

Union of India & Others v. Bharat Forge Ltd. & Another

Case number: Civil Appeal No. 5294 of 2022, arising out of SLP (C) No. 4960 of 2021 (appeal number verified from official eSCR metadata; blank in this signed cover)

Citation: 2022 INSC 837 (verified from official eSCR metadata)

Decision date: 2022-08-16

GST/public-procurement interface: HSN and GST disclosures, contractual tax burden and jurisdictional tax oversight

Court: Supreme Court

Bench: K.M. Joseph and Hrishikesh Roy, JJ.; judgment by K.M. Joseph, J.

Decision stage: Final judgment allowing the appeal against tender directions, with a separate mandatory tax-information safeguard

01 Facts

Diesel Locomotive Works, Varanasi invited global e-tenders for turbo wheel impeller balance assemblies. Bharat Forge, an approved local manufacturer, was ranked L4. It quoted a base price of Rs.7.03 lakh and GST at 18%, producing Rs.8,29,540, while L1 quoted Rs.6 lakh and 5%, producing Rs.6.30 lakh. Bharat Forge argued that the differing tax rates distorted comparison and placed its offer outside the 20% purchase-preference margin under the Make in India policy. It sought a specified HSN classification and 18% rate, interference with the ranking and disqualification of bidders using 5%. The High Court directed the Railway purchaser, where GST was included in the evaluated price, to obtain clarification from GST authorities about the correct HSN code and state it in the tender documents. Some tender-specific prayers had become infructuous because the offer period had expired and a subsequent tender had gone to Bharat Forge. The Union and Railway appellants challenged the continuing mandatory direction. The issue before the Supreme Court concerned the procurement authority's duty, tender terms and tax-administration responsibilities, rather than a statutory appeal finally classifying the product.

Pinpoint: Paragraphs 2-7, official PDF pages 1-10; parties' submissions and issues, paragraphs 9-14, pages 10-18. Tender publication is described in paragraph 4 as 11 April 2019.

02 Court Discussion

The Court rejected the proposition that mandamus can enforce only a duty expressly imposed by statute: an enforceable public duty can arise from other lawful sources, subject to the usual requirements. It nevertheless emphasised restraint in judicial review of public contracts and found no enforceable duty of the asserted kind in this case. The tender clauses had to be read together. They required bidders to understand their taxes, allocated misclassification or mistaken tax assumptions to the supplier and treated an offer omitting a separate tax component as inclusive. A supplier could commercially absorb some or all of an indirect tax within its price, but that did not remove its statutory tax liability. Except where the reverse-charge regime applied, liability and self-assessment lay with the supplier and assessment belonged to the jurisdictional tax authority. The Railway Board's 5 September 2017 communication permitted the purchaser to mention an HSN number while leaving responsibility for correct HSN/GST disclosure with the bidder; it did not impose the mandatory duty found by the High Court. Nor did the Make in India policy create that duty. The advance-ruling process involved statutory procedures and limited binding effect, and section 168 did not supply the requested purchaser-facing clarification mechanism. A tender purchaser's

statement of its understanding could not conclusively bind the supplier or tax authority. The classification dispute itself was substantive: the parties contested whether the assembly should be treated like a turbocharger or under another tariff heading. The Court did not resolve that dispute or endorse either the 5% or 18% rate as the finally correct rate for these goods. It also treated reverse charge separately and said that question did not appear to arise on these facts.

Pinpoint: Mandamus and review: paragraphs 15-23, pages 19-33. Tender allocation: paragraphs 25-39, pages 33-49. Circular and statutory mechanisms: paragraphs 43-49, pages 53-63. Product dispute: paragraphs 51-52, pages 63-65. Make in India and other tenders: paragraphs 53-59, pages 66-74. Reverse charge: paragraph 60, pages 74-76.

03 Decision

The appeal was allowed and the impugned High Court judgment was set aside, with no order as to costs. The appellants were nevertheless expressly required to comply with paragraph 61: whenever they award a contract, a copy of the award document containing all material details must immediately be forwarded to the concerned jurisdictional officer. To enable that, the appellants must require tenderers to state details of their assessing officers in their bids. The Union of India and Railway Board must ensure compliance by all units. This tax-information safeguard is part of the operative relief, not an optional observation. The judgment neither fixed a GST rate for the product nor required award of a particular contract to Bharat Forge or L1.

