

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF APRIL, 2022

PRESENT

THE HON'BLE MRS.JUSTICE S.SUJATHA

AND

THE HON'BLE MR. JUSTICE SHIVASHANKAR AMARANNAVAR

W.A.No.42/2022 (T - RES)

BETWEEN :

- 1 . THE VICE CHAIRMAN
SETTLEMENT COMMISSION
II FLOOR, NARMADA BLOCK
CUSTOMS HOUSE, 60,
RAJAJI SALAI, CHENNAI - 600 001
 - 2 . THE PRINCIPAL COMMISSIONER
OF GST AND CENTRAL EXCISE
BANGALORE EAST
C.R.BUILDINGS, QUEENS ROAD
BANGALORE - 560 001
- ...APPELLANTS

(BY SRI JEEVAN J. NEERALGI, AGA.)

AND :

- 1 . M/s ZYETA INTERIORS PVT. LTD.,
2/3, 2ND FLOOR, ALFRED STREET
BENGALURU - 560 025
REP BY SHRI AMIT PRAKASH
S/O SHRI MADHAVESHWAR JAH
AGED ABOUT 41 YEARS
DIRECTOR OF M/s ZYETA INTERIORS PVT. LTD.
- 2 . SHRI AMIT PRAKASH
DIRECTOR OF M/s ZYETA INTERIORS PVT. LTD.,
NO.405, GREEN CASTLE APARTMENTS

ANNASWAMY MUDALIAR ROAD
BANGALORE NORTH
BANGALORE - 560 042

...RESPONDENTS

(BY SRI V.RAGHURAMAN, SENIOR COUNSEL A/W
SRI C.R.RAGHAVENDRA, ADV.)

THIS W.A. IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT, PRAYING TO SET ASIDE THE ORDER OF THE LEARNED SINGLE JUDGE PASSED IN W.P.NO.9636/2020 DATED 18.08.2021.

THIS APPEAL COMING ON FOR PRELIMINARY HEARING, THIS DAY, **S. SUJATHA, J.**, DELIVERED THE FOLLOWING:

J U D G M E N T

This intra Court appeal is directed against the order dated 18.08.2021 passed in W.P.No.9636/2020, whereby the petition filed by the respondents – assesseees has been allowed in part quashing the impugned part of the orders, matter was remitted to the Settlement Commission for consideration afresh in accordance with law and after notice to the stakeholders.

2. The respondent- M/s. Zyeta Interiors Pvt. Ltd., a company registered under the provisions of the Companies Act, 1956 is engaged in the business of

carrying out design, supply and installation of interior works mainly for commercial establishments. The respondent is registered under the Service Tax Provisions vide ST Registration No.AAACZ3238JST001. Pursuant to the show cause notice dated 28.08.2018 issued by the Principal Additional Director General, Directorate General of Goods & Services Tax Intelligence [DGGSTI], the respondent had submitted an application dated 03.06.2019 for settlement of the proceedings. The Settlement Commission after hearing the parties, ordered for joint sitting of both the parties. Accordingly, the joint sitting was held on various dates. Both the parties submitted the joint sitting report before the Settlement Commission. The Settlement Commission passed the final order dated 24.03.2020 confirming the service tax amount of Rs.40,75,512/- along with interest and penalty of Rs.5,00,000/- and Rs.25,000/- respectively on the Director of the respondent company. The request made by the respondent for modification of the final order dated

24.03.2020 came to be rejected. Being aggrieved by the order dated 24.03.2020 passed by the Settlement Commission the respondent had approached the Writ Court. The learned Single Judge vide order dated 18.08.2021, allowed the Writ Petition in part quashing the impugned part of the orders and remitting the matter to the Settlement Commission for consideration afresh. Hence, this Writ Appeal by the Revenue.

