



Appeal No. PPRA/AP-56/2024
Government of Pakistan
Public Procurement Regulatory Authority
(Appeal & Review Petition Secretariat)
1st Floor, FBC Building, G-5/2, Islamabad
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ORDER

Sui Southern Gas Company Limited (SSGCL)

...the "Appellant"

Vs.

Sui Northern Gas Pipeline Limited (SNGPL), etc.

...the "Respondent(s)"

<u>Dates of Hearings</u>	
13.03.2025 27.01.2025	Sardar Taimoor Aslam Khan (ASC), Mr. Ali Akbar (On behalf of Appellant) Mr. Umer Sharif (Legal Advisor), Mr. Fiaz Rasool, Mr. Khalid Mehmood (On behalf of Respondent)

APPEAL UNDER RULE 48(7) OF THE PUBLIC PROCUREMENT RULES, 2004

The above mentioned learned counsel(s) and representative(s) of the parties tendered appearance before the Appellate Committee and furnished their arguments at length.

2. At the outset of the hearing, learned counsel of the appellant i.e., Sui Southern Gas Company Limited (SSGCL) submitted that they filed the instant Appeal being aggrieved and

dissatisfied with the rejection of its grievance by the Grievance Redressal Committee (GRC) vide email dated 22.11.2024, wherein, no reasons / justification have been rendered qua such rejection and the same have not been intimated despite repeated requests.

3. The counsel of the appellant also submitted that the Sui Northern Gas Pipeline Limited (SNGPL / the Respondent) issued a Tender Inquiry No. SND 2469/24 related to the supply of domestic 274,000 G-1.6 and 120,000 G-4 Gas Meters. The appellant submitted their technical bid and it was declared technically compliant for both items, as per Bid Evaluation Report dated 23.08.2024. Subsequently, the Financial Bids were opened on 11.09.2024. The Appellant was declared financially non-complaint and Respondent offered the Appellant the landed cost of lowest foreign bidder for G-1.6 gas meters and asked for unconditional acceptance of the Appellant if it can match the landed cost of the lowest foreign bidder. After that in response to the Respondent's offer, the SSGC / the Appellant declined the same under protest due the reason(s) mentioned in its email dated 02.10.2024. Further submitted that the Appellant raised key concerns via its email to the Respondent in respect to the customs duty rate used in calculating the landed cost for imported meters, which directly impact the evaluation's accuracy, fair competition and local industry support. Consequently, the Respondent issued the Final



Evaluation Report dated 05.11.2024 and awarded the tender to the lowest foreign bidders.

4. The counsel of the appellant added that they also highlighted following grievances which were raised for consideration of the GRC:

1. Incorrect Application of Customs Duty Rate:

1.1 Non-Compliance with SRO Regulations: *The landed cost of imported G-1.6 gas meters has been calculated using a 5% customs duty rate. However, according to SRO 678 and SRO 827, a 20% customs duty rate applies when a local manufacturer, such as SSGC is available.*

1.2 Required 20% Duty for Imports: *Given SSGC's local manufacturing capability for G-1.6 meters, the applicable customs duty for imported meters is 20%, a specified under tariff code 9028.1000. Applying a reduced 5% duty is inconsistent with customs regulations and disadvantages local production.*

2. Accurate Landed Cost Calculation:

2.1 Impact on Comparative Evaluation: *The use of a 5% customs duty rate has resulted in an artificially low landed cost for the imported bid. When the correct 20% duty is applied, the accurate landed cost for the imported bid would be Rs.5866/-, as opposed to the currently stated figure.*

2.2 Lowest Bid Determination: *SSGC submitted a competitive bid of Rs.5406/- with the correct 20% duty applied to the imported bid. SSGC's quote is, in fact, the lowest bid. The evaluation report does not currently reflect this due to the inaccurate custom duty calculation.*

3. Commitment to Fair Competition and Local Industry Support

3.1 Alignment with Policy Objectives: *The Government of Pakistan's customs framework is designed to support local industry by applying a higher customs duty to imported goods when equivalent items are locally produced. Misapplication of these standards hinders local industry, despite SSGC's competitive and compliant pricing.*

