2026:DHC:9305

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

Judgment reserved on: 20.07.2026
Judgment pronounced on: 16.10.2026

 # CNR No. DLHC011445042016

\+ O.M.P. (COMM) 257/2016

LARSEN & TOUBRO LIMITED .....Petitioner

Through: Mr. Ramesh Singh, Senior Advocate, Mr. Arpan Behl, Ms. Rohini Roy, Ms. Hage Nanya, Advs along with Mr. Yogesh Gupta, AR.

versus

DELHI METRO RAIL CORPORATION LTD .....Respondent

Through: Mr. Tarun Johri, Mr. Ankur Gupta, Mr. Vishwajeet Tyagi, Advs.

CORAM:
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT

% 16.10.2026

1. The present petition has been filed under Section 34 of the Arbitration and Conciliation Act of 1996[1], assailing the arbitral award dated 31.03.2014[2] with respect to disputes arising out of a contract dated 15.01.2008 executed between the Petitioner[3] and the Respondent[4].

[1] "Act" hereinafter
[2] "Impugned Award" or "Award" alternatively
[3] "Contractor" alternatively
[4] "DMRC" alternatively

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2. Shorn off unnecessary details, the facts emerging from the record would show that DMRC awarded Contract dated 15.01.2008[5] to a consortium consisting of the Petitioner and M/s Furrer + Frey AG Ltd., in the capacity of contractors.

3. The Contract pertains to the "design, supply, installation, testing and commissioning of 25kV Rigid Overhead Contact[6] System switching Stations (1SSP, 1 SP, 2SS) with 25kV associated cabling for the Underground Portion of Central Secretariat – Green Park – Saket (Broad Gauge – Line – 2) and Central Secretariat – Jangpura (Standard Guage – Line – 6) Sections of Delhi MRTS Phase-II Project"[7] for a value of Rs.43,36,75,791/- and USD 2,024,988 and Swiss Franc 54,94,930, with the commencement date of 19.09.2007.

4. The Contract required the Contractor Consortium (including the Petitioner) to deliver certain items/equipment to DMRC in accordance with the Bill of Quantities[8] attached to the said contract.

5. During the execution of the Contract, disputes arose between the Petitioner and DMRC with respect to the applicability and reimbursement of Delhi Value Added Tax[9] as paid by the Petitioner on some of the items, in view of Clause 24(c)(ii) of the Special Conditions

[5] "Contract" hereinafter
[6] "ROC" hereinafter
[7] "Project" hereinafter
[8] "BOQ" hereinafter
[9] "DVAT" hereinafter

of Contract[10] which provided that DMRC would reimburse the Contractor for the DVAT paid by it. The said clause is reproduced hereinbelow:

> *"(c) The rates and prices quoted for each item in the Bill of Quantities shall be inclusive of all taxes, levies, duties and other charges leviable, including tax deducted at sources, except.*
>
> *i. Custom Duty and Excise Duties on all equipments, including machinery and rolling stock procured for this contract, for which exemptions certificates will be issued in terms of para (i) above provided PAC has not been asked for the same item.*
> *ii. DVAT/UP Trade Tax (if applicable) paid on all indigenous equipments including machinery and rolling stock, procured for this contract which will be reimbursed to the contractor on the basis of actual on submission of documentary proof of payment, in addition to the unit rates quoted.*
> *iii. Haryana VAT has been exempted in terms of Haryana Government Excise and Taxation Department Notification No. S.O. 112/H.A.6/2003/S 59/2006 Dated 30th November 2006 procured for this contract."*

6. On account of non-resolution of this issue, the Petitioner issued a "Notice of Dispute" dated 21.10.2011 to the Respondent and resultingly, the learned Arbitral Tribunal comprising of three members came to be constituted on 01.06.2012 and rendered the impugned award on 31.03.2014.

7. According to the Petitioner, it was required to not only deliver equipment as per the BOQ but also install, test and commission the same. These items/equipment are as follows:

[10] "SCC" hereinafter

2026:DHC:9305

*"**BOQ-S1***

Item No. B-1.5	*Contact Wire;*
Item No. B-2	*Sectioning Post for Udyog Bhawan;*
Item No. B-3	*Sub-sectioning Posts at Jorbagh and Green Park;*
Item No. B-4	*Traction Cables for Central Secretariat to Green Park to Saket;*
Item No. B-5.2	*Return Conductor.*

BOQ-S2

Item No. B-1.5	*Contact Wire;*
Item No. B-2	*Sub-sectioning & Paralleling Posts at Central secretariat;*
Item No. B-3	*25 kV cables for Line 2 to Line 6 Traction Power Exchange Link;*
Item No. B-4	*25 kV cables for Park Street TSS-1-link for Overhead Conductor System (OCS) of Line 6;*
Item No. B-5	*Equipment for Park Street TSS-2;*
Item No. B-6	*Equipment for Airport TSS;*
Item No. 7	*25 kV traction cable for Central Secretariat to Jangpura;*
Item No. B-8.2	*Return Conductor."*

8. It is the case of the Petitioner that for the installation and commissioning of the aforesaid equipment, it required certain materials such as high voltage[11] panels, low voltage[12] panels, cables, contact wires etc. Accordingly, it procured these HV and LV panels from one M/s Aveda (India), Allahabad and M/s Areva (India), Kolkata. The aforesaid being an interstate transaction, the Petitioner issued Form C for 2% Central Sales Tax[13] to the aforementioned suppliers at Allahabad and Kolkata. Further, M/s Aveda (India) imported the HV panels from Germany and paid custom duty on the same. Admittedly, this custom duty was reimbursed by DMRC after furnishing requisite proof.

[11] "HV" hereinafter
[12] "LV" hereinafter
[13] "CST" hereinafter

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9. According to the Petitioner, it was required to shift this equipment to various sites in Delhi as per the Contract and integrate them to constitute the "Sectioning" and "Sub-Sectioning Posts" for erection of the ROC System. The Petitioner claims the aforesaid to be new commercial products sold to DMRC in Delhi. Accordingly, the Petitioner paid Rs.4,45,73,743/- as DVAT on these items. In this regard, the Petitioner also furnished five invoices before the learned Tribunal.

10. Notably, DMRC did reimburse the Petitioner on one of the aforesaid invoices. However, this amount was subsequently recovered from the Petitioner's running bills on the premise that DVAT was not applicable on the transactions in question.

11. DMRC resisted all these claims by maintaining that as per Clause 24(c)(ii) of the Special Conditions of Contract[14], DVAT was liable to be reimbursed only if it was legally applicable and not if it were wrongfully paid by the Contractor. In this regard, DMRC contended that since the LV panels were procured from M/s Areva (India), Kolkata for incorporation in Delhi, DVAT was not applicable on such interstate sale. In a meeting held on 30.01.2014 before the learned Tribunal, the Petitioner clarified that it procured the items from outside of Delhi and hence, CST was applicable. Further, the HV panels were procured from Germany, for which, the custom duty was already reimbursed by DMRC.

[14] "SCC" hereinafter

12. In view of the aforesaid, the learned Tribunal rendered the impugned award dated 31.03.2014, whereby all the claims of the Petitioner came to be rejected. Since DMRC also did not raise any counter-claims, a *nil* award was passed. The learned Tribunal held as follows:

(i) There was a direct link between the Petitioner placing orders for HV panels and the import of the same by M/s Areva for DMRC, for which custom duty was paid and reimbursed thereafter.

(ii) The Petitioner erred in paying DVAT on items brought to Delhi from other States and therefore, DMRC is not liable to reimburse.

(iii) DMRC has not denied that it initially reimbursed the Petitioner for one of the DVAT invoices, but later recovered the same. Petitioner's reliance on this aspect is of no avail since a party can be allowed to rectify its mistake without it amounting an admission of sorts.

13. Aggrieved thereby, the Petitioner preferred the present objection petition under Section 34 of the Act.

SUBMISSIONS

14. At the outset, Mr. Ramesh Singh, learned Senior Counsel for the Petitioner assailed the impugned award on the ground of patent illegality, inasmuch as the Arbitral Tribunal has erred in its applicability of the DVAT Act and Clause 24(c)(ii) of the SCC. It was submitted that the Petitioner was required to pay DVAT, as is evident from the definition of "sale" under Section 2(zc) of the DVAT Act and therefore, DMRC ought to reimburse it.

15. Mr. Singh contended that the learned Tribunal rendered the impugned award in complete disregard of the express clauses of the Contract. According to him, Clause 24(c)(ii) of SCC, read with Clause 11.1.1 of General Conditions of Contract[15] only requires actual payment of tax and furnishing proof thereof for the purpose of claiming reimbursement. The use of "if applicable" only indicates the transactions undertaken during the execution of the contract in respect of which DVAT or U.P. Trade Tax provisions shall apply. It does not give any discretion to the Respondent to refuse reimbursement of the amount of VAT paid by the Petitioner. It was submitted that this intent is also evident from Clause 35 of GCC, which stipulates a refund mechanism to be pursued with the tax department when the Respondent is of the view that tax is not payable on a transaction.

