

In the High Court for the State of Telangana
Writ Petition No. 4210 of 2021

Between:

OLA Fleet Technologies Pvt Ltd
Sy.No 76, 1st floor, above OBC Bank,
Srishti Towers, Arunodaya Cooperative Housing Society,
Madhapur, Hyderabad, Ranga Reddy, Telangana,
Represented by Ms.Snigdha Mehrotra Associate Direct

... Petitioner

and

The Union of India,
Through its Revenue Secretary,
Department of Revenue, Ministry of Finance,
128A/North Block, New Delhi **& others**

... Respondents

Date of Judgment Pronounced: 16-03-2022

Submitted for Approval:

HON'BLE SRI JUSTICE UJJAL BHUYAN

AND

HON'BLE SRI JUSTICE A. VENKATESHWARA REDDY

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|---|--------|
| 1. Whether Reporters of Local newspapers
may be allowed to see the judgment ? | Yes/No |
| 2. Whether the copies of judgment may be
marked to Law Reporters/Journals | Yes/No |
| 3. Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment ? | Yes/No |

UJJAL BHUYAN , J

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*** HON'BLE SRI JUSTICE UJJAL BHUYAN**
and
HON'BLE SRI JUSTICE A. VENKATESHWARA REDDY
+ Writ Petition No. 4210 of 2021

% Dated 16.03.2022

Between:

OLA Fleet Technologies Pvt Ltd
Sy.No 76, 1st floor, above OBC Bank,
Srishti Towers, Arunodaya Cooperative Housing Society,
Madhapur, Hyderabad, Ranga Reddy, Telangana,
Represented by Ms.Snigdha Mehrotra Associate Direct

... Appellant/respondent

and

The Union of India,
Through its Revenue Secretary,
Department of Revenue, Ministry of Finance,
128A/North Block, New Delhi **& others**

...Respondents

! Counsel for the Petitioner:

Mr. Narender Dave

^ Counsel for respondents No.1 to 3: Assistant Solicitor General
rep. by Mr. B. Mukherji

Counsel for respondents No.4 to 6: Mr. K. Raji Reddy,
Spl.Standing Counsel for the CT Dept.,

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>HEAD NOTE:

? Cases cited:

W.P.(T).No.2246 of 2019 dated 18.12.2019
2018(11) TMI 954

HON'BLE SRI JUSTICE UJJAL BHUYAN
AND
HON'BLE SRI JUSTICE A. VENKATESHWARA REDDY
W.P.No.4210 of 2021

Order: *(Per Hon'ble Sri Justice Ujjal Bhuyan)*

Heard Mr. Narender Dave, learned counsel for the petitioner; Mr. B. Mukherjee, learned counsel representing learned Assistant Solicitor General of India for respondents No.1 to 3; and Mr. K.Raji Reddy, learned Special Standing Counsel for the Commercial Tax Department appearing for respondents No.4 to 6.

2. By filing this petition under Article 226 of the Constitution of India, petitioner seeks quashing of showcause notice dated 23.01.2021, issued by respondent No.5 and further seeks a direction to the respondents for adjustment of the Integrated Goods and Services Tax (IGST) paid by the petitioner towards Central Goods and Services Tax (CGST) and State Goods and Services Tax (SGST) in the State of Telangana.

3. Petitioner is a registered person under the Telangana State Goods and Services Tax Act, 2017 (for short 'the TSGST Act'). It is

engaged in the business of providing passenger transport motor vehicles on rental basis to various individuals for commercial usage. As part of its business, petitioner has been leasing vehicles to various drivers located in different states. If the driver is located in the State of Telangana, the transaction is qualified as intra-state supply to attract both CGST and SGST. On the other hand, if the driver is located in another State, the transaction would be deemed to be an inter-state supply and would attract IGST.