Pinpoint: Paragraphs 61-62, official PDF pages 76-78; operative information-transmission direction on page 77; disposal and signatures on page 78.

04 In Favour Of

Union of India and Railway appellants on setting aside the High Court direction; mandatory award-information safeguard retained for tax authorities

In favour of the Union of India and the Railway appellants on removal of the High Court's mandatory HSN-clarification/tender-disclosure direction. Their success came with a separate affirmative duty to obtain assessing-officer details and forward contract awards for tax oversight. Bharat Forge did not obtain the requested mandatory direction or a Supreme Court determination of its preferred tax rate. This is a procurement outcome with GST-administration implications, not a final classification victory for a taxpayer or Revenue.

Pinpoint: Paragraphs 61-62, pages 76-78; absence of an enforceable HSN duty discussed in paragraphs 43-59.

05 AKHB REVIEW POINT

AKHB REVIEW POINT: Separate three questions when reviewing a GST-sensitive tender: the supplier's statutory classification and liability; the contractual allocation of the economic tax burden; and the purchaser's price-evaluation rules. A low tax figure in an accepted bid does not immunise the supplier from tax correctly due. Check inclusive-price, misclassification and statutory-variation clauses before assuming the buyer must reimburse a later difference. For the Railway procurement framework addressed here, record the bidder's assessing-officer details and the immediate onward transmission of the award with material particulars. Do not read the judgment as permission to omit an HSN field that a different tender, binding rule or later instrument expressly requires. Equally, do not use its discussion as a tariff ruling that every railway turbo assembly bears either 5% or 18%. Resolve a live classification or assessment issue through the appropriate statutory route using the actual product and applicable rate instruments. The

Court's procurement reasoning is tied to the tender clauses and policy record before it; a materially different reverse-charge or reimbursement arrangement needs separate analysis.

Pinpoint: AKHB analysis based on paragraphs 35-39, 43-49, 52-61; official PDF pages 43-49 and 53-77. This practical analysis is distinct from the Court's holdings.

Sources and limitations

Relevant provisions

Central Goods and Services Tax Act, 2017: sections 9(3), 59, 60, 96-105 and 168, as considered in the judgment

Corresponding State GST provisions, including the Uttar Pradesh section 168 reproduced in the judgment

Constitution of India: Articles 14, 19(1)(g) and 226

Railway tender clauses 2.7.6, 2.7.7, 2.8.6.2 and 2.9.2; Railway Board communication dated 5 September 2017

Public Procurement (Preference to Make in India) Order, 2017 dated 15 June 2017

Statutory note

The note describes the historical statutory and procurement framework considered in 2022. It does not certify current tariff rates, amended tender terms, advance-ruling arrangements or the commencement/operation of every provision mentioned in the original. Paragraph 30 says the Court could not locate the statutory-variation clause for the particular bid and therefore referred to a clause supplied from another tender; the discussion is not treated as proof of an identical clause in every Railway contract. Tender-date references vary in the source: paragraph 4 states 11 April 2019, while later passages use other dates. This note anchors its chronology to paragraph 4 and does not silently reconcile those variations. Product classification and rate arguments are not converted into final tax findings.

Treatment note

Complete issuing-court original and official eSCR identity metadata checked on 12 October 2026. Targeted official-domain searches are not an exhaustive later-treatment, review/clarification or implementation audit. No comprehensive subsequent-treatment check or verification that all Railway units complied with paragraph 61 has been completed. The judgment should not be described as a current universal exemption from HSN disclosure in all public procurement. This AI-assisted AKHB research note is based on identified primary material. It does not evidence human legal review and is not a substitute for professional advice on the facts of a particular case.

Scope of source review

Complete 78-page official judgment read, paragraphs 1-62, including the quoted tender clauses, Railway circular, Make in India discussion and final directions. Title, SLP number and author checked on page 1; bench and date on page 78. Civil Appeal No. 5294/2022 and neutral citation 2022 INSC 837 verified in saved official eSCR search metadata because the signed cover leaves the appeal number blank. This is included as a GST/public-procurement interface decision, not a direct final tariff-classification ruling. No connected distinct judgment or additional case is counted from authorities quoted within it.

Primary source

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Judges: K.M. Joseph; Hrishikesh Roy

Outcome type: final

Disclosures and source rights

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