[15] "GCC" hereinafter

16. Mr. Singh also challenged the impugned award on account of it being against the public policy of India. It was submitted that the learned Tribunal exceeded its jurisdiction insofar as it returned findings on whether DVAT was leviable or not, which is strictly a sovereign function. In this regard, it was submitted that Clause 17.3 of the Contract empowered the Tribunal to resolve disputes arising out of this Contract. However, the issue of applicability of DVAT is not a 'a dispute arising out of the contract', which can only be decided by the authorities under the DVAT Act and parties cannot, by way of agreement, confer jurisdiction on authorities not envisaged by law. It was further submitted that the DVAT Act is a complete code in itself and it designates authorities for adjudication of matters arising under the Act. In this regard, it was submitted that Section 83 of the DVAT Act bars a suit before any civil court, and hence, by necessary implication, arbitration is also barred. Reliance was placed on ***H.P. SEB v. R.J. Shah and Co.***[16], ***Titagarh Paper Mills Ltd. v. Orrisa State Electricity Board and Anr.***[17], ***Vijay Karia & Ors. v. Prysmian Cavi E Sistemi SRL & Ors.***[18], ***A. Ayysamy v. A. Paramasivam***[19], ***Vidya Drolia & Ors. v. Durga Trading Corp.***[20] and ***Delhi Airport Metro Express (P) Ltd. v. DMRC***[21].

17. Learned Senior Counsel further submitted that from a conjoint reading of Sections 26 and 31 of the DVAT Act, it can be reasonably

[16] **(1999) 4 SCC 214**
[17] **(1975) 2 SCC 436**
[18] **2020 SCC OnLine SC 177**
[19] **2016 (10) SCC 386**
[20] **(2021) 2 SCC 1**
[21] **(2022) 1 SCC 131**

discerned that once tax is paid and return has been filed, it is a self-assessment of tax liability. Section 31(1)(a) provides that such self-assessment is deemed to be an assessment made by the Commissioner. It was therefore urged that the impugned award essentially sets aside an assessment made by the Commissioner under the DVAT Act. Reliance was placed on ***Samsung India Elecs. v. Govt. of NCT of Delhi***[22].

18. Mr. Singh further contended that the learned Tribunal's findings on the exigibility of DVAT is incorrect, inasmuch as it held that sale of HV and LV Panels by M/s Areva (India) to the Petitioner as "sale in course of import" and "inter-state sale" respectively did not attract DVAT. In this regard, it was submitted that the import of HV panels and purchase of LV panels from Kolkata were not directly linked to the installation of sectioning posts and sub-sectioning posts, which were items of BOQ. It was therefore submitted that the integration of these panels for commissioning did not meet the criteria for "sale in course of import" or "interstate sale" as defined under Section 7(c) of the DVAT Act read with Section 5(2) of the CST Act, 1956. It was submitted that there is necessity of an integral connection between the first sale, following the import and the actual imported itself and that the same was overlooked by the learned Tribunal. It was also argued that the movement of goods from a foreign country must be pursuant to contractual conditions between the vendor and the customer. In this regard, reliance was placed on ***K.G. Khosla and Co. v. Deputy***

[22] **(2017) 97 VST 417**

Commissioner of Commercial Taxes[23] and ***Deputy Commissioner of Agricultural Income Tax and Sales Tax, Ernakulum v. Indian Explosives Ltd.***[24].

19. Mr. Singh further submitted that the contract mandated the Petitioner to install and commission specific BOQ items which are distinct from spare parts procured, such as LV and HV panels. It was reiterated that the purchase of HV and LV panels constituted independent transactions, which were completely different from the sale of the commissioned BOQ items and that it was the Petitioner's obligation to deliver fully installed and commissioned BOQ items and not just supply the spare parts separately, that is to say, the sectioning and sub-sectioning posts constituted a distinct commercial commodity. According to Mr. Singh, M/s Areva (India) independently imported, and purchased the panels, which were not imported by the Petitioner directly or through M/s Areva (India) acting as agent of the Petitioner. It was after such import by M/s Areva (India) that these panels were sold to the Petitioner and then transported to the erection sites from Allahabad and Kolkata to Delhi. It was argued that there was complete lack of privity of contract between the Respondent and M/s Areva (India) and the Respondent with the exporter. It was also contended that the use of imported panels purchased from Kolkata for installation did not establish any inextricable link between the Petitioner's sale and M/s Areva (India)'s import. Mr. Singh further submitted that the learned Tribunal overlooked that absence

[23] **(1966) 3 SCR 352**
[24] **(1985) 4 SCC 119**

of privity of contract between a foreign seller and an Indian customer in cases involving two separate sale transactions does not amount to sale in course of import, as also affirmed in ***Binani Brothers v. UOI***[25]. Reliance was also placed on ***K. Gopinathan Nair & Ors. v. State of Kerala***[26] and ***Coffee Board v. Joint Commercial Tax Officer***[27].

20. Learned Senior Counsel urged that introduction of a third party dealing independently with the seller and importer severs the link between them. Mr. Singh relied on ***Giesccke & Debrient I. P. Ltd. v. Commr., S. T.***[28] in this regard.

21. Mr. Singh further laid emphasis on the aspect that DMRC itself reimbursed the Petitioner for DVAT paid by it on BOQ items on 15.01.2010 and deducted TDS on the Petitioner's DVAT invoices as per Section 36A of the DVAT Act. This, it was argued, demonstrated acknowledgment by DMRC that the sale of BOQ items was a local sale and that the Respondent's act of recovering reimbursement from running bill on 03.03.2011 was an afterthought. It was argued that the learned Tribunal erroneously considered this afterthought to be a *bona fide* mistake. It was further argued that it was in furtherance of such conduct of the Respondent that the Petitioner continued to pay DVAT on the local sale of BOQ items, therefore according to Mr. Singh, the Respondent was estopped from refusing to reimburse the Petitioner.

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[25] **(1974) 1 SCC 459**
[26] **(1997) 10 SCC 1**
[27] **(1970) 25 STC 528 (SC)**
[28] **(2012) 47 VST 343**

22. Mr. Singh submitted that the reliance placed on ***ABB Ltd. v. Commissioner Delhi Value Added Tax***[29] by the Respondent before the learned Tribunal was erroneous because: (i) in that case, the contractor directly imported the goods for supply to the Respondent but in the present case, the Petitioner did not directly import the goods, instead the items were bought from M/s Areva (India), who imported the same independently; (ii) in that matter, the goods therein were manufactured outside Delhi and sold directly to DMRC after interstate movement but in this case, the Petitioner integrated the equipment supplied by M/s Areva (India); (iii) the goods supplied to DMRC were identical to the ones procured domestically and internationally; however, in the present case, the HV and LV panels procured from M/s Areva (India) differ from the sectioning and sub-sectioning posts sold to the Respondent.

23. *Per contra,* Mr. Tarun Johri, learned Counsel for the Respondent submitted at the outset that the allegation of the Petitioner that the learned Tribunal did not have jurisdiction to render an award relating to DVAT stands belied in view of the fact that it was Petitioner who invoked arbitration in the first place and did not move any application under Section 16 of the Act in this regard, hence, the Petitioner is now precluded from raising this objection. Reliance was placed on ***Narayan Prasad Lohia v. Nikunj Kumar Lohia***[30] and ***S.N. Malhotra v. Airport Authority of India***[31].

[29] **(2012) 55 VST 1**
[30] **(2002) 3 SCC 572**
[31] **2008 SCC OnLine Del 442**





24. Mr. Johri submitted that once the aforesaid objection stands rejected, the only other ground taken by the Petitioner is with respect to interpretation of the Contract. However, it was submitted that a court under Section 34 is not a court of appeal and can only intervene if the interpretation of the Arbitral Tribunal is not plausible. Reliance was placed on ***ONGC v. Saw Pipes Ltd.***[32] and ***State Trading Corpn. of India Ltd. v. Toepfer International Asia (P) Ltd.***[33]

25. Mr. Johri vehemently maintained that the impugned award did not warrant any interreference by this Court. It was submitted that the Respondent was not legally obligated to reimburse the Petitioner for all transactions, and that as per Clause 24(c)(ii) of the SCC, the Respondent was only liable to pay DVAT if it were applicable on a transaction. It was therefore submitted that the transactions in question did not attract DVAT. According to Mr. Johri, in light of Section 7 of the DVAT Act, if there is import of goods, DVAT is not applicable. It was submitted that there was a direct link between the import by M/s Areva (India) and sale by Petitioner to Respondent since the goods were custom-made for the Respondent; hence, if the underlying contract with the Respondent was not in existence, then the Petitioner could not have imported those specific goods.