4. It is stated that in the course of business, through inadvertence, petitioner mapped the State of Telangana as the State of Andhra Pradesh in its IT system. Since the location of the petitioner is in the State of Telangana and the location of the driver being in the State of Andhra Pradesh, the IT system of the petitioner determined the nature of supply to be that of inter-state supply, though the transaction was very much within the State of Telangana and would therefore amount to intra-state supply. Consequently, petitioner paid IGST under the Integrated Goods and Services Tax Act, 2017 (for short 'the IGST Act') instead of paying CGST under the Central

Goods and Services Tax Act, 2017 (for short 'the CGST Act') and SGST under the TGST Act.

5. An inspection was carried out by the respondents/authorities in respect of the petitioner under Section 65 of the TGST Act. In the course of such inspection, it was noticed that both supply of service and place of supply were located in the State of Telangana. Therefore, petitioner was required to pay CGST and SGST. On scrutiny of the returns filed by the petitioner for the year 2018-2019, it was noticed that petitioner had paid IGST of Rs.6,55,70,925.00 instead of CGST and SGST. In the process, there was substantial revenue loss for the State of Telangana.

6. In this connection, a show cause notice was issued by respondent No.5 on 23.01.2021 calling upon the petitioner to pay an amount of Rs.5,98,65,274.00 on account of both CGST and SGST for the period 2018-2019 within fifteen days. The breakup of the aforesaid amount is as under:

CGST- Rs.2,99,32,637.00

SGST- Rs.2,99,32,637.00

7. Against the said showcause notice, petitioner has preferred the present writ petition.

8. This Court, by order dated 23.02.2021, had issued notice and also granted interim stay.

9. Thereafter, respondents No.1 to 3 have filed counter-affidavit followed by respondents No.4 to 6, who have also filed an application for vacating stay along with counter-affidavit.

10. Stand taken by respondents No.1, 2 and 3 is that under Section 19(1) of the IGST Act, a registered person who has paid IGST on a supply considered by him to be an inter-state supply, but which is subsequently held to be an intra-state supply, shall be granted refund of the amount of IGST so paid in such manner and subject to such conditions as may be prescribed. Therefore, it is stated that petitioner may file an application for refund of the IGST before respondents No.1, 2 and 3. There is no provision for adjustment of IGST with CGST and SGST as contended by the petitioner. Elaborating on this aspect, it is stated that when CGST and SGST are paid, CGST goes to the Consolidated Fund of India whereas SGST

goes to the exchequer of the respective State/Union territory. When IGST is paid, 50% of the IGST goes to the Consolidated Fund of India and the balance 50% goes to the exchequer of the respective destination State/Union Territory. This procedure is prescribed under the Goods and Services Tax Refund Rules, 2017 (for short 'the Refund Rules').

11. In their detailed counter-affidavit, respondents No.4 to 6 have stated that adjustment sought for by the petitioner is beyond the provisions of the CGST Act, IGST Act and TGST Act. Because of the action of the petitioner in paying IGST, despite the fact that the transaction involved was an intra-state supply, serious revenue loss has been caused to the State of Telangana.

12. Reference has been made to a decision of the Jharkhand High Court in **Shree Nanak Ferro Alloys Pvt. Ltd. V. Union of India**¹ to contend that petitioner should first pay the outstanding CGST and SGST amount and may seek refund of the IGST amount paid erroneously.

¹ W.P(T).No.2246 of 2019 dated 18.12.2019

13. Learned counsel for the petitioner has referred to Section 77 of the CGST Act as well as Rule 4(1) of the Refund Rules and submits that by interpreting the aforesaid provisions in a pragmatic manner, a Single Bench of the Kerala High Court in **Saji S. Proprietor, Adithya and Ambadi Traders v. Commissioner, State GST**², allowed the same contention of the petitioner for transferring the tax paid from the head SGST to IGST.

14. However, this contention of learned counsel for the petitioner has been strongly opposed by both learned counsel for respondents No.1 to 3 and learned counsel for respondents No.4 to 6.

