



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF NOVEMBER, 2023

BEFORE

THE HON'BLE MR JUSTICE B M SHYAM PRASAD

WRIT PETITION NO. 24699 OF 2023 (T-RES)

BETWEEN:

M/S HATSOFF HELICOPTER
TRAINING P LIMITED
SURVEY NOS 3 AND 4
OPPOSITE ARDC, HAL
VIBUTHIPURA, MARATHALLI POST
BENGALURU URBAN, BENGALURU 560037
PRIVATE LIMITED COMPANY
(REPRESENTED BY MR T JAGADEESH
CHIEF FINANCIAL OFFICER
AGED ABOUT 46 YEARS
SON OF SRI T CHENGALARAYAN).

...PETITIONER

(BY SRI. K.S. NAVEEN KUMAR AND
SRI.DAKSHINA MURTHY R.,ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
FINANCE DEPARTEMNT
VIDHANA SOUDHA
DR AMBEDKAR VEEDHI
BENGALURU 560001
(REPRESENTED BY ITS FINANCE SECRETARY).
2. THE DEPUTY COMMISSIONER OF COMMERCIAL
TAX (AUDIT 5.4)
DGSTO-5, 5TH FLOOR
B BLOCK, VTK 2
KORAMANGALA
BENGALURU 560047.





3. THE JOINT COMMISSIONER OF
COMMERCIAL TAXES
(APPEALS) 5, ROOM NO 220
2ND FLOOR, BMTc, TTCM B BLOCK
SHANTHI NAGAR
BENGALURU 560027.

4. ICICI BANK LIMITED
ICICI BANK TOWERS 1
COMMISSARIAT ROAD
GROUND FLOOR
BENGALURU 560025
(REPRESENTED BY
THE BRANCH MANAGER).

...RESPONDENTS

(BY SRI.SHAMANTH NAIK., HCGP FOR R1 TO R3;
NOTICE TO R4 IS DISPENSED WITH VIDE ORDER
DATED 16.11.2023)

THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE RECOVERY NOTICE IN FILE NO. DCCT(A)-5.4/GST(ADJ)/2023-24 DATED 17/10/2023 IN ANNEXURE-J ISSUED BY R2 AS ILLEGAL, ARBITRARY, UNSUSTAINABLE AND CONTRARY TO THE PROVISIONS OF CGST ACT AND KGST ACT, 2017 B) DIRECT THE R1 TO R3 TO ALLOW FILING OF APPEAL TO THE GST TRIBUNAL AS AND WHEN IT IS CONSTITUTED AND NOT TO INITIATE COERCIVE OR ANY OTHER ACTION FOR RECOVERY OF THE AMOUNTS UPHELD IN THE ORDER IN APPEAL NO. GST AP. 141/2022-23 DATED 30/09/2023 PASSED BY THE R3 IN ANNEXURE-E TILL THE APPEAL IS FILED AGAINST THE SAID ORDER.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:



ORDER

The petitioner has impugned the second respondent's order-in-original dated 30.01.2023 [Annexure-C] and the third respondent's order-in-appeal dated 30.09.2023 [Annexure-E] with a prayer for quashing the recovery notice dated 17.10.2023 issued by the second respondent [Annexure-J] and for refund of Rs.1,52,03,733/-.

2. The petitioner is issued with notice in Form GST DRC-02 on 29.11.2022 for the period from 2018-19 to 2021-22 referring to the audit report and calling upon the petitioner to show cause against the additional tax liability in a sum of Rs.22,80,51,322/-. The petitioner has caused reply on 09.01.2023, and with the second respondent passing the impugned order-in-original dated 30.01.2023 in Form GST DRC-07 computing the petitioner's liability in a total sum of Rs.25,08,56,456/- [*total tax payable of Rs.22,80,51,322/- with penalty in a sum of*



Rs.2,28,05,134/-], the petitioner has filed its appeal under Section 107(11) of the CGST/KGST Act, 2017 with the third respondent. This appeal is disposed of on 30.09.2023. The petitioner in availing appellate remedy has made pre-deposit of 10% of the amount asserted as due.

3. It is undisputed that the petitioner, during the aforesaid period from 2018-19 to 2021-22, has offered “*Bulk Simulator Training Services*” to the Helicopter pilots from Indian Air Force, Indian Army, Indian Navy and other defence establishments including some of the departments of the State Government; that the services provided to the Central Government/State Government/Union Territory Administration for imparting training for which the total expenditure is borne by the Central Government/State Government/Indian Territory Administration are exempted *vide* Entry in No.72 of the Notification No.12/2017 dated 28.06.2017. It is



further undisputed that the petitioner has raised invoices on the recipient organizations but without mentioning GSTIN.