26. With respect to the Petitioner's contention that the procured HV and LV panels were not the same as the sectioning and sub-sectioning posts envisaged by the contract, it was submitted that these contents were

[32] **(2003) 5 SCC 705**
[33] **2014 SCC OnLine Del 3426**

considered by the learned Tribunal as well comprising of people from the engineering background and therefore, their findings do not warrant interference at the Section 34 stage. It was also submitted that in such case, the Petitioner ought to have invoiced the sectioning and sub-sectioning posts after value addition and not the individual BOQ items. Placing reliance on ***ABB Ltd. (supra)***, it was submitted that the items were custom-made for the Respondent and approved by it and therefore, the import and inter-State trade were necessarily linked to the Contract.

27. It was further argued that sub-sectioning formed part of the GIS substation[34] and comprised of both off-the-shelf goods and custom component, which raises the issue of double taxation. Thus, it was submitted that no interference is warranted by this Court in the limited jurisdiction it exercises under Section 34 of the Act.

28. In rebuttal, Mr. Singh submitted that the invoices included the cost for the "work done", that is modification of the procured items into what was finally sold to the Respondent and labour charges for installation etc. and that these invoices also depicted a break-up of the items as per BOQ. It was submitted that these items were integrated for the purpose of sectioning and sub-sectioning.

29. With respect to the submission that the goods were imported specifically for the Respondent and that they were custom-made, Mr. Singh submitted that the goods were merely approved by the Respondent

[34] Gas-Insulated Switchgear substation

and were part of the input. It was submitted that this input was integrated and assembled into an output for the Respondent. It was urged that the invoices contained the break-up of input items in terms of the BOQ in the Contract. It was further averred that as per tax jurisprudence, if at the end, a distinct product comes into existence, then it is a distant product for levy of tax and in the present case, a new product emerges.

30. The main thrust of the argument of the learned Senior Counsel was that ***ABB Ltd. (supra)*** is distinguishable as it did not pertain to a works contract and the products were supplied as it is without any value addition. It was emphasised that the Petitioner added value by substantial integration and incorporated the procured items into sectioning and sub-sectioning posts, thereby creating commercially distinct products. It was also submitted that the invoices, merely stipulated the breakup of the constituent items in terms of the BOQ.

ANALYSIS AND REASONING

31. I have heard the learned Counsel appearing for the parties and perused the material on record.

32. I shall refrain from burdening this judgment by delineating the well settled scope of Section 34 of the Act. There lies no quarrel with the position of law on this aspect.

33. The short issue for consideration of this Court is whether DMRC is liable to reimburse the Petitioner for the DVAT paid by it in terms of

Clause 24(c)(ii) of the Contract. Thus, the anterior question is whether DVAT was applicable or not in the first place.

34. In the present case, DMRC awarded a works contract to the Petitioner for designing, supplying, installing, testing and commissioning a ROCS system for certain metro stations. For execution of the Contract, the Petitioner procured certain items from other States and one of its suppliers, in turn, procured the items from Germany. The learned Tribunal accepted DMRC's arguments that the transactions in question constituted inter-State trade and import respectively, therefore, DVAT was not applicable.

35. At the outset, Article 366(29A)(b) of the Constitution of India, as it stood prior to the Constitution (105th) Amendment Act, 2021, stipulated the following:

> *"366. Definitions.—In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say—*
>
> ***
>
> *(29-A) "tax on the sale or purchase of goods" includes—*
>
> ***
>
> ***(b) a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;…"***
>
> ***(emphasis supplied)***

36. Article 366(29A)(b) brings indivisible goods involved in works contract within the ambit of taxation by the State by treating it as a deemed sale. An inquiry to this effect i.e., whether transfer of property in goods has occurred, is a fact-intensive endeavour and largely dependent

on the terms of the contract itself. The first step is to discern the taxable event, which in a works contract is when the deemed sale occurs.[35]

37. Simply put, a "works contract" is one whereby a party undertakes to execute works such as construction, manufacture, installation etc. Section 2(zo) of the DVAT Act defines a "works contract" as follows:

> *"(zo) "works contract" includes any agreement for carrying out for cash or for deferred payment or for valuable consideration, the building construction, manufacture, processing, fabrication, erection, installation, fitting out, improvement, repair or commissioning of any moveable or immovable property;"*

38. Section 2(ja) of the Central Sales Tax Act, 1956[36] also defines "works contract" in the following manner:

> *"(ja) "works contract" means a contract for carrying out any work which includes assembling, construction, building, altering, manufacturing, processing, fabricating, erection, installation, fitting out, improvement, repair or commissioning of any movable or immovable property;"*

39. For the purposes of the present case, it is also relevant to note that Section 7 of the DVAT Act[37] exempts sale in the course of import of

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[35] Aristo Printers (P) Ltd. v. CTT, **(2025) 147 GSTR 182;** Larsen & Toubro Ltd. v. State of Karnataka, **(2014) 1 SCC 708**

[36] "CST Act" hereinafter

[37] "**7. Certain sales not liable to tax**

Rule: Nil	***Form: Nil***

Nothing contained in this Act or the rules made thereunder shall be deemed to impose or authorise the imposition of tax on any sale of goods when such sale takes place—
(*a*) in the course of inter-state trade or commerce; or
(*b*) outside Delhi; or
(*c*) in the course of import of the goods into or export of the goods out of, the territory of India.
Explanation. - Sections 3, 4 and 5 of the Central Sales Tax Act, 1956 (74 of 1956) shall apply for determining whether or not a particular sale takes place in the manner indicated in clause (a), clause (b) or clause (c) of this section."

goods into the territory of India and in the course of inter-State trade or commerce.

40. Section 3 of CST Act defines "inter-State trade or commerce" as follows:

> *"3. When is a sale or purchase of goods said to take place in the course of inter-State trade or commerce.—**A sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase—***
>
> ***(a) occasions the movement of goods from one State to another; or***
> ***(b) is effected by a transfer of documents of title to the goods during their movement from one State to another…"***
>
> ***(emphasis supplied)***

41. Further, Section 5 of CST stipulates what constitutes as sale in the course of import or export, as follows:

> *"5. When is a sale or purchase of goods said to take place in the course of import or export.—(1) A sale or purchase of goods shall be deemed to take place in the course of the export of the goods out of the territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India.*
> ***(2) A sale or purchase of goods shall be deemed to take place in the course of the import of the goods into the territory of India only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontiers of India.***
> *(3) Notwithstanding anything contained in sub-section (1), the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall also be deemed to be in the course of such export, if such last sale or purchase took place after, and was for the purpose of complying with, the agreement or order for or in relation to such export.*
> *(4) The provisions of sub-section (3) shall not apply to any sale or purchase of goods unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner a declaration duly filled*

and signed by the exported to whom the goods are sold in a prescribed form obtained from the prescribed authority.
(5) Notwithstanding anything contained in sub-section (1), if any designated Indian carrier purchases Aviation Turbine Fuel for the purposes of its international flight, such purchase shall be deemed to take place in the course of the export of goods out of the territory of India.
Explanation.—For the purposes of this sub-section, "designated Indian carrier" means any carrier which the Central Government may, by notification in the Official Gazette, specify in this behalf."
(emphasis supplied)

42. In ***Aristo Printers (P) Ltd. v. CTT***[38], the Supreme Court observed that transfer of property occurred when goods were incorporated in the works. It was clarified that these items need not exist in the final product and that Article 366(29A)(b) of our Constitution *"does not mandate that the works contract must yield a physical end-product or that the transfer must be tangible".* The relevant excerpt is reproduced as thus:

"61. In Gannon Dunkerley and Co. v. State of Rajasthan [(1993) 88 STC 204 (SC); (1993) 1 SCC 364; 1992 SCC OnLine SC 524.] , ***this court clarified that the transfer of property in such goods takes place when the goods are incorporated in the works.*** *The court's use of the word "incorporated" should not be mechanically interpreted to mean that a transfer of property occurs only when a physical or tangible goods is passed on when executing a works contract. Rather, "incorporation" is to be understood contextually, defined by the specific nature of "the works" contracted for.*

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63. This court in Xerox Modicorp Ltd. v. State of Karnataka [(2005) 142 STC 209 (SC); (2005) 7 SCC 380; 2005 SCC OnLine SC 1225.] and the Kerala High Court in Enviro Chemicals v. State of Kerala [(2011) 39 VST 434 (Ker) [FB]; 2011 SCC OnLine Ker 3685.] correctly identified the taxable event as the precise moment the contractor's goods are incorporated into the "works", i.e., when the toner is fitted into the machine or the chemical is introduced into the effluent water. The subsequent consumption of these items is irrelevant, as it does not negate the transfer of property that has

[38] **(2025) 147 GSTR 182**

already occurred. ***The cardinal principle, which must serve as the guiding light for any court or Tribunal adjudicating such disputes, is that the analysis must be anchored to a singular question : has transfer of property in goods involved in the execution of the works contract occurred ?***

