL fields at Assam. In WP(C)/4657/2022, there is an additional issue of benefits accruing to a party in the category of MSME.

2. This Court while issuing notice of motion vide orders dated 25.07.2022 had also passed an interim order directing that no further action be taken by the OIL in respect of the LOI issued till the returnable date.

3. One of the major considerations for passing the interim order was that the Hon'ble Allahabad High Court on a similar circumstance had decided the issue in favour of the party making the challenge.

4. The matters were thereafter listed on 24.08.2022 when, on behalf of the respondents, it was submitted that the judgment of the Hon'ble Allahabad High Court was successfully challenged and the Hon'ble Supreme Court in SLP (C) No. 4960/2021 vide judgment dated 16.08.2022 had reversed the findings. Upon such submission, this Court had observed that the matters would be considered and the respondents were also at liberty to file appropriate interlocutory applications, fixing the matters on 31.08.2022 and till such time, the interim order was extended.

5. On 31.08.2022, time was sought for on behalf of the petitioners to file objection to the interlocutory applications for modification of the interim order. Accordingly, the matters were directed to be listed on 12.09.2022 on which date, the parties had again prayed for some accommodation and accordingly, 22.09.2022 was fixed for consideration. The interim orders were accordingly extended.

6. Today the hearing was limited to the aspect of continuing with the interim protection or not.

7. I have heard Shri SK Bagaria, learned Senior Counsel, Shri D. Bora and Shri Omkar, learned counsels for the petitioners. I have also heard Shri SN Sarma, learned Senior Counsel assisted by Shri K. Kalita, learned counsel for the Oil India Limited; Shri Rohan Shah, learned counsel for the respondent no. 3 in WP(C)/4649/2022, WP(C)/4656/2022 and Shri A. Kalita, learned counsel for the respondent no. 3 in WP(C)/4657/2022.

8. The scope of today's hearing was limited in view of the judgment of the Hon'ble Supreme Court in the case of ***Union of India and Others Vs. Bharat Forge Limited and Anr.***, reported in ***(2022) SCC OnLine SC 1018*** decided on 16.08.2022. This is in view of the fact that the mainstay of the arguments from the side of the petitioners was the judgment of the Hon'ble Allahabad High Court which had persuaded this Court to pass the interim order and it is the said judgment of the Hon'ble Allahabad High Court which has been interfered with by the Hon'ble Supreme Court.

9. Shri Bagaria, the learned Senior Counsel appearing for the petitioner in WP(C)/4649/2022 has submitted that though the Hon'ble Supreme Court in the aforesaid case of ***Bharat Forge*** (supra) had passed a judgment on 16.08.2022, the same is distinguishable to the present issue and therefore, he submits that the said judgment *per se* may not be applicable and he would make an endeavour to persuade this Court in that regard. The learned Senior Counsel submits that there is a

distinction between Quoted GST rate and Applicable GST rate and this aspect has not been dealt with. The learned Senior Counsel emphatically submits that the impugned order has been passed by wholly ignoring and overlooking the said distinction.

10. By referring to the IFB, the learned Senior Counsel for the petitioner has drawn the attention of this Court to Clause 12.4.3 with regard to the GST. As per the said Clause, OIL is under an obligation to reimburse the GST to the supplier of goods / services at actual against submission of invoices as per format and in case of any variation the ceiling amount on which GST is applicable will be modified on pro-rata basis. Further, reference is made to Clause 15.7 which is with regard to the situation where the OIL is not entitled to avail / take the full input tax credit on GST. He further submits that Clauses 15.15, 15.16 and 15.17 are relevant factors which lay down a guideline.

11. As regards the *inter se* comparison of the responsive bids, reference has been made to Clause 5.5 of the same in which the total estimated contract cost including all taxes and duties have been laid down where the total contract cost is to be determine by adding five ingredients. The evolution of price bids on and overall lowest cost to overall basis which would include the price for, amongst others, the GST.

12. Shri Bagaria, the learned Senior Counsel has also referred to Clause 6.3 wherein it has been laid down that if any one of the Clauses in the BEC contradicts with other Clauses of the bid document, then the Clauses in the BEC shall prevail.

13 In the instant case, as per the petitioner, the action of the respondent- OIL in granting the work to the private respondent no. 3 is absolutely arbitrary and unreasonable. The petitioners contend that it was the sacrosanct duty of the respondent OIL to provide a uniform GST rate and such failure has resulted in an incorrect selection / ranking of bidders. The petitioners have clearly stated that they are relying upon the judgment of the Hon'ble Allahabad High Court in the case of ***Bharat Forge*** (Supra) in which the contention of the petitioner was substantiated.

The petitioner has also submitted that accepting bids of those, who do not code the correct GST price, is contrary to the public interest. The learned Senior Counsel submits that two different expressions cannot have the same meaning.