3.2 Principles of Equitable Competition: *Fair competition requires accurate duty calculation to ensure that local manufacturers are not unfairly disadvantaged by incorrect landed cost assessments. Upholding these principles is essential for the integrity of the procurement process.*

4. Request for Re-Evaluation and Award of Contract:

4.1 Regulatory Compliance in Re-Evaluation: *Given these discrepancies, we (the appellant) formally request a re-evaluation of the final report incorporating the correct customs duty rate as per SRO 678 and SRO 827. This re-evaluation should recognize SSGC's quoted price of Rs.5,406/- as the lowest valid bid, based on an adjusted landed cost of Rs.5,866/- for the imported meters.*

4.2 Award Recommendation: *We respectfully request that, following the corrected evaluation, the order be awarded to SSGC as the lowest bidder under the fair and accurate cost comparison.*

5. The counsel of the appellant further added that in pursuant to the directions of the Honorable High Court, Lahore dated 27.06.2023, the Engineering Development Board (EDB) has decided on the matter of local manufacturing status of SSGC MMP. Vide its decision dated 21.02.2024, the EDB declared the Appellant's Gas Meters (i.e.G-1.6 and G-4) as "locally manufactured". The Respondent assailed the EDB decision dated 21.02.2024 before the Honorable High Court, Lahore, and the Honorable Court vide Order dated 30.04.2024 set aside the same. Resultantly, the Appellant preferred a Review Petition, which was dismissed, however, CPLA before the Honorable Supreme Court on the matter is pending.

6. The counsel of the appellant also submitted that the GRC vide its email dated 22.11.2024 communicated that the Appellant's Grievance Petition does not stand merit. However,

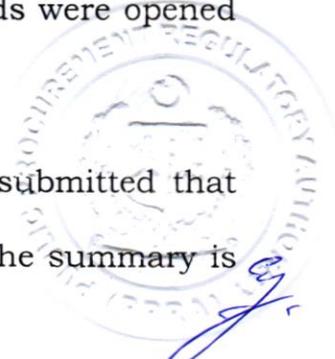
astoundingly no reasons or justification for adjudication, as such were communicated or have been relayed till filing of the instant Appeal. Hence, the instant Appeal.

7. On the other hand, the learned counsel of the respondent i.e., Sui Northern Gas Pipeline Limited (SNGPL) denied all the assertion made by the counsel of the appellant and raised preliminary objection regarding the instant appeal.

8. At the first, the counsel of the respondent submitted that the subject appeal is not maintainable in the eye of law and the appeal was filed by unauthorized person. Moreover, no board resolution was enclosed as required by Order 29 Rule 1 of CPC and issue in hand has already been decided by Honourable Supreme Court of Pakistan, hence, requested for dismissal on the said grounds.

9. The counsel of the respondent submitted that the tender enquiry SND-2469/24 was issued through press advertisement for the Domestic Gas Meters G-1.6 (274,000 Nos.) and Domestic Gas Meters G-4 (96,000 Nos.) and the bids against the said tender enquiry were invited through Single Stage Two Envelop procedure. Moreover, the tender was closed on 23.07.2024 at 1530 hours and technical bids were opened in public on the same date at 1600 hours.

10. The counsel of the respondent also submitted that technical bids submitted by four bidders and the summary is



given as under:

Sr.#	Supplier/Manufacturer	Local Representative	Quoted For	Technical Evaluation Results
A	M/s Sui Southern Gas Co., Ltd, Karachi	Local manufacturer	Item 1 & 2	Technically responsive for both items
B	M/s Daesung Measuring Co, Ltd., Korea	M/s Maxus Power Group, Islamabad	Item 2	Technically responsive
C	M/s Qianwei Meters (Chongqing) Co., Ltd., China	M/s Rehma Metering Solutions, Lahore	Item 1	Technically responsive
D	M/s Zenner Metering Technology (Shanghai) Co., Ltd., China	M/s Bukhari Brother, Lahore	Item 2	Technically responsive
E	M/s Zhejiang Chint Instrument & Meter Co., Ltd., China	M/s Evergreen Chemical International Co., Ltd., Islamabad	Item 1 & 2	Technically non-responsive for both items

From the above, only M/s SSGC, Karachi and M/s Qianwei Meters (Chongqing) Co., Ltd., China are considered technically responsive for item No. 1 i.e. Domestic Gas Meters G-1.6.