64. In Enviro Chemicals v. State of Kerala [(2011) 39 VST 434 (Ker) [FB]; 2011 SCC OnLine Ker 3685.] , ***the Kerala High Court correctly noted that the items need not exist in any form in the resultant product.*** *To insist that a transfer of property is contingent upon the good's tangible presence in a final product is to impose a condition that article 366(29A)(b) does not contemplate and, in fact, is textually contradictory.* ***The statutory framework only requires that the goods be "involved in the execution of the works contract". It does not mandate that the works contract must yield a physical end-product or that the transfer must be tangible.*** *To impose such a limitation would not only lead to a gross misapplication of the law but would also defeat the legislative intent of the Forty-sixth Amendment and the dictum of this court in various rulings. This court allowed a broad interpretation of the term "works contract" in order to enable the taxing transfer of property in goods in all genres of works contract.*

65. ***Many works contracts****, particularly those for services and transformations,* ***do not result in a new end-product or a tangible transfer of property****. For example, a works contract for providing pest control or cleaning service (as was the case in Pest Control India Ltd. v. Union of India [(1989) 75 STC 188 (Patna); 1989 SCC OnLine Pat 288.] and Dynamic Industrial and Cleaning Services P. Ltd. v. State of Kerala [(1995) 97 STC 564 (Ker); 1994 SCC OnLine Ker 379.] , respectively)* ***would not lead to the creation of a new end-product or a very tangible transfer of property in goods. However, the chemicals used are indeed being transferred, as without such transfer of goods, it would be impossible to make an area clean or pest-free.*** *Similarly, in Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes) v. M.K. Velu [(1993) 89 STC 40 (Ker); 1993 SCC OnLine Ker 577.] and Microtrol Sterilization Services P. Ltd. v. State of Kerala [(2009) 26 VST 213 (Ker); 2009 SCC OnLine Ker 1480.] , the works contract therein could not have been executed successfully without the transfer of property in the fireworks and ethylene oxide, respectively. The chemicals, fireworks, and ethylene oxide are the primary goods facilitating the works under the respective contracts. It is in this context that they may said to be incorporated in the "works" of the respective contracts. Consequently, it is undeniable that the property in such goods is being transferred*





> *when the respective works contract are executed. These goods differ from consumables such as water and electricity, which merely aid in executing works contract and the property in them is not transferred before they are consumed."*
>
> ***(emphasis supplied)***

43. Further, three Judges of the Supreme Court in ***Larsen & Toubro Ltd. v. State of Karnataka***[39] succinctly provided a three-fold test to determine if tax was leviable in a works contract, as follows:

> *"97.1. For sustaining the levy of tax on the goods deemed to have been sold in execution of a works contract, three conditions must be fulfilled: (i) there must be a works contract, (ii) the goods should have been involved in the execution of a works contract, and (iii) the property in those goods must be transferred to a third party either as goods or in some other form."*

44. A Division Bench of this Court in ***ABB Ltd. (supra)*** dealt with the applicability of DVAT with respect to a contract for supply, installation, testing and commissioning of traction electrification, power supply and power distribution for operation of certain metro trains. The bid document, in that case prescribed, *inter alia*, the items, their quantities and specifications, delineating the sources along with the name of the manufacturers for procuring these items, and detailed terms and conditions for approval of subcontractors/suppliers. To ascertain whether there was an inter-State sale or if the sale was in course of import, the learned Bench examined the link between the sale and the movement of goods, i.e., how integrally was the sale connected with the contract itself. It found that since the contract envisaged where the items would be

[39] **(2014) 1 SCC 708**

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procured from (which the contract stipulated to be outside of Delhi), undoubtedly the movement of the goods was linked to the contract. It was observed that even if the movement of goods was incidental to the contract, it would amount to an inter-State trade. It was also observed that since the goods were custom-made, they were procured specifically for the contract and not independently by the contractor. I deem it apposite to reproduce the relevant excerpt hereinbelow:

> *"26. In Tata Iron and Steel Co. Ltd. v. S. R. Sarkar [1960] 11 STC 655 (SC), the Supreme Court held that where the goods are moved from one State to another as a result of a covenant in the contract of sale, that would be clearly a sale in the course of inter-State trade. The court further proceeded to hold that* ***even a movement of goods from one State to another, which is merely incidental to, and which is not part of the contract of sale, is also brought within the fold of section 3(a) of the Central Act****.*
>
> *27. In Oil India Ltd. v. Superintendent of Taxes [1975] 35 STC 445 (SC), the Supreme Court held that :*
>
> > *"No matter in which State the property in the goods passes, a sale which occasions 'movement of goods from one State to another is a sale in the course of inter-State trade'. The inter-State movement must be the result of a covenant, express or implied, in the contract of sale or an incident of the contract. It is not necessary that the sale must precede the inter-State movement in order that the sale may be deemed to have occasioned such movement. It is also not necessary for a sale to be deemed to have taken place in the course of inter- State trade or commerce, that the covenant regarding inter-State movement must be specified in the contract itself. It would be enough if the movement was in pursuance of and incidental to the contract of sale."*
>
> ***28.*** *In English Electric Company of India Ltd. v. Deputy Commercial Tax Officer [1976] 38 STC 475 (SC), the court again held that (pages 479 and 480 in 38 STC) :*

> *"When a branch of a company forwards a buyer's order to the principal factory of the company and instructs them to dispatch the goods direct to the buyer and the goods are sent to the buyer under those instructions it would not be a sale between the factory and its branch.* ***If there is a conceivable link between the movement of the goods and the buyer's contract, and if in the course of inter-State movement the goods move only to reach the buyer in satisfaction of his contract of purchase and such a nexus is otherwise inexplicable, then the sale or purchase of the specific or ascertained goods ought to be deemed to have taken place in the course of inter-State trade or commerce as such a sale or purchase occasioned the movement of the goods from one State to another****. The presence of an intermediary such as the seller's own representative or branch office, who initiated the contract may not make the matter different.*** *Such an interception by a known person on behalf of the seller in the delivery state and such person's activities prior to or after the implementation of the contract may not alter the position."*

29. Yet again, in South India Viscose Ltd. v. State of Tamil Nadu [1981] 48STC 232 (SC), the Supreme Court held that ***if there is a "conceivable link" between a contract of sale and the movement of goods from one State to another in order to discharge the obligation under the contract of sale, it must be held to be an inter-State sale and that character will not be changed on account of an interposition of an agent of the seller who may temporarily intercept the movement****.*

30. In the present case, there can be no manner of doubt that there was a live and conceivable link between the sale and movement of goods ; ***DMRC was aware that the goods were to be sourced from the appellant's factories, which were outside Delhi. The reference to specific locations, in the list issued by DMRC, in respect of particular equipments, which were integral to the contract, establishes that the movement of those goods was clearly in the contemplation of the parties. Moreover, as noticed earlier, the goods were custom made****. The only conclusion that could reasonably have been drawn was that the character of the transaction was that of inter- State sale, necessitating movement****. Specific instructions, or allusions in the contract, or lack of such facts, can hardly be decisive ;* ***the intention of the contract, as gleaned from the document compels the court to draw the conclusion that inter-State sales were involved in the present case, as to attract section 3 of the Central Sales tax***

***Act**. In the opinion of this court, the Tribunal fell into error in assuming that to attract section 3(a) of the Act, the agreement has to expressly stipulate for inter-State movement of goods, and the fact that in performance of the contract, the appellant would have to move the goods from other States to Delhi would not suffice. In this context, in Oil India Ltd. [1975] 35 STC 445 (SC) where it was very pertinently held that **"It is also not necessary for a sale to be deemed to have taken place in the course of inter-State trade or commerce, that the covenant regarding inter-State movement must be specified in the contract itself. It would be enough if the movement was in pursuance of and incidental to the contract of sale"**.*

31. ... Question No. 2 : Sale in the course of import

32. ... In terms of section 5(2), a sale or purchase of goods shall be deemed to take place in the course of the import of the goods into the territory of India if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontiers of India.