15. Submissions made have been duly considered.

16. At the outset, we may advert to Section 77 of the CGST Act, which reads as under:

“77. Tax wrongfully collected and paid to Central Government or State Government:

(1) A registered person who has paid the central tax and state tax or, as the case may be, the central tax and the union territory tax on a transaction considered by him to be an intra-state supply, but which is subsequently held to be an inter-state supply, shall

² 2018 (11) TMI 954

be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.

(2) A registered person who has paid integrated tax on a transaction considered by him to be an inter-state supply, but which is subsequently held to be an intra-state supply, shall not be required to pay any interest on the amount of central tax and State tax or, as the case may be, the central tax and the Union territory tax payable.”

17. From the above, it is seen that if a registered person pays CGST and SGST on a transaction considered by him to be an intra-state supply, but is subsequently held to be an inter-state supply, such registered person shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.

18. Likewise, if a registered person pays IGST on a transaction considered by him to be an inter-state supply, but is subsequently held to be an intra-state supply, such registered person shall not be required to pay any interest on the amount of CGST and SGST.

19. At this stage, we may also refer to Section 19 of the IGST Act, which reads as follows:

“19. Tax wrongfully collected and paid to Central Government or State Government:-

(1) A registered person, who has paid integrated tax on a supply considered by him to be an inter-state supply, but which is subsequently held to be an intra-state supply, shall be granted refund of the amount of integrated tax so paid in such manner and subject to such conditions as may be prescribed.

(2) A registered person, who has paid central tax and state tax or Union territory tax, as the case may be, on a transaction considered by him to be an intra-state supply, but which is subsequently held to be an inter-state supply, shall not be required to pay any interest on the amount of integrated tax payable.”

20. As in the case of Section 77 of the CGST Act, here also, provision for refund is made; and in case of payment of CGST and SGST on a transaction considered to be an intra-state supply, which was subsequently held to be inter-state supply, he is not required to pay any interest on the IGST so paid.

21. Rule 92(1) of the Central Goods and Services Tax Rules, 2017 (for short ‘the CGST Rules’), lays down the procedure for sanctioning refund. Likewise, Rule 4(1) of the Refund Rules lays down the procedure for passing of order sanctioning refund.

22. After hearing learned counsel for the parties and on due consideration, we are of the view that calling upon the respondents to

adjust IGST paid by the petitioner with CGST and SGST would amount to adopting a procedure, which is not provided under the relevant statute. It would be going beyond the statute. To that extent, we are unable to agree with the view expressed by the learned Single Judge of Kerala High Court in **Saji S. Proprietor** (2 supra).

23. On the other hand, we find that in **Shree Nanak Ferro Alloys Pvt. Ltd.** (1 supra), a Division Bench of the Jharkhand High Court did not agree with similar contention raised before that Court. In that case, Division Bench of the Jharkhand High Court had directed the petitioner to deposit the IGST amount within a period of ten days without any interest; further, holding that the said petitioner would be entitled to refund of the amount paid under the CGST head.

24. That was a case where petitioner had erroneously paid CGST instead of IGST.

25. Thus, upon thorough consideration of the matter, we are of the view that petitioner should comply with the showcause notice dated 23.01.2021 and pay the CGST and SGST amount in terms of the said showcause notice within a period of two months from today.

26. At the same time, petitioner would be at liberty to file appropriate application under Section 19(1) of the IGST Act for refund of the IGST amount erroneously paid by it.

27. After compliance to the show cause notice dated 23.01.2021 and once such an application is filed for refund, respondents No.5 and 6 shall take up the said application for refund and complete the process within a period of two months from the date of receipt of the refund application.

28. Writ Petition is, accordingly, disposed of. Related interlocutory applications, pending if any, stand disposed of.

29. No costs.

UJJAL BHUYAN , J

A. VENKATESHWARA REDDY, J

Date: 16-03-2022
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