



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

WRIT PETITION NO.2031 OF 2018

Dharmendra M. Jani

Aged 48 years

606-Park Vista, Park Darshan CHS Ltd.

Lallubhai Park, Andheri (West),

Mumbai – 400 058.

... Petitioner

vs.

1. The Union of India, through Secretary,
Ministry of Finance (Dept. of Revenue)
North Block, New Delhi – 1.

2. Central Board of Indirect Taxes and Customs
Department of Revenue,
Ministry of Finance, North Block
New Delhi – 110 001.

3. Goods and Services Tax Council
through Additional Secretary, 5 th Floor,
Tower II, Jeevan Bharti Building,
Janpath Road, Connaught Place
New Delhi – 110 001.

4. Principal Commissioner of Goods and
Service Tax, Mumbai,
New Central Excise Building,
M.K. Road, Opp. Churchgate Station
Mumbai – 400 020.

5. State of Maharashtra, through Secretary,
Finance Department, Mantralaya,
Madam Cama Road, Hutatma Rajgur Chowk,
Nariman Point, Mumbai – 400 032.

...Respondents

AND

WRIT PETITION (L.) NO.639 OF 2020

A.T.E. Enterprises Private Limited
 (formerly known as A.T.E. Marketing Pvt. Ltd.)
 having its registered office at
 43, Dr. V.B. Gandhi Marg, Fort,
 Mumbai – 400 023.
 through Shri Nikesh Jain, the Chief
 Financial Officer and Authorized Signatory.

... Petitioner

Vs.

1. The Union of India, through Secretary,
 Ministry of Finance (Dept. of Revenue)
 No. 137, North Block, New Delhi – 1.

2. State of Maharashtra, through Secretary,
 Finance Department, Mantralaya,
 Madam Cama Road, Hutatma Rajgur Chowk
 Nariman Point, Mumbai – 400 032.

3. Central Board of Indirect Taxes and Customs
 through Chairman, Department of
 Revenue, Ministry of Finance, North Block
 New Delhi – 110 001.

4. Goods and Services Tax Council
 through Additional Secretary, 5 th Floor,
 Tower II, Jeevan Bharti Building,
 Janpath Road, Connaught Place
 New Delhi – 110 001.

...Respondents

Mr. Bharat Raichandani with Mr. Rishabh Jain i/b.UBR Legal for
 Petitioner in WP No.2031/2018.

Mr. Abhishek Rastogi with Mr. Pratyushprawa Saha, Mr. Mahir Chablani,
 Ms. Kanika Sharma and Mr. Marmik Kamdar i/b. Khaitan & Co. for
 Petitioner in WP(L.) No.639/2020.

Mr. Anil C. Singh, ASG with Mr. Pradeep Jetly, Senior Advocate, Mr. J.B.
 Mishra and Mr. Aditya Thakkar and Mr. Dhananjay B. Deshmukh for
 Respondent/UOI in both the Writ Petitions.

Ms. Jyoti Chavan, AGP for State in WP No.2031/2018.

Mr. Dushyant Kumar, AGP for State in WP(L) No.639/2020.

**CORAM : SUNIL B. SHUKRE AND
ABHAY AHUJA, JJ.
DATE : 06 JUNE, 2023.**

FINAL JUDGMENT :-

1. The principal challenge in both these petitions is to the vires of section 13(8)(b) and section 8(2) of the Integrated Goods and Services Tax Act, 2017 (“IGST” for short).

2. On 9th June, 2021 Hon’ble Shri Justice Ujjal Bhuyan in paragraphs No.65 and 66 of his Judgment and Order in Writ Petition No.2031 of 2018 held as under :-

“65. Thus having regard to the discussions made above and upon thorough consideration, we have no hesitation in holding that section 13(8)(b) of the Integrated Goods and Services Tax Act, 2017 is ultra vires the said Act besides being unconstitutional.

66. Writ petition is accordingly allowed to the above extent. However, there shall be no order as to cost.”

3. Similar view holding section 13(8)(b) of the IGST Act to be ultra-vires and unconstitutional had been taken in Writ Petition (L) No.639 of 2020.

4. One of us (Abhay Ahuja, J.) had held section 13(8)(b) as well as section 8(2) of the IGST Act as constitutionally valid observing in paragraphs No. 119 and 120 of judgment and order (dissenting) dated 16th June, 2021 in Writ Petition No.2031 of 2018 as under:-

“119. In the light of the above, I am of the view that neither Section 13(8)(b) nor Section 8 (2) of the IGST Act are unconstitutional. Also neither Section 13 (8) (b) nor Section 8 (2) of the IGST Act are ultra vires the IGST Act. Section 13 (8) (b) is also not ultra vires Section 9 of the CGST Act, 2017 or the MGST Act, 2017. Section 13(8)(b) as well as Section 8(2) of the IGST Act are constitutionally valid and operative for all purposes.

120. Petition is accordingly dismissed. There shall be no order as to costs.”

5. Similar view was taken by one of us (Abhay Ahuja, J.) holding section 13(8)(b) as well as section 8(2) of the IGST Act as constitutionally valid in Writ Petition (L) No.639 of 2020.

6. In view of the difference of opinion with regard to the constitutionality of Section 13(8)(b) of the IGST Act wherein one of the Hon'ble Judges, Hon'ble Shri. Justice Ujjal Bhuyan had struck down the constitutional validity of the said provision and allowed the petitions and one of us (Abhay Ahuja, J.) had held the said provision to the

constitutional, on 16th June, 2021, the Division Bench (Hon'ble Shri. Justice Ujjal Bhuyan and Hon'ble Shri. Justice Abhay Ahuja) had directed the Registry to place the matters before The Hon'ble The Chief Justice on the administrative side as per the following order :-

“1. There is difference of opinion in the Bench.

2. Matters relate to constitutionality of section 13(8)(b) of the Integrated Goods and Services Tax Act, 2017. While as per one opinion (opinion of Justice Ujjal Bhuyan) the said provision is unconstitutional, Justice Abhay Ahuja has expressed his disagreement and has rendered his separate opinion today.

3. In view of such difference of opinion, Registry to place the matters before Hon'ble Chief Justice on the administrative side for doing the needful.”

7. Pursuant to the above reference order, the then Hon'ble The Chief Justice had referred these matters for the opinion of the third Judge, our learned brother Hon'ble Shri. Justice G.S.Kulkarni and he has rendered his opinion vide judgment and order dated 18th April, 2023 holding the said provision to be constitutional, observing as under :

“

ORDER

(i) The provisions of Section 13(8)(b) and Section 8(2) of the IGST Act are legal, valid and constitutional, provided that the provisions of Section 13(8)(b) and Section 8(2) are confined in their operation to the

provisions of IGST Act only and the same cannot be made applicable for levy of tax on services under the CGST and MGST Acts.

(ii) The reference as made to this Court is accordingly answered in the above terms.

114. The office to place the matter before the Division Bench.”

8. Accordingly, the matters have been placed before us pursuant to an administrative order dated 19th May, 2023, of the then Hon’ble The Acting Chief Justice in accordance with the Rules, for pronouncement of the final judgment for disposing of the matters.

9. Considering the views taken by our learned brother Hon’ble Shri. Justice G.S.Kulkarni and one of us (Abhay Ahuja, J.), we hold the provisions of Section 13(8)(b) and Section 8(2) of the IGST to be legal, valid and constitutional.

6. Petitions are accordingly dismissed. There shall be no orders as to costs.

(ABHAY AHUJA, J.)

(SUNIL B. SHUKRE, J.)