

THE HONOURABLE SRI JUSTICE UJJAL BHUYAN

AND

THE HONOURABLE MRS JUSTICE SUREPALLI NANDA

WRIT PETITION No.25526 of 2022

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

Heard Mr. Tushar Jarwal, learned counsel appearing on behalf of Mr. Mamilla Ashwin Reddy, learned counsel for the petitioner and Mr. K.Raji Reddy, learned Senior Standing Counsel, Commercial Tax for the respondents.

2. By filing this petition under Article 226 of the Constitution of India, petitioner has challenged legality and validity of the order dated 04.02.2022 issued by the 3rd respondent levying total tax (CGST + SGST) of Rs.2,21,38,236.40 for the audit period April, 2019 to March, 2020 as well as the consequential notice dated 08.06.2022.

3. Petitioner before us is a private limited company registered under the provisions of the Companies Act, 1956, having its registered office at Bengaluru in the State of Karnataka though it has its business presence in various

States including the State of Telangana. Petitioner under the trade name 'Ola' is engaged in the business of providing internet platform/mobile application services where the driver partners provide passenger transportation services to the customers. It is clarified that petitioner *per se* is not engaged in providing passenger transportation service. It is only providing an electronic platform to the driver partners and to the customers.

4. Petitioner is registered with the Goods and Services Tax (GST) authorities in the State of Telangana.

5. It is the case of the petitioner that for transportation services rendered by the drivers outside the State of Telangana, it has been charged Integrated Goods and Services Tax (IGST) which it has paid. Insofar this case is concerned, petitioner has paid IGST amounting to Rs.2,21,38,236.00 for the period under consideration.

6. A notice for short payment of tax dated 02.03.2020 was issued to the petitioner by the 3rd

respondent. As per the said notice, the supplier of service and place of supply were found to be located in the State of Telangana. Therefore, a view was taken by the 3rd respondent that State Goods and Services Tax (SGST) and Central Goods and Services Tax (CGST) had to be paid by the petitioner and not IGST. Pointing out that a total amount of Rs.325,29,49,802.00 was to be paid by the petitioner, a notice for short payment of tax was issued.

7. In response thereto, petitioner submitted a detailed reply on 19.03.2020 pointing out that petitioner had rightly paid IGST for the audit period and was not required to pay CGST and SGST.

8. By the impugned order dated 04.02.2022, explanation furnished by the petitioner was not accepted whereafter 3rd respondent took the view that CGST and SGST were required to be paid by the petitioner on its turnover and for the period from April, 2019 to March, 2020, a total amount of Rs.2,21,38,236.40 covering both CGST and SGST were required to be paid. Since the dealer (petitioner) by not

paying CGST and SGST has committed an offence thereunder, penalty proceedings have been initiated. This is followed by notice dated 08.06.2022 issued by the 3rd respondent to the petitioner for payment of the above tax.

9. Learned counsel for the petitioner has referred to Section 7 of the Integrated Goods and Services Tax Act, 2017 (briefly referred to hereinafter as the 'IGST Act') and submits that as per Sub-Section (3) thereof, supply of services where the location of the supplier and the place of supply are in two different States; or in two different Union Territories; or in one State and one Union Territory, it shall be treated as a supply of services in the course of inter-state trade or commerce though the same is subject to the provisions of Section 12 of the IGST Act. As per Section 8(2) of the IGST Act, subject to the provisions of Section 12 of the IGST Act, supply of services where the location of the supplier and the place of supply of services are in the same State or same Union Territory, it shall be treated as inter-state supply. Section 12 of the IGST Act deals with place of supply of

services where location of supplier and recipient is in India. Sub-Section (9) is relevant. It says that the place of supply of passenger transportation service to a registered person shall be the location of such person and if it is to a person other than a registered person, it shall be the place where the passenger embarks on the conveyance for a continuous journey. Thus, what Sub-Section (9) of Section 12 of the IGST Act provides is that the place of supply of passenger transportation service to a registered person would be the location of such person, but if the person is other than a registered person, it shall be the place where the passenger embarks on the conveyance for a continuous journey.

10. Learned counsel for the respondents submits that petitioner should pay the demand and claim refund of IGST. Alternatively he can file appeal.

11. Submissions made have been considered.

12. It is *prima facie* evident that if the passenger is not registered under GST and avails transportation service,

by way of legal fiction the place of supply would be the place where the passenger embarks or starts his journey.

13. Keeping the above legal provision in mind, we may advert to the impugned order dated 04.02.2022. Though the 3rd respondent has referred to provisions of Section 12(9) of the IGST Act, he has however erroneously recorded that in case of unregistered recipient, the place of supply shall be the location of such recipient, which *prima facie* appears to be in contravention of Section 12(9) of the IGST Act. Thereafter, 3rd respondent levied the tax as noted above and issued notice for payment.

14. We are afraid the contentions raised by the petitioner, more particularly the requirement to pay IGST under Section 12(9) of IGST Act and correspondingly the non-liability to pay CGST and SGST insofar the transportation services rendered by the drivers were not considered in the right perspective. That apart though the impugned order is a lengthy one, the substantive portion appears to be without due application of mind to the legal provision.

15. That being the position, we would not like to relegate the petitioner to the forum of appellate remedy since the question as to applicability of Section 12(9) of the IGST Act would go to the root of the contention raised by the petitioner.

16. Accordingly, we set aside the order dated 04.02.2022 and remand the matter back to the 3rd respondent for a fresh decision in accordance with law after giving notice of hearing as well as opportunity of hearing to the petitioner. Since the petitioner is before the Court, let him appear before the 3rd respondent within a period of three (03) weeks from today and file additional submissions, if considered necessary. Third respondent to consider the submissions of the petitioner and thereafter pass fresh orders in accordance with law within a period of four (04) weeks from the date of filing of additional submissions by the petitioner. Needless to say since we have set aside the impugned order dated 04.02.2022, the consequential notice dated 08.06.2022 would also stand quashed.

17. This disposes of the Writ Petition. However, there shall be no order as to costs.

18. As a sequel, miscellaneous applications pending, if any, in this Writ Petition, shall stand closed.

UJJAL BHUYAN,J

SUREPALLI NANDA, J

Date: 16.06.2022
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