3. The arguments of the learned counsel for the Revenue are two fold. Firstly, the assessee was required to strictly adhere to the provisions of Section 68[2] of the Finance Act, 1994 amended from time to time. In terms of the said provision, the ratio of 50:50 tax payable by the assessee and the service provider was altered to 75:25 with effect from 20.06.2012 vide 30/2012-ST and the same remained up to 01.04.2015. Thereafter, it was modified to 100% qua the consumer with effect from 01.04.2015. In terms of the said

provision, the assessee was required to pay 75% of the tax. The tax paid in the ratio of 50:50 i.e., by the assessee and the service provider not being in conformity with the existing provisions of the Act applicable at the relevant time, the learned Single Judge ought not to have reversed the findings of the Settlement Commission in this regard.

4. Secondly, the learned counsel for the respondent/assessee argued that the photocopies of the invoices not being the required documents to award CENVAT Credit prescribed under Rule 9 of the CENVAT Credit Rules, 2004, learned Single Judge remanding the matter to the Settlement Commission for re-consideration afresh is not tenable.

5. Learned counsel appearing for the assessee placing reliance on the CBEC Circular No.341/18/2004-TRU [Pt.], dated 17.12.2004 submitted that though the said Circular was issued

with respect to Goods Transport Agency Service [GTA Service] on reverse charge payment, the same analogy would be applicable to the case on hand i.e., the manpower service. The reverse charge mechanism should not lead to double taxation. The tax amount being paid in full by the assessee under the service provider in the ratio 50:50, the same cannot be construed as shortage of payment of tax.

6. Nextly, it was argued that the law enunciated by the Hon'ble High Courts of Bombay, Gujarat and Punjab & Haryana in the case of ***Commissioner of Central Excise, Goa V/s. Essel Propack Ltd., [(2015) 57 taxmann.com 52 (Bombay)]***; ***Commissioner of Central Excise & Customs, Vadodara-II V/s. Steelco Gujarat Ltd., [(2013) 3 taxmann.com 388 (Gujarat)]***; ***Commissioner of Central Excise V/s. Ralson India Ltd., [(2007) 6 STT 134]*** being considered by the learned Single Judge while

arriving at a conclusion that no denial could be made in admitting the Photostat copies of the documents when there was no dispute as to input credit tax/service of the genuineness of the claim, the same do not warrant any interference by this Court.

7. It is submitted that the learned Single Judge has remanded the matter more particularly in the facts and circumstances of the case where the respondent-assessee has made it clear that they are ready and willing to produce the originals of the invoices and hence seeks for dismissal of the Writ Appeal.

8. Having considered the rival submissions of the learned counsel appearing for the parties and perusing the material on record, the two legal issues addressed by the Writ Court has been considered.

9. As regards the issue of double taxation, we find no exception. Whatever the ratio, the tax in its entirety has reached the hands of the ex-chequer. Merely

for the reason that there was no strict adherence to the ratio as envisaged during the relevant point of time for payment of tax insofar as the assessee and the service provider, the assessee cannot be made liable to pay the double tax. What is significant to note is that the discharge of entire tax amount is not disputed. Thus, the reverse charge mechanism would not lead to double taxation. We find no grounds to interfere with this finding of the learned Single Judge. Moreover, the CBEC Circular No.341/18/2004-TRU [Pt.], dated 17.12.2004 also supports the case of the assessee in this regard.

10. Insofar as the issue of photocopies of the invoices based on which no CENVAT Credit was allowed, it is pertinent to note that the learned Single Judge has remanded the matter for fresh consideration mainly on the ground that the assessee is ready and willing to produce the original invoices. Hence, adjudicating upon the issue of award of CENVAT Credit on the basis of the Photostat copies of the documents

would become academic. In the present set of facts, without dwelling upon the said issue, more particularly, in view of the assessee being ready and willing to produce the original invoices, we are disposing of this case confirming the order of remand.

Accordingly, the Writ Appeal stands disposed of directing the Settlement Commission to re-consider the matter afresh in accordance with law and after notifying the assessee and the Revenue. All the rights and contentions of the parties are left open.

Resultantly, Writ Appeal stands disposed of in terms of the above.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

NC.