*33. In K. G. Khosla and Co. [1966] 17 STC 473 (SC) ; AIR 1966 SC 1216 a Constitution Bench of the Supreme Court had to consider whether sales in that case were in the course of import. The assessee therein had entered into a contract with the Director General of Supplies, New Delhi, for supply of axle bodies manufactured by its principals in Belgium. The goods were inspected on behalf of the buyers in Belgium but under the contract they were liable to rejection after further inspection in India. In pursuance of the contract the appellant supplied axle bodies to the Southern Railway at Perambur and Mysore. The assessee contended that the sales by them to the Director General of Supplies were in the course of import. The contention was rejected by the assessing authority, holding that these were intra-State sales because the seller was the consignee of the goods and the buyer had reserved the right to reject the goods even after their arrival in India. The assessee's appeal to first appellate authority was rejected. Its appeal to the Tribunal was partly allowed. The High Court rejected the assessee's revision application. **The Constitution Bench of the Supreme Court held that section 5(2) of the Central Sales tax Act does not prescribe any condition that before a sale could be said to have occasioned import, it is necessary that the sale should have preceded the import and that it was apparent that it was incidental to the contract in that case** ; furthermore that the axle-box bodies would be manufactured in Belgium, inspected there, and imported into India for the consignee**. Movement of goods from Belgium to India was in pursuance of the***

conditions of the contract between the assessee for any other purpose. *Consequently, the sales took place in the course of import of goods within section 5(2). The entire transaction was an integrated one by which a foreign seller through its Indian agent, namely, the assessee sold the goods to Indian purchaser, namely, the Director General of Civil Supplies through the agency of its local agent, namely, the assessee and, therefore, the transaction was treated by the Constitution Bench as representing sale in the course of import. The court held as follows (pages 484 and 489 in 17 STC) :*

> *".. . appellant K. G. Khosla & Co., hereinafter referred to as the assessee entered into a contract with the Director-General of Supplies and Disposal, New Delhi, for the supply of axle-box bodies. According to the contract the goods were to be manufactured in Belgium, and the D. G. I. S. D., London, or his representative, was to inspect the goods at the works of the manufacturers. He was to issue an inspection certificate. Another inspection by the Deputy Director of Inspections, Ministry of W. H. & S., Madras, was provided for in the contract. It was his duty to issue inspection notes on Form No. WSB. 65 on receipt of a copy of the inspection certificate from the D. G. I. S. D. London and after verification and visual inspection. The goods were to be manufactured according to specifications by M/s. La Brugeoies. ET. Nivelles, Belgium.*
>
> *.. .*
>
> *The next question that arises is whether the movement of axle-box bodies from Belgium into Madras was the result of a covenant in the contract of sale or an incident of such contract. It seems to us that it is*
>
> *quite clear from the contract that it was incidental to the contract that the axle-box bodies would be manufactured in Belgium, inspected there and imported into India for the consignee. A movement of goods from Belgium to India was in pursuance of the conditions of the contract between the assessee and the Director-General of Supplies. There was no possibility of these goods being diverted by the assessee for any other purpose. Consequently we hold that the sales took place in the course of import of goods within section 5(2) of the Act, and are, therefore, exempt from taxation."*

***

35. Recently, in Indure Ltd. v. Commercial Tax Officer [2010] 34 VST 509 (SC) ; (2010) 9 SCC 461, ***wherein the dealer had procured the goods as a part of the contract to supply, erect and commission them***

as part of a larger project, *the Supreme Court held that (pages 523 and 524 in 34 VST) :*

> *".. . we are of the considered opinion that it has not been the respondents' case that the MS pipes imported by the company were not used for the erection and commissioning of the plant for N. T. P. C. Thus, from the facts of Binani Bros. [1974] 33 STC 254 (SC) ; (1974) 1 SCC 459, it is clearly spelt out that the facts of the case in hand are different. Thus, the ratio of the said case would not be applicable to it.*
> *42. In fact, the ground, sought to be raised for the first time before this court that MS pipes were put to manufacturing process and thereby converted into a distinct end-product had not been raised before any of the authorities earlier. It was not the respondent's case that pipes so imported were not necessary components for the erection and commissioning of the plant.* ***Admittedly, the said pipes were used as components in the ash handling plant in the same condition as they were imported without altering their originality****. Thus, the ground which was sought to be raised before us for the first time has not been considered by any of the authorities and in our opinion rightly so. Thus, we also do not deem it fit and proper to consider the same at this belated stage.*
> *43. Apart from the aforesaid reasons, we are also of the considered opinion that such import would fall within the Constitutional umbrella. It is also to be noted that company had admittedly imported the goods into India for completion of the project on turnkey basis of N. T. P. C. Thus, by virtue of article 286(1)(b) of the Constitution, they would not be taxable. For ready reference, article 286(1)(b) of the Constitution is reproduced hereinbelow :*
> *'286. Restrictions as to imposition of tax on the sale or purchase of goods.—(1) No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place—*
> *(a) outside the State ; or*
> *(b) in the course of the import of the goods into, or export of the goods out of, the territory of India.*
> *See Minerals and Metals Trading Corporation of India Ltd. v. Sales Tax Officer [1998] 111 STC 434 (SC) ; (1998) 7 SCC 19.*
> *44. In the facts and circumstances of the case we are of the opinion that the order passed by Division Bench of the High Court as also the orders passed by Tribunal and other*





authorities cannot be sustained in law. The same are hereby set aside and quashed. The appellant is held entitled to claim the benefit of section 5(2) of the Act.""

(emphasis supplied)

45. After delineating the foregoing position in law, the learned Bench succinctly articulated the relevant factors for consideration, as follows:

"36. The common thread of reasoning which runs through all the decisions is that ***to determine whether the sale was in the course of import, the court has to see whether the movement of goods through was integrally connected with the contract for their supply****. Questions such as passing of title, or whether the end user has a privity of contract with the supplier, or where the consideration flows from, are not determinative or decisive of the issue.* ***Section 5 does not prescribe any condition that before a sale could be said to have occasioned import, it is necessary that the sale should have preceded the impor****t.*

37. In the present case, the various conditions in the contract and other related covenants between DMRC and the appellant amply bear out that :

(1) Specifications were spelt out by DMRC ;
(2) Suppliers of the goods were approved by the DMRC ;
(3) Pre-inspection of goods was mandated ;
(4) The goods were custom made, for use by DMRC in its project ;
(5) Excise duty and customs duty exemptions were given, specifically to the goods, because of a perceived public interest, and its need by DMRC ;
(6) In the project authority certificate issued by DMRC the name of the sub-contractors as well as the equipment/goods to be supplied by them were expressly stipulated ;
(7) DMRC issued a certificate certifying its approval of foreign suppliers located in Italy, Germany, Korea, etc., from whom the goods were to be procured.
(8) Packed goods were especially marked as meant for DMRC's use in its project."

(emphasis supplied)

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46. The aforementioned decision in ***ABB Ltd. (supra)*** came to be affirmed by the Supreme Court in ***CVAT v. ABB Ltd.***[40]. The Supreme Court observed that DMRC executed a contract which required the contractor to provide certain stipulated items and complete electrical solution including control room for operation of metro trains of a particular section. It was further observed that movement of goods by way of import or inter-State trade was either envisaged and/or incidental to the contract. It was held that the goods were of specific quality and description as prescribed by the contract, and accordingly, there was no possibility of those goods being diverted by the contractor for any other purpose. Accordingly, the transactions in question constituted either sale/purchase in course of import or inter-State trade and hence, exempted from the ambit of the DVAT Act. The Court observed and held as follows:

> *"9. So far as the issue in respect of sale in the course of inter-State trade is concerned, the Tribunal rejected the claim on the ground that there was no specific order for supply of such goods issued by DMRC nor was there specific instruction for inter-State movement of goods. The High Court found that in fact the terms of the contract envisaged inter-State movement of goods. Such movement of goods was within the knowledge of DMRC because there was total ban on setting up/working of heavy industries in Delhi and DMRC had approved 18 places within the country from where the equipments and goods had to be supplied. These included the premises and factories of the respondent also.*
>
> *10. On facts, therefore, it was rightly held by the High Court that the inter-State movement of goods was within the contemplation of the parties and it can be reasonably presumed that such movement was to fulfil the terms of the contract and therefore the transaction was covered by Section 3(a) of the CST Act. The law on this issue was also*

[40] **(2016) 6 SCC 791**





considered by the High Court in correct perspective after noticing the case of Tisco Ltd.v. S.R. Sarkar [Tisco Ltd. v. S.R. Sarkar, AIR 1961 SC 65 : (1960) 11 STC 655] that where the goods moved from one State to another as a result of a covenant in the contract of sale it would be clearly a sale in the course of inter-State trade. The conclusion of the High Court on this issue also finds ample support from the following case laws which were noticed by the High Court in (1) Oil India Ltd. v. Supt. of Taxes [Oil India Ltd. v. Supt. of Taxes, (1975) 1 SCC 733 : 1975 SCC (Tax) 167 : (1975) 35 STC 445] , (2) English Electric Co. of India Ltd. v. CTO[English Electric Co. of India Ltd. v. CTO, (1976) 4 SCC 460 : 1977 SCC (Tax) 23 : (1976) 38 STC 475] and (3) South India Viscose Ltd. v. State of T.N. [South India Viscose Ltd. v. State of T.N., (1981) 3 SCC 457 : 1981 SCC (Tax) 245 : (1981) 48 STC 232] :

10.1. In Oil India Ltd. [Oil India Ltd. v. Supt. of Taxes, (1975) 1 SCC 733 : 1975 SCC (Tax) 167 : (1975) 35 STC 445] this Court held that (SCC p. 737, para 9) the inter-State movement must be the result of a covenant, express or implied in the contract of sale or an incident of the contract. In other words, the covenant regarding inter-State movement need not be specified in the contract, it would be enough if the movement was in pursuance of or incidental to the contract of sale.
10.2. In English Electric Co. of India Ltd. [English Electric Co. of India Ltd. v. CTO, (1976) 4 SCC 460 : 1977 SCC (Tax) 23 : (1976) 38 STC 475] the law was clarified thus : (SCC p. 464, para 16)

> *"16. ... If there is a conceivable link between the movement of the goods and the buyer's contract, and if in the course of inter-State movement the goods move only to reach the buyer in satisfaction of his contract of purchase and such a nexus is otherwise inexplicable, then the sale or purchase of the specific/ascertained goods ought to be deemed to have taken place in the course of inter-State trade or commerce...."*

10.3. In South India Viscose Ltd. [South India Viscose Ltd. v. State of T.N., (1981) 3 SCC 457 : 1981 SCC (Tax) 245 : (1981) 48 STC 232] it was held that (SCC p. 462, para 8) if there is a "conceivable link" between contract of sale and the movement of goods from one State to another to meet the obligation under a contract of sale it would amount to an inter-State sale and such character will not be changed on account of interposition of an agent of the seller who may temporarily intercept the movement."