11. The counsel of the respondent further submitted that the technically responsive bidders were invited for public opening of 'Financial Proposals' which was held on 11.09.2024 at 1100 hours in public. The unit prices offered by the appellant (M/s SSGC) and those offered by foreign bidder, on Landed Cost basis (excluding GST), are compared and given below:-

Item No.	Description	Qty. (Nos.)	M/s SSGC, Karachi (F.O.R) Rs.	M/s Qianwei Meters (Chongqing), China (C&F in US\$) / Landed Cost @ 5% Custom Duty)
1.	Gas Meters G-1.6	274,000	5,406.00	C&F: 16.10
	Landed Cost in Rs.			5,179.55

12. The counsel of the respondent further added that, in light of SOR 827(1)/2001 issued by Government of Pakistan, the landed cost of lowest priced foreign bidder upto Manga Store (excluding GST) was prepared and offered to the appellant (M/s



SSGCL), vide e-mail dated 24.09.2024 followed by reminders vide e-mails dated 25.09.2024, 26.09.2024, 27.09.2024 and 02.10.2024, which is as under:-

Item No.1	Domestic Gas Meters G-1.6	Rs.5,179.55
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13. The counsel of the respondent further argued and submitted that the appellant vide e-mail dated 02.10.2024 refused to accept the landed price of foreign bidder objecting that the landed cost was calculated by taking custom duty @ 5% instead of @ 20%. The appellant stance in the said email is as under:-

"The landed cost for the imported bidder has been computed by SNGPL based on 5% customs duty, which is an incorrect application of SRO 678. As SSGC is manufacturing G-1.6 gas meters locally, the applicable customs duty on the imported meters should be 20%, as per the prevailing tariff structure. Consequently, the actual landed cost for the imported bidder should be Rs. 5866 instead of the erroneous lower figure calculated with a 5% duty."

14. The counsel of the respondent also submitted that the appellant, being aggrieved, submitted its grievance vide letter dated 08.11.2024 on the final evaluation report. The appellant contested that the applicable custom duty on imported domestic gas meters would be 20% under tariff code 9028.1000 and SRO 678 because the appellant (M/s SSGC) is a local manufacturer of G-1.6 gas meters. However, the GRC of the respondent in its decision did not accept the grievance of the appellant and uphold the calculation of landed cost and final

evaluation of the bids. It is important to mention that the purchase order has already been placed on the successful bidder.

15. The counsel of the respondent further submitted that, it is imperative to mention that the status of appellant (M/s SSGC) as a local manufacturer of G-1.6 gas meters is yet sub judice and EDB (Engineering Development Board) has been directed by the Honorable High Court vide its order dated 30.04.2024 to decide the matter relating to the local manufacturer of gas meters as under:-

“The petition is allowed and the impugned Order dated 21.02.2024 is set aside with the direction to the Engineering Development Board to decide the matter afresh.”

Therefore, the appellant (M/s SSGC) has hidden the facts from this Appellate Committee in this regard that the matter is sub judice before EDB.

16. The counsel of the respondent further added that the Hon'ble Supreme Court of Pakistan in terms of CPLA No. 2912/2024 to 2932/2024 has set aside the decision of the Sindh High Court and the Tribunal and declared that SNGPL is entitled to the exemption under the SRO vide its order dated 20.12.2024, para 6 & 7 of the Hon'ble Supreme Court of Pakistan order are reproduced hereunder;

“6. We have examined the record of the case and heard the learned counsel for the parties. For the petitioner to claim entitlement of exemption from custom duty in excess of 5%

under the SRO, the petitioner had to meet two conditions: (i) that the gas meter was not being manufactured locally in Pakistan and (ii) that the meter was required by the petitioner for their "own use".