14. In support of his submissions, Shri Bagaria, the learned Senior Counsel for the petitioner places reliance upon the following decisions-

***i. AIR 1959 SC 265 [M/s Rajputana Agencies Ltd. Vs. Commissioner of Income Tax]***

***ii. (2007) 14 SCC 31 [CCE Vs. Frick India Ltd.]***

***iii. (2016) 1 SCC 170 [CCE & Customs Vs. Larsen & Toubro Ltd]***

***iv. (2019) 7 SCC 99 [State of Bihar Vs. Tata Iron and Steel]***

***v. (2020) 8 SCC 129 [Indore Development Authority Vs. Manoharlal].***

15. In the case of ***M/S Rajputana*** (supra), the Hon'ble Supreme Court was considering a matter which had required interpretation of fiscal statute in paragraph 8 of the judgment which has been pressed into service, it has been laid down that "the rate applicable" may mean either the rate prescribed by paragraph B or the rate actually applied in the light of the relevant statutory provision.

16. In the case of ***Frick India*** (supra), the Hon'ble Supreme Court has laid down the following while considering the aspect of chargeability of excise duty.

***“17. Chargeability of excise duty is on the manufacture of excisable goods. The assessee has to pay duty on the manufacture of such goods. With chargeability, question of quantification of duty comes in. Classification decides the applicable rate. It is followed by valuation i.e. value on which the rate is to be applied. The concept of "classification" is, therefore, different from the concept of "valuation". In the present matter there is confusion in application of the aforesaid two concepts by the Commissioner. In our view, the thrust of the show-cause notice is towards undervaluation and not classification...”***

17. In the case of **Larsen Turbo** (supra), the Hon'ble Supreme Court has reiterated the earlier findings of the said Court in the case of **Mathuram Agrawal Vs. State of MP** reported in **(1999) 8 SCC 667** in which it was laid down as follows:

*“...The statute should clearly and unambiguously convey the three components of the tax law i.e. the subject of the tax, the person who is liable to pay the tax and the rate at which the tax is to be paid. If there is any ambiguity regarding any of these ingredients in a taxation statute then there is no tax in law. Then it is for the legislature to do the needful in the matter.”*

18. The case of **Tata Iron and Steel** (supra) was cited with regard to the rule of interpretation of contracts wherein it has been laid down that the interpretation should be such that it brings into harmony with the other provisions.

19. On the same issue of interpretation of statute the case of **Indore Development Authority** (supra) has been cited wherein it has been stated that when two different expressions are used in the same provision of a statute, there is a presumption that they are not used in the same sense.

20. Shri D. Borah and Shri Omkar, learned counsel appearing for the petitioners in the other two cases have endorsed the submissions of Shri Bagaria, learned Senior Counsel.

21. *Per contra*, Shri SN Sarma, learned Senior Counsel representing the respondents- OIL has submitted that after the pronouncement of the judgment by the Hon'ble Supreme Court in the case of **Bharat Forge** (supra) in which the decision of the Hon'ble Allahabad High Court have been reversed, there is hardly any scope for argument from the side of the petitioners. The learned Senior Counsel has submitted that in WP(C)/4649/2022, affidavit-in-opposition has been filed in which the claim of the petitioners have been categorically negated. By referring to the paragraph nos. 46,



49, 59 and 61 of the judgment dated 16.08.2022 of the Hon'ble Supreme Court in the case of **Bharat Forge** (supra), the learned Senior Counsel submits that the issue has been finally determined and therefore, not only the interim order needs to be vacated, the writ petitions are liable to be dismissed.

22. Shri Rohan Shah, learned counsel has appeared for the respondent no. 3 in WP(C)/4649/2022 and WP(C)/4657/2022. Apart from endorsing the submissions of Shri SN Sarma, the learned Senior Standing Counsel for the OIL, it is contended that the arguments put forward on behalf of the petitioners are not at all consistent with the pleadings in the writ petitions and the rejoinder. It is contended that the writ petitioners are barred by the doctrine of approbation and reprobation.

23. Amongst the major inconsistencies, Shri Shah, the learned counsel has pointed out that in the Synopsis to the writ petition the petitioner has made a categorical statement of relying upon the case of **Bharat Forge** (supra) as decided by the Allahabad High Court wherein it has been held that the tendering authority must provide correct classification and applicable GST rate if the GST value is to be added to the base price to arrive at the total pricing for ranking of the bidders. In ground B.2, the issue has been said to be similar in comparable facts and in ground B.3 it has been stated that the ratio of the Hon'ble Allahabad High Court is applicable and the petitioner is seeking a relief of similar nature. However, after the judgment was rendered by the Hon'ble Supreme Court on 16.08.2022 a rejoinder was filed wherein it has been innocuously stated that there are certain factual variance in the subject tenders between the case of **Bharat Forge** (supra) and the present case.

24. It is further pointed that in the writ petition, there was no prayer or any challenge with regard to the Clause 5.6 of the tender notice wherein it has been categorically laid down that the BEC is to evaluate the price bids on an overall lowest cost i.e. by considering the total Quoted price of all services including applicable GST. However, in the rejoinder it has been projected that the entire case of the petitioner is

by challenging Clause 5.6. In fact, in paragraph 8, the petitioner has prayed for quashment of the said Clause without prejudice to its original prayer. Shri Shah, learned counsel has also pointed out other discrepancies and inconsistencies on the stand of the petitioner.