47. In the case at hand, the Petitioner, at the outset contended that the learned Tribunal could not have adjudicated upon the applicability of DVAT since it is a sovereign function. In this regard, the decision of the Division Bench of the High Court of Allahabad in ***U.P. Public Works Deptt. v. Vriddhi Infratech India (P) Ltd.***[41] is much relevant. The Court was seized with the question as to whether an arbitrator could decide a dispute pertaining to taxation and held as follows:

> *"40. In this regard, a court while formally considering as to whether a dispute is arbitrable or non-arbitrable must follow the following postulates which have been culled out from judicial pronouncements of the Supreme Court and has gained universal acceptance.*
>
> *(i) Whether the action giving rise to the disputes lies in the realm of acts in rem. Any act which leads to a dispute which requires adjudication and the effect of such judgment or adjudication is that it determines a status of the party or things, which is distinct from a particular interest in it of a party to a litigation and such adjudication/judgment is conclusive evidence for and against all persons whether parties or strangers to the matter actually decided, such judgments operate in rem and such kind of disputes are generally not arbitrable. [see Vidya Darolia (supra)];*
> *(ii) Legal action against sovereign function of the State is also non arbitrable as it is the State which has the exclusive domain, right and duty to perform such functions. Any decision and adjudication of and by the State which has a public interest element involved including such rights relating to legitimacy of marriage, citizenship, winding up of the companies, are considered to be non arbitrable. The only exception is where a statute in relation to a regulatory or adjudicatory mechanism either expressly or by clear implication permits arbitration;*
> *(iii) All such matters wherein the cause of action and subject matter of dispute affects third party rights which may have an all pervading effect and requires centralized adjudication in contradistinction to cases where mutual adjudication would not be proper and enforceable, are also non-arbitrable;*

[41] **2026 SCC OnLine All 22854**

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(iv) Where the subject matter of the dispute is expressly or by implication made non arbitrable as per statute.

41. Now to answer specifically, the issue, whether a dispute relating to taxation is arbitrable or not, can be considered under two distinct heads:
(A) Disputes relating to tax which can be resolved within the contract can be resolved through arbitration and
(B) Disputes which requires statutory determination through tax laws and such disputes cannot be resolved through arbitration.

41.1 Head-A: Such disputes are covered under Head A, which arise from an agreement over which the arbitrator has the jurisdiction to interpret the terms of the contract to settle private obligations such as:

> ***(i) Any such matter arising out of the contract which requires, deciding inter se tax liability that is to say which party is contractually liable and obligated to pay or deposit the tax;***
> ***(ii) Any such disputes which require adjudication within the contract relating to which party is obligated to receive reimbursement of tax paid;***
> ***(iii) Contractual issues relating to tax sharing or indemnity clause or determination of the fact as to which party to the contract is obligated to indemnify the other in respect of statutory taxes and penalties;***
> ***(iv) Any interpretation of any clause contained in the contract including or to give meaning to any phrase in the contract including words and phrases such as "inclusive of all taxes" and whether the use of such words would include a newly introduced tax or any other change or statutory modification of any taxing regime or if such tax may impact and constitute an 'extra cost', under the contract.***

41.2. Head B:- All such matters would fall under ***Head B, which relates to tax and which cannot bind a third party, are generally not arbitrable*** *such as:*

> *(i) In matters relating to tax between the contracting parties, if any such issue or adjudication is made by an arbitrator which may have the impact of encroaching upon the exclusive domain of a taxing authority then it cannot be decided by an arbitrator;*
> *(ii) Similarly, any issue arising between the contracting parties relating to the determination as to whether any particular transaction is legally taxable or has the impact of challenging a*

statutory tax arrangement issued by a taxing authority, cannot be made the subject matter of arbitration;
(iii) Issue which may involve determination of any classification or entry as specified by a taxing statute, which may be applicable in between the contracting parties;
(iv) Issue relating to determination of rate of taxation, which may be in dispute between the contracting parties including as to whether any of the contracting parties is eligible for any statutory exemption from tax or any tax concession;
(v) Disputes between any contracting party and the State Authority relating to tax also cannot be decided by the arbitrator.

41.3. In other words, what is required to be truly seen is not what the parties agreed but what the law mandates. A question of statutory interpretation and fiscal categorization which may lie in the exclusive domain of the taxing authority including in its appellate hierarchy, including Tribunal constituted under the taxing statute, such disputes would necessarily require the arbitrator to render a finding on the applicable tax rate, classification of goods or entries in the taxing statute, these are all issues which are in the hands of the taxing authorities and not the arbitrator.

41.4. The arbitrator is a creature of contract and its jurisdiction to decide the dispute may be co-extensive with the contract but if it requires any determination relating to tax rates or classification of goods under any particular entry of the taxing statute or the quantum of any tax liability or the adjudication requires referencing to any Executive Tax Notification and Statutory Tax Rates Schedules, then such disputes even though arising out of a contract ceases to be contractual in nature and it metamorphosis into a fiscal regulatory issue. Such issues are governed by the taxing statute which are a complete code in themselves and cannot be subjected to determination by a private forum such as an Arbitral Tribunal."

(emphasis supplied)

48. Thus, the Court carved out two distinct heads, whereby one is concerned with disputes pertaining to tax which can be resolved within the contract. These disputes require the arbitrator to interpret the terms of the contract and do not have any effect on third parties. They include situations wherein a party may be obligated to receive reimbursement of

tax, or questions as to *inter se* tax liability of the parties involved, etc. The second category pertains to tax issues which are generally not arbitrable such as determination of the rate of tax, determination as to whether a particular transaction is legally taxable, or any adjudication by an arbitrator, which may have the effect of encroaching upon the exclusive domain of a taxing authority. In the abovementioned case, there was no dispute with respect to whether GST was payable or not. Instead, the dispute pertained to the extent as to whether the payable tax was to be calculated as per MoRTH[42] guidelines or the orders issued by the concerned State Government.

49. Notably, the case at hand revolves around Clause 24(c)(ii) of the SCC which envisages reimbursement by DMRC to the Petitioner for any DVAT paid by it, if applicable. Accordingly, the bone of contention is whether DVAT was applicable on the underlying transactions. Therefore, in the opinion of this Court, such question falls under 'Head A', as carved out by the learned Division Bench in the aforementioned decision, and is therefore, arbitrable.

50. Adverting to the facts of the present case, the main thrust of the Petitioner's argument is that "sectioning posts" and "sub-sectioning posts", which was a BOQ item, created a commercially distinct final product which attracted DVAT and that the installation and commissioning of the BOQ items also led to value addition, thereby attracting DVAT.

[42] Ministry of Road Transport and Highways

51. With respect to the import by M/s Areva (India), Allahabad from M/s Areva (Germany), the Petitioner maintained before the learned Tribunal that it made the purchase from M/s Areva (India) only. It was also maintained that certain items were bought from M/s Areva (India), Kolkata as well, for which it paid CST. It was further argued that the contract did not envisage sale of the HV and LV panels, and the Petitioner was instead required to sell "Sectioning and sub-sectioning posts", "traction cables", "return conductor" etc., as stipulated in the BOQ. According to the Petitioner, the sale of these BOQ items constituted a sale under the DVAT Act.

52. On the other hand, DMRC maintained that Clause 24(c)(ii) of the SCC only contemplated reimbursement of DVAT if it was legally applicable in the first place. DMRC placed reliance on the purchase order dated 20.09.2008 for HV panels, which was in the name of DMRC itself, to urge that since the invoices bore its name, the Petitioner was aware that the procurement was specifically in furtherance of the works contract and accordingly, the import was also incidental to the contract. Further, the invoices issued by M/s Areva and customs invoice of M/s Areva also mentioned the name of DMRC as the consignee. DMRC also contended before the learned Tribunal that it approved M/s Areva as the supplier and accordingly, issued the Custom Duty Exemption Certificate in favour of M/s Areva. Therefore, DMRC maintained that there was direct nexus between such sale and import, with the contract executed between DMRC and the consortium of contractors. DMRC relied on Sections 3

and 5 of the CST Act to submit that since there existed an unbreakable chain between the sale and movement of goods, the exemption under Section 7 of DVAT Act would apply.