7. We have noticed that through letter dated 04.07.2017 issued by EDB that at the time the said gas meters were not being manufactured local in Pakistan. This requirement of getting a certification from EDB is also a requirement of the said SRO. Further, we have gone through the agreement between the petitioner and the consumers for supply of gas and have gone through clauses, 5, 7, 9, 18 and 19 of the Agreement to note that the gas meter is rented out to the consumer by the petitioner and is used to gauge the quantity of supply of gas for record and for the purposes of billing. The meter at all time remains the property of the petitioner and can be removed by the petitioner if there is default by the consumer. Hence, the gas meter is being used by the petitioner for their "own use" i.e., supply of gas and for no other purpose. Having successfully met the two requirements under the SRO, the petitioner-company is entitled to the exemption under the said SRO. The view taken in the Order-in-Original was correct. We, therefore, set aside the view taken by the High Court and Tribunal declaring that the petitioner-company is entitled to exemption under the SRO. These petitions are therefore converted into appeals and allowed."

17. At the last, the counsel of the respondent also submitted that the domestic gas meters fall within the domain of "equipment" mention in SRO 678 (I)/2004 and the gas meters are entitled to exemption for the custom duty in excess of 5% and the Supreme Court of Pakistan has also issued order accordingly as referred above. It is therefore brought to the notice of appellate tribunal that the Custom Authorities have cleared our last two consignments of domestic gas meters against GD's dated 28.06.2024 & 10.07.2024 under tariff code 9028.1000 @ 5% custom duty. Moreover, it is imperative to

mention that in previous tender enquiry No. SND-2410/23 covering Domestic Gas Meters G-1.6 & G-4 the appellant (M/s SSGC, Karachi) had accepted calculation of landed cost with 5% custom duty vide e-mail dated 30.11.2023 and subsequently purchase order No. HO/MGA/003/24 was placed on them for supply of 479,000 gas meters of G-1.6, hence, requested for dismissal of the instant appeal.

18. After perusal of all available record and arguments made by all the parties, the Appellate Committee ("the Committee") observed that, as per the stance of the appellant the landed cost for the imported bidder computed by SNGPL based on 5% customs duty, which is an incorrect application of SRO 678. As SSGC is manufacturing G-1.6 gas meters locally, the applicable customs duty on the imported meters should be 20%, as per the prevailing tariff structure. Consequently, the actual landed cost for the imported bidder should be Rs.5866 instead of the erroneous lower figure calculated with a 5% duty. Whereas, the record shows that the issue regarding the applicability of custom duty has already been decided by the Hon'ble Supreme Court in CPLA No. 2912/2024 to 2932/2024 and held that **SNGPL is eligible for 5% customs duty under SRO 678**, based on the fact that gas meters were not locally manufactured at the time of import and are used for SNGPL's own operations. The ruling clarified the correct interpretation and application of SRO 678. Therefore,

the calculation of landed cost and final evaluation of the bids issued by the respondent is rightly justified.

19. The Committee also observed that the application of a 5% customs duty for the evaluation of imported gas meters, as per SRO 678 and in light of the Supreme Court's ruling, appears justified, especially considering that SSGCL itself accepted this basis in a previous tender. Moreover, the Engineering Development Board's earlier recognition of SSGCL as a local manufacturer is currently under reconsideration before the competent authority (EDB), thus rendering it an unsettled matter.

20. The Committee further observed that the GRC's decision dated 22.11.2024 did not provide any reasoning or justification for rejection of the grievance. Whereas, it is the settled principle of law as established in a judgment **AIR 1976 SC 1785** titled *Siemens Engineering & Manufacturing Co. of India Ltd. V. Union of India* that "where an authority makes an order in exercise of a quasi-judicial function it must record its reasons in support of the order it makes. Every quasi-judicial order must be supported by reasons." Therefore, failure to provide reasons rendering the order is arbitrary and violative of the principle of natural justice. Therefore, grievances must be disposed of through speaking orders.

21. In view of the above, the appeal in hand is hereby disposed of with the direction to the respondent and the

appellant to follow strict compliance of the Hon'ble Supreme Court Judgement passed in CPLA No. 2912/2024 to 2932/2024, in true letter and spirit, and to follow the principles of natural justice as well.


(Dr. Muhammad Aslam Waseem)
Director General (Legal)
(Member)


(Sheikh Afzaal Raza)
Director (M&E)
(Member)


(Hasnat Ahmed Qureshi)
Managing Director (PPRA)
(Chairman of the Committee)

Each page of the order has been signed by all members of the Appellate Committee. The order comprises of twelve (12) pages.

