

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 749 OF 2021
WITH
INTERIM APPLICATION NO. 213 OF 2021
AND
WRIT PETITION NO. 4052 OF 2022
WITH
INTERIM APPLICATION NO. 146 OF 2022

Media Net Software Services (India) Pvt. Ltd. ..Petitioner
Vs.
Union of India & Ors. ..Respondents

Mr. Sandeep Chicana and Suhana Manjesh i/b. Ms. Devyani Kulkarni for
Petitioner.

Mr. Himanshu Takke, AGP with Mr. Hemant Haryan, AGP for State.

Mr. Jitendra Mishra for Respondent No.2 in WP 749/21 and for
Respondent Nos. 1, 3 & 4 in WP 4052/22.

CORAM : G. S. KULKARNI &
JITENDRA S. JAIN, JJ.
DATE : JULY 05, 2023

P.C.:

1. We have heard Mr. Chicana, learned counsel for the petitioner, Mr. Takke, learned AGP for the State representing CGST and MGST authorities and Mr. Mishra, learned counsel for Union of India.

2. On 07 June, 2023 a Co-ordinate Bench of this Court of which one of us (G.S. Kulkarni, J.) was a member, passed the following order:-

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“1. Heard learned counsel for the parties. Mr.Mishra for the Union of India and Mr.Haryan, learned AGP for the State – Respondent Nos.2 and 4 in Writ Petition No.749 of 2021. Already reply affidavit is filed by the State in this Petition.

2. The contention, as urged on behalf of the Petitioner is that the State Authority has no jurisdiction to levy tax on export of service, which according to the Petitioner would fall within the purview of IGST Tax exclusively within the jurisdiction of the Central Authorities. In support of this submission the decision of this Court in Writ Petition No.2031 of 2018 the case of (Dharmendra M. Jani Vs. The Union of India & Ors.) and in Writ Petition No.639 of 2020 (A.T.E. Enterprises Pvt. Ltd. Vs. The Union of India & Ors.), is relied upon on behalf of the Petitioners.

3. Insofar as Writ Petition No.4052 of 2022 is concerned, similar issue is stated involved.

4. Both the Union of India and the State Government are required to file reply affidavits. Let the reply affidavits be filed by the Respondents within 3 weeks from today. A copy of the same be served on the Petitioner’s advocate well in advance. The Petitioner is permitted to file rejoinder, if any, to the reply affidavits.

5. List the petitions high on board on 5th July, 2023.”

3. Learned counsel for the parties would not dispute that the decision of this Court in *Dharmendra M. Jani Vs. The Union of India & Ors.* (supra), would hold that the jurisdiction of the respective authorities under the IGST Act and CGST/MGST Act are compartmentalized. In so far as the export of service is concerned, the Division Bench has held that it would lie within the purview of the IGST Act and it would be the Central authorities under the IGST Act who would have jurisdiction in regard to any transaction in respect of export of service.

4. In the present case, it has so happened that the petitioner on the impugned action as taken by the State Government was required to deposit tax on the export transaction in question with the authorities under the CGST Act and/or the MGST Act. The petitioner had taken a clear position before such authorities would not have jurisdiction to demand any tax on export of service. The petitioner also had filed applications for refund of tax deposited with the CGST/MGST/authorities. Such refund applications are stated to have been rejected by orders dated 15 October, 2020 and 27 November, 2020 respectively. Such rejection was admittedly much prior to the decision of the Division Bench in *Dharmendra M. Jani Vs. The Union of India & Ors.* (supra) and *A.T.E. Enterprises Pvt. Ltd. Vs. The Union of India & Ors.* (supra).

5. Now in view of the position in law as laid down in the said decision, the CGST/MGST authorities would not have jurisdiction to retain such amount of tax on the export transactions, and retain such amounts which in fact would be required to be transferred to the Central Government. Thus as fairly submitted at the Bar, the amount would now required to be transferred to the Assistant Commissioner of Central Tax having his

address at Division VI, Mumbai (East) Commissionerate 10th Floor, Near Lotus Info Centre, Near Parel Station (East), Mumbai – 400 012. Let the tax as deposited by the petitioner along with the statutory interest as applicable be transferred by the State authorities to the said Central Authority having jurisdiction under the IGST Act.

6. In these circumstances, the order passed by the Deputy Commissioner of Sales Tax rejecting the refund application of the petitioner is required to be set aside. It is accordingly set aside. The refund application of the petitioner is restored and the same be transferred to the Assistant Commissioner (Central Taxes) for appropriate orders to be passed in view of the decision of this Court in *Dharmendra M. Jani Vs. The Union of India & Ors.* (supra) and *A.T.E. Enterprises Pvt. Ltd. Vs. The Union of India & Ors.* (supra). Let the application be transferred within two weeks from today and the same be decided by the Assistant Commissioner (Central Taxes) within a period of six weeks thereafter.

7. All contentions of the parties on the refund application and issues arising thereunder are expressly kept open.

8. The petitions are disposed of in the above terms. No costs.

9. Interim applications would not survive. The same are disposed of accordingly.

10. Parties to act on the authenticated copy of this order.

[JITENDRA S. JAIN, J.]

[G. S. KULKARNI, J.]