53. DMRC also contended that as per the invoices furnished by the Petitioner, it had paid DVAT on the HV and LV panels and not on the sectioning post or sub-sectioning post. The Petitioner contested the aforesaid in the following manner:

> *"6.2.2 On this the Claimant' contention is that HV panels, LV Panels etc., are all spare parts to be integrated to form the individual BOQ items stated above. The HV panels, LV panels, Cables, Contact Wires, and Return Conductors were shifted to different sites of erection where these panels were integrated, erected, installed and commissioned to form "Sectioning and Sub-Sectioning Posts", "Overhead Conductor" etc., as stated in the respective BOQ item, and the Claimant, as per the BOQ, submitted the invoice as "Sectioning and Sub-Sectioning Posts", "Traction Cables", "Return Conductor", "Sub-Sectioning and Paralleling Posts", "25 Kv Cables", Equipment for Park Street TSS-2, Equipment for Airport TSS, 25 Kv Traction Cables and "Return Conductor" for ROCS to the Respondent for payment. Thus new commercial products were sold to the Respondent at various station locations in New Delhi, and in terms of the statutory compliances under Delhi Value Added tax Act, the Claimant paid the DVAT on these BOQ items over a period from 2008 to 2009, as and when the sale accrued. The sale in the course of import of HV Panels, and inter-state trade of LV Panels could not be effected as the supply of BOQ items does not contemplate sale of stand-alone items such as HV and LV Panels."*

54. The Petitioner further maintained that there was no direct link between the purchase and sale since the purchase is related to procurement of the component items for the assembly of the BOQ items, and it is these BOQ items that are sold to DMRC. The Petitioner sought to argue that the Contract did not contemplate DMRC to issue Form 'C'





for HV and LV panels from a different State. The BOQ items being a distinct product from what was procured, attract DVAT. The Petitioner placed reliance on an order passed by the Commissioner (Trade and Taxes), as follows:

> *"6.2.6 In support of its claim the Claimant has filed a copy of the Order No. 193/CDVAT/2007/179 dated 15.01.2008 passed by the Commissioner, T&T, under Delhi Value Added Tax Act, 2004, which states in the penultimate paragraph "— There is no sale during import because the equipment had been custom cleared by the applicant company himself and charged VAT on sale" In the case of the Claimant, the custom clearance was made by the Claimant's vendor, thus breaking the inextricable link in the chain of transaction. Therefore Claimant does not agree with the contention of the Respondent that the inextricable link has not been broken. The Claimant has also tried to establish its point that the DVAT amount of Rs. 1,88,28,688/- claimed by the Claimant vide invoice No. BE-3 Lot-2/DVAT/03 dated 09.03.2009 for the period 01.12.2008 to 31.12.2008, was reimbursed by the Respondent (Rs. 1,29,29,200/- as net amount) vide cheque no. 12992 dated 15.01.2010, as the Respondent was of the view that DVAT was required to be paid on the said transaction as per the Contract conditions. However, the Respondent did an above turn and recovered from the claimant's Running Bill, the gross amount of Rs. 1,38,22,788/- on 03.03.2011.*
>
> *6.2.7 The Claimant through its Application under Section 23 of the Arbitration and Conciliation Act, 1996, has brought out that the Claimant made local sale in Delhi and the same was accepted by the Respondent by the action taken by the Respondent by effecting Works Contract Tax/TDS under Section 36A of DVAT Act on the above said supply of "Sectioning and Sub-Sectioning Posts", "Over Head Conductors" etc., which means they deducted TDS on WCT on these supplies considering the same as local sale. As per Section 36A of DVAT Act, "any dealer, for discharge of any liability on account of valuable consideration payable for the*
> *transfer of property in goods in pursuance of a Works Contract, shall at the time of credit of such sum to the account of the contractor or at the time of payment thereof in cash or by any other mode, whichever is earlier, deduct tax thereon at the rate of four percent and same to be remitted to the Govt. and issue TDS certificate to the Contractor". The DVAT Act does not contemplate deduction of TDS on inter-state sale, thus clearly establishing that the inextricable link has been broken. By*

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virtue of Tax deducted by the Respondent and TDS certificate issued, it is clearly evident that the Respondent also treated this as local sale. The Claimant denies the Respondent's submission that there cannot be any tax by any State on sale or purchase of goods when such sale or purchase takes place in the course of import or export, and that in the course of inter-state sale, local tax of any State would not apply, and only Central Sales Tax would apply."

55. DMRC placed reliance on ***ABB Ltd. (supra)*** before the learned Tribunal and submitted that the said decision squarely applied to the case at hand in the following manner:

"6.2.9 ...(a) Technical specifications of the Contract (page 148-555 in RD-1);
(b) Supply of goods were approved by the DMRC (pages 675, 676 to 678 of RD-2);
(c) Pre-inspection of goods for BE-3 Lot-2 Contract (Clauses 7.3, 19 of the GCC, Employers requirement- General specifications and Particular Specifications related to Scope of Work);
(d) The goods were custom made for use by DMRC in its project - Design & Drawings were approved by DMRC specifically for custom made items used in DMRC;
(e) Excise and Custom duty exemption certificates were issued by the DMRC (pages 686-687 & 688 of RD-2);
(f) DMRC issued a certificate certifying its approval as foreign supplier located in Germany from whom the goods were procured;
(g) Packed goods were specially marked as meant for DMRC use in Contract (page 685 of CD-4 for HV panel- consignee - DMRC, & pages 605, 606 of CD-3 fer LV panels - Consignee - DMRC)."

56. It is also pertinent to note that the Petitioner claimed before the learned Tribunal that certain items like cables, contact wires, etc., were purchased in Delhi itself and were undisputed. However, in a meeting held before the Tribunal on 30.01.2014, the Petitioner clarified that these materials were not purchased in Delhi, but from other States. The Petitioner maintained that these were undisputed materials on which

DMRC ought to have reimbursed DVAT, however, DMRC contested the aforesaid and claimed that these materials were also disputed on the grounds that they were purchased from outside Delhi.

57. It is in the aforesaid background that the learned Tribunal held as follows:

> *"6.3 The Arbitral Tribunal's Conclusions:*
> *6.3.1 The Arbitral Tribunal has considered the whole matter based on the documents placed before it and the arguments advanced by the parties during the oral hearings. The import of the HV panels and indigenous procurement of all other items, were part of the BOQ equipment under the Contract executed between the Claimant and the Respondent. The Respondent issued the Custom exemption certificate in favour of M/S Areva wherever applicable and reimbursed the import duty, for import of HV panels in case paid by the Claimant through M/S Areva. The Claimant has not refuted the assertion of the Respondent (Para 6.5 supra) that the name of M/S Areva was got approved by the Claimant from DMRC, before placing the purchase order on 08.05.2008, the Purchase Order dated 20.09.2008 placed by the Claimant in favour of M/S Alstom T & D india Ltd. for delivery of HV panels, prescribed that the same are required for Respondent's Rigid Overhead Contact System, the Excise invoices issued by Areva and the Custom invoices raised by M/S Areva on the Claimant also mentioned the name and address of the consignee to be M/S Delhi Metro Rail Corporation Ltd. Thus M/S Areva also knew from the very beginning that the HV panels had been imported by the Claimant only for the purposes of its installations in Delhi Metro Project. This establishes a direct connection between the Claimant placing purchase orders upon M/S Areva and import of. HV panels by M/S Areva for the Respondent's project under the Contract. The Tribunal is also convinced that after the clarifications given by the Claimant in the meeting held with both the Parties on 30-01-2014 (Ref; Para 6.2.12), the materials purchased for the project from within India were not purchased at New Delhi but were procured from outside as the inter-state sales, subjected to the Central sales Tax, and are not the local sale in Delhi liable for payment of DVAT.*
>
> *6.3.2 The Claimant's mention of the Respondent deducting Works Contract Tax on the Invoices, which included the DVAT amount, has*

not been contradicted by the Respondent. The Respondent has also not denied that that the DVAT amount of Rs. 1,88,28,688/-claimed by the Claimant vide invoice No. BE-3 Lot-2/DVAT/03 dated 09.03.2009 for the period 01.12.2008 to 31.12.2008, was reimbursed by the Respondent, but later on recovered from the Claimant's Running Bill Through this the Claimant has tried to justify that the Respondent treated this as local sale, and that the inextricable link has been broken, because the DVAT Act does not contemplate deduction of TDS on inter-state sale. However, the Tribunal is of the opinion that if a mistake has been committed, but rectified later on its realization, it cannot justify admission of the material to be as local sale, liable for payment of DVAT. The Tribunal is of the considered-view that the Claimant has erred in paying-the DVAT to the Department, on the material for the Respondent's project brought to Delhi either through import or as inter-state sale, and the Respondent is not, therefore, bound to reimburse the same to the Claimant.

6.3.3 Accordingly, the Tribunal rejects the claim of Rs. 4,45,73,743/- (Rupees Four Crore Forty Five Lakh Seventy Three Thousand Seven Hundred and Forty Three) raised by the Claimant against the Respondent, and give 'NIL' Award against the claim.