4. The proceedings are initiated with the issuance of DRC -1A and DRC -01 alleging *inter alia* that the petitioner has discharged tax under wrong head *i.e.* IGST on the aforesaid supply instead of discharging SGST and CGST and causing loss to the State Exchequer. These proceedings are initiated because the authorities have opined that in the absence of GSTIN and PAN, the *place of supply* will be in Karnataka [the place of petitioner's registered address] according to Section 12(5) of the IGST Act, and the services extended by the petitioner to the defence establishments in Delhi, Jharkhand and other places will not be inter-state supplies.

5. The petitioner asserts that the provisions of the Central Goods and Services Tax Act, 2017



[CGST]/Karnataka Goods and Services Tax Act, 2017 [KGST], contemplate the recipient being a registered entity without making a distinction on whether such registration is PAN or TAN. The petitioner further asserts that it has extended invoiced *supplies* to the recipient establishments which had PAN/TAN, while the supplies made to the recipient establishments with PAN are reduced, the proceedings relating to TAN are continued; and that even otherwise, the petitioner is *bona fide* in not mentioning the GSTIN obtained by the recipient organizations, as mentioned in paragraphs 74 and 75 of the memorandum of petition.

6. Sri. Dakshina Murthy R, the learned counsel for the petitioner, relying upon the above contentions, submits that if the necessary details such as TAN and the actual place of supply can be discerned from the records, the second and third respondent could not have denied the benefit of



exemption *vide* Notification No.12/2017 dated 28.06.2017 citing Section 12(5)(d) of the IGST Act, but neither the second respondent nor the third respondent has considered the same and therefore there must be interference. Crucially, Sri. Dakshina Murthy canvasses that the petitioner's liability, given the undisputed fact that the petitioner has remitted to the concerned the IGST collected, must also be examined in the light of the details of GSTIN now furnished.

7. Sri Shamanth Naik, the learned High Court Government Pleader, submits that due *registration* of a receiving organization would be necessary as it would be a dispositive factor to decide the *place of supply* under Section 12(5) of the IGST Act. The petitioner has admittedly not furnished GSTIN, and therefore, the supply must be deemed to be an *intra state* service liable to KGST/CGST and this Court cannot take any exception either with the



second respondent or the third respondent observing that the petitioner, who has not furnished the GSTIN, is liable to pay GST within the State because the place of supply will be in Karnataka.

8. The second and the third respondents' impugned orders are perused. These authorities have elaborately referred to the provisions of IGST Act as also the CGST/KGST Act and they have also referred to the details of the recipient establishments. There is obvious reference in the impugned orders to the details furnished by the petitioner after being served with the notice in GST DRC-02, but the proceedings are concluded in the premise that the petitioner has raised Invoices without mentioning the necessary details. This Court must refer to the conclusions by the third respondent on this aspect and it reads as under:

"3. From the above relevant sections/rules mentioned regarding the content/particulars of tax invoice or bill of supply there is no format



prescribed, however, rules make it mandatory for a tax invoice or bill of supply to must/shall have fields on the face it.

4. *Therefore, it can be observed from the above-mentioned relevant provisions of the GST Act which makes it mandatory for the supply of goods or services or both to follow prescribed details shall be apparently exist on the tax invoice or bill of supply.*

5. *Impliedly, if any of the prescribed particulars are not present on the tax invoice or bill of supply, then the same is not in accordance with the GST Law and it cannot be treated as tax invoice or bill of supply.*

6. *Therefore, applying the said logic to the issue under consideration, admittedly the appellant has not mentioned the GSTIN number of the service recipient on the records submitted irrespective of provision of taxable services or exempt services for the time being.”*

9. This Court must opine that this consideration in the peculiarities of the case will not suffice, and if it is undisputed that the recipient establishments are based in Delhi, Jharkhand and



Uttar Pradesh and the petitioner's supply [imparting of training] is exempt, significance of the same should also have been considered. This Court is of the considered opinion that, especially in the peculiarities of this case, the third respondent, to sustain the proposed demand, had to examine whether failure to furnish the details of the GSTIN, notwithstanding the other circumstances, could justify denial of exemption.

10. Further, if the petitioner, notwithstanding the fact that the GSTIN of the recipient organization was not furnished initially, is able to furnish the same later and demonstrate that its services of imparting training to the helicopter pilots was totally sponsored and borne by the Central Government or the State Government, the third respondent will have to decide whether the exemption *vide* Notification No.12/2017 dated 28.06.2017 could be denied, these



aspects will have to be considered for complete adjudication. Hence, the following:

ORDER

The petition is allowed-in-part and the impugned order-in-appeal dated 30.09.2023 [*Annexure-E*] is quashed and the proceedings are restored to the third respondent to reconsider the merits of the petitioner's response in the light of this Court's observation. Consequentially, the recovery notice dated 17.10.2023 is also quashed.

**Sd/-
JUDGE**

SA
ct:sr