25. By referring to Clause 4.12, Shri Shah, the learned counsel for the respondent no. 3 has submitted that the Sub-Clauses thereto are to be followed in *toto* which includes a Tax Clause under Sl. No. (ii). In continuation with the said contention, Shri Shah has referred to Clause 12.3 which relates to Taxes and special attention has been drawn towards Sub-Clauses 12.3.1, 12.4.3 and 12.4.4, as per which, there is no manner of doubt regarding the methodology of evaluation of the bids which is laid down in Clause 5.5.

26. Shri Shah, the learned counsel by referring to the decision of the Hon'ble Supreme Court in ***Bharat Forge*** (supra) has submitted that in paragraph 42 it has been categorically laid down regarding the correct rate of GST.

27. Shri Shah has also questioning the maintainability of the writ petition itself as the entire structuring of the writ petition is upon alleged violation of Article 19(1)(g) of the Constitution of India whereas the petitioner is not a citizen but an artificial entity and the said right is only available to a citizen of India.

28. Shri Shah, the learned counsel has referred to a number of judgments of the Hon'ble Supreme Court in support of his contention.

29. Shri A. Kalita, learned counsel for the respondent no. 3 in WP(C)/5657/2022 while endorsing the submission made by Shri SN Sarma, learned Senior Counsel for the OIL as well as Shri Rohan Shah, learned counsel for the private respondents in the other case has additionally contended that the respondent no. 3 belongs to the MSME category and is entitled to certain benefits. By referring to Clause 7.0 of the tender document, Shri Kalita submits that a leverage of 15% was entitled by his client which falls under the category of Micro, Small and Medium Enterprises. Shri Kalita, the

learned counsel has also referred to the decisions of the Hon'ble Supreme Court in the case of **Tafcon Projects (I) (P) Ltd. Vs. Union of India and Others**, reported in **(2004) 13 SCC 788** in which it has been laid down that any competitive bidder after having participated in the bid process cannot later on be allowed to question any alleged vagueness in the same. Further reference has been made to the case of **Balaji Ventures Pvt. Ltd. Vs. Maharashtra State Power Generation Company Ltd. and Anr.** reported in **2022 LiveLaw (SC) 295** wherein it has been laid down that the owner should have the freedom to provide for eligibility criteria and the terms and conditions unless it is found to be arbitrary, mala fide and tailor made, a bidder cannot be permitted to challenge any bid condition which might not suit him or be inconvenient to him.

30. The rival submissions made by the learned counsel for the parties have been duly considered and the materials placed before this Court have been carefully examined.

31. As already indicated above, the hearing was on the aspect of whether the interim order was to be continued in view of the pronouncement of the Hon'ble Supreme Court in the case of **Bharat Forge** (supra).

32. Both in the pleadings and at the time of arguments, the principal grounds of challenge was based on the hypothesis of the petitioners that the price quoted by a bidder has to be independently evaluated without taking the GST into regard. And in support of the said hypothesis, heavy reliance was made upon the judgment of the Hon'ble Allahabad High Court in the case of **Bharat Forge Vs. Principal Chief Materials Manager and Others**, reported in **2001 (51) GSTL 153**. However, the said decision of the Hon'ble Allahabad High Court has been reversed by the Hon'ble Supreme Court vide the judgment dated 16.08.2022 i.e. after issuance of notice by this Court on 25.07.2022 when the interim order was also passed. The grounds of challenge as formulated in the present petitions are *pari materia* the case before the

Hon'ble Allahabad High Court. Though such grounds were initially accepted by the High Court, after the judgment has been passed by the Hon'ble Supreme Court in the appeal filed against the said judgment whereby the impugned judgment has been set aside, it remains doubtful as to whether there would be any further scope to examine the matter.

33. As rightly pointed out by Shri Shah, the learned counsel for the respondent no. 3 that there has been drastic change in the mode of challenge after pronouncement of the judgment by the Hon'ble Supreme Court on 16.08.2022 and such change is discernible from the pleadings in rejoinder affidavit filed on 09.09.2022. This Court has also noticed that the inconsistencies in the stand of the petitioners at various stages. The further question arises as to whether after participating in tender process, the petitioner can challenge any condition of the said tender on the allegation of vagueness. However, before final completion of the pleadings, this Court would refrain from answering those issues at this stage. However, in view of the categorical pronouncement by the Hon'ble Supreme Court in the case of Bharat Forge (supra) in its judgment dated 16.08.2022, there is absolutely no scope for this Court to continue with the interim order passed earlier.

34. Accordingly, the interim orders passed on 25.07.2022 in the writ petitions stand vacated. Consequently, the respondent-OIL is at liberty to go ahead with the subject tender process in accordance with law.

35. Let the writ petitions be listed for orders after the ensuing Autumn Vacation. In the meantime, remaining pleadings by the respective parties may be exchanged.

**JUDGE**

**Comparing Assistant**