6.3.4 The Claimant has also claimed interest, pre-reference from the date of reference till 11.06.2012, interest pendente-lite till the date of Award, and future interest from the date of Award till the date of payment, @ 18% p.a. As the amount awarded on the Claim is 'NIL', the question of awarding interest does not arise. Even otherwise, in terms of Clause 17.10 of the General Conditions of Contract (GCC), of the Contract executed between the parties, no interest is to be paid on whole or any part of the money for any period, till the date on which the award is made.

6.3.5 The Claimant has stated that it is entitled for cost of arbitration proceedings also. The Respondent has pleaded against this demand due to clear provision in the Contract. In terms of Clause 17.11 of the GCC of the Contract executed between the parties, the cost of arbitration, which includes the fee of the arbitrators also, is to be borne by the respective parties. Hence, the Tribunal is unable to grant any relief to the Claimant on this score also.

6.4 No counterclaim has been filed by the Respondent.

7. Award:

7.1 Since the Tribunal rejects the claim of Rs. 4,45,73,743/- (Rupees Four Crore Forty Five Lakh Seventy Three Thousand Seven Hundred and Forty Three) raised by the Claimant against the Respondent, 'NIL' Award is given against the claim.

7.2 As the awarded amount is 'NIL', and also there being clear provision in Clause 17.10 of GCC, no interest is payable to the Claimant."

58. It is evident from a plain reading of the impugned award that the learned Tribunal considered the relevant material placed before it and the submissions of both parties. It proceeded on the premise that there was a link between the import and indigenous procurement of the items with the contract executed between the parties. Accordingly, the exemption under Section 7 of the DVAT Act would come into play. The learned Tribunal observed that DMRC approved the name of M/s Areva as supplier, issued custom exemption certificate and reimbursed the import duty, the purchase order bore the name of DMRC, the excise and custom invoices were also in the name and address of DMRC as the consignee. Thus, the learned Tribunal, based on the aforesaid, opined that there existed a direct link between the Petitioner procuring the items indigenously and through import for the works contract. The learned Tribunal also placed reliance on the meeting dated 30.01.2014, whereby the Petitioner admitted that the materials were purchased from outside of Delhi and were therefore amenable to CST.

59. The learned Tribunal further took note of the fact that DMRC did reimburse the DVAT amount of Rs. 1,88,28,688/-, however, it later recovered the same on the ground that DVAT was not applicable. In this

regard, the learned Tribunal opined that DMRC committed a mistake and subsequently rectified the same. Such rectification, according to the learned Tribunal, could not be treated as an admission so as to invoke liability for payment. Ultimately, the learned Tribunal arrived at the conclusion that the Petitioner erred in paying DVAT on the material indigenously procured or by way of import, and therefore, DMRC was not bound to reimburse the same to the Petitioner.

60. In my considered opinion, the present case is squarely covered by the judgment of this Court in ***ABB Ltd. (supra)*** which came to be affirmed by the Supreme Court. The key elements being the following:

> *"(1) Specifications were spelt out by DMRC ;*
> *(2) Suppliers of the goods were approved by the DMRC ;*
> *(3) Pre-inspection of goods was mandated ;*
> *(4) The goods were custom made, for use by DMRC in its project ;*
> *(5) Excise duty and customs duty exemptions were given, specifically to the goods, because of a perceived public interest, and its need by DMRC ;*
> *(6) In the project authority certificate issued by DMRC the name of the sub-contractors as well as the equipment/goods to be supplied by them were expressly stipulated ;*
> *(7) DMRC issued a certificate certifying its approval of foreign suppliers located in Italy, Germany, Korea, etc., from whom the goods were to be procured.*
> *(8) Packed goods were especially marked as meant for DMRC's use in its project."*

61. In the present case, it is evident from the material on record that, at least, conditions (1), (2), (3), (4), (5), (7) and (8) are satisfied. The same has been noted by the learned Tribunal as well, as is evident from paragraph no. 6.2.9, which is being delineated herein below:

"6.2.9 ... (a) Technical specifications of the Contract (page 148-555 in RD-1);
(b) Supply of goods were approved by the DMRC (pages 675, 676 to 678 of RD-2);
(c) Pre-inspection of goods for BE-3 Lot-2 Contract (Clauses 7.3, 19 of the GCC, Employers requirement- General specifications and Particular Specifications related to Scope of Work);
(d) The goods were custom made for use by DMRC in its project - Design & Drawings were approved by DMRC specifically for custom made items used in DMRC;
(e) Excise and Custom duty exemption certificates were issued by the DMRC (pages 686-687 & 688 of RD-2);
(f) DMRC issued a certificate certifying its approval as foreign supplier located in Germany from whom the goods were procured;
(g) Packed goods were specially marked as meant for DMRC use in Contract (page 685 of CD-4 for HV panel- consignee - DMRC, & pages 605, 606 of CD-3 fer LV panels - Consignee - DMRC)."

62. This Court, under Section 34 of the Act, does not sit in appeal over the decision of the Arbitral Tribunal and cannot re-appreciate evidence. This Court shall refrain from interfering with an arbitral award if the same is a plausible view based on the material on record.

63. In the instant case, DMRC provided the technical specifications for the contract, it approved the supply of goods, it pre-inspected the goods, the goods were custom-made for DMRC, DMRC issued certificates for custom and excise exemption, and the packed goods were specifically for DMRC's use pursuant to the Contract.

64. In view thereof and considering the ratio in ***ABB Ltd. (supra)***, I am of the considered view that there exists a direct link between the inter-State procurement of goods with the Contract and between the

import of goods with the Contract. Accordingly, the exemption granted under Section 7 of the DVAT Act is applicable.

65. At this stage, it would be relevant to note the Petitioner's contention as to how ***ABB Ltd. (supra)*** is distinguishable from the present case. The Petitioner, in this regard, largely submitted that (i) the Contractor directly imported the goods for sale but in the present case, the Petitioner bought from M/s Areva, which had imported the goods; (ii) the goods were manufactured outside Delhi in that matter, however, in the present case, the goods procured were integrated and commissioned into the final product as per BOQ and not sold as it is.

66. I am not inclined to accept these contentions for the reasons to follow.

67. The fact that the contractor in ***ABB Ltd. (supra)*** directly imported the goods is of no avail. The relevant inquiry is whether the movement of goods was occasioned by or incidental to the contract between the Petitioner and DMRC. In the present case, there exists a link because the order was placed by the Petitioner and the invoice bore the name of DMRC as the consignee. The learned Division Bench in ***ABB Ltd. (supra)*** clarified that to ascertain if a sale was in the course of import, a court must examine whether the movement of goods was *"integrally connected with the contract for their supply"*. In the present case, in light of the foregoing discussion, this Court is of the considered view that such integral connection does exist.

68. The submission that the Petitioner integrated the equipment into the final product does not, by itself, distinguish ***ABB Ltd. (supra)***, which also involves a works contract pertaining to installation and commissioning of electrical systems for DMRC. At the cost of repetition, the link between deemed sale and movement of goods is to be examined in order to ascertain whether the sale is inter-State or in the course of import.

69. Apropos the sectioning and sub-sectioning posts, it is borne from the record that the same required HV and LV panels as constituent items. It was urged on behalf of the Petitioner that sectioning and sub-sectioning posts are commercially distinct from these input items. However, as per ***ABB Ltd. (supra)***, what is relevant is the contractual nexus with the movement of goods rather than the form in which the goods were incorporated. In the present case, the goods were procured as per the specifications of DMRC from approved suppliers and specifically for the contract, this is what is relevant in the inquiry as to whether the sale falls under Section 3 or 5 of CST Act. The incorporation, according to this Court, does not severe this nexus.

70. To reiterate, the Supreme Court in ***English Electric Company of India Ltd. v. Deputy Commercial Tax Officer***[43] held that *"If there is a conceivable link between the movement of the goods and the buyer's contract, and if in the course of inter-State movement the goods move only to reach the buyer in satisfaction of his contract of purchase and*

[43] **[1976] 38 STC 475 (SC)**

such a nexus is otherwise inexplicable, then the sale or purchase of the specific or ascertained goods ought to be deemed to have taken place in the course of inter-State trade or commerce as such a sale or purchase occasioned the movement of the goods from one State to another".

71. In view of the foregoing discussion, this Court is of the considered view that no ground under Section 34 of the Act is made out in order to warrant interference. The impugned award reflects due application of mind and consideration of material on record. The conclusion arrived at by the learned Arbitral Tribunal is a plausible view based on the material on record before it. Even mere incorrect application of law is not a ground sufficient enough to warrant interference.

72. Undoubtedly, this Court cannot undertake its own exercise of re-appreciating evidence to arrive at another equally plausible view of the matter. The learned Tribunal has not re-written the contractual bargain. There exists no patent illegality going to the root of the matter in the impugned award.

73. The petition is, accordingly, dismissed in the above terms.

74. Pending applications, if any, stand disposed of.

75. No order as to costs.

OM PRAKASH SHUKLA, J

OCTOBER 16, 2026/*gunn*