



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Civil Writ Petition No. 393/2023

M/s Skylark Infra Engineering Pvt. Ltd.

----Petitioner

Versus

Union Of India

----Respondent



| | | |
|-------------------|---|--|
| For Petitioner(s) | : | Mr. Hemant Kothiari with Mr. Gaurav Baheti |
| For Respondent(s) | : | Mr. M.S. Singhvi, Advocate General assisted by Mr. Sheetanshu Sharma Mr. R.D. Rastogi, Additional Solicitor General assisted by Mr. C.S. Sinha, Mr. Devesh Yadav Mr. Kinshuk Jain |

**HON'BLE THE CHIEF JUSTICE MR. PANKAJ MITHAL
HON'BLE MRS. JUSTICE SHUBHA MEHTA**

Order

11/01/2023

1. Heard Mr. Hemant Kothari, learned counsel for the petitioner, Mr. M.S. Singhvi, learned Advocate General assisted by Mr. Sheetanshu Sharma, Mr. R.D. Rastogi, learned Additional Solicitor General assisted by Mr. C.S. Sinha and Mr. Kinshuk Jain, learned counsel for the respondents.
2. The petitioner is a private limited company having its registered office in Delhi Cantt. It is primarily engaged in the business of supplying manpower to various entities. In the Assessment Years 2017-18, 2018-19, 2019-20, it supplied manpower service to M/s GVK Jaipur Expressway Pvt. Ltd.
3. The petitioner on the supply of the aforesaid manpower service, deposited 18% Integrated Goods and Services Tax (for short 'IGST') treating the aforesaid supply of manpower to be



inter-state services, inasmuch as it had its office at Delhi/Gurgaon and the manpower was supplied at Jaipur in Rajasthan. The petitioner was served with a show cause notice dated 03.07.2020 to show cause why a demand of CGST+RGST under Section 74 of the GST Act along with interest and penalty may not be raised against it. The Assessing Authority after considering the reply of the petitioner to the said show cause notice, vide order-in-original dated 20.10.2020 assessed and confirmed the demand of CGST+RGST, interest and penalty, as raised against it by treating the service of supply of manpower by the petitioner to be intra-state. The aforesaid order was affirmed by the Joint Commissioner (Appellate Authority) vide order dated 23.09.2022.

4. Since the GST Tribunal has not been constituted so far, the petitioner instead of resorting to the remedy of further appeal, has preferred this writ petition challenging the assessment order dated 20.10.2020 passed by the Assessing Authority and the order dated 23.09.2022 passed by the Appellate Authority. In addition to the aforesaid challenge, the petitioner by means of this writ petition has also challenged the validity of Section 19(1) of the IGST Act, Section 77(1) of the CGST Act/RGST Act and Rule 89(1A) of the CGST Rules as unconstitutional.

5. The contention of the learned counsel for the petitioner is that the service of supply of manpower to an entity in Rajasthan by the petitioner is an inter-state transaction as the said supply has been undertaken by the petitioner from a place of business outside Rajasthan to a place in the State of Rajasthan. On the said inter-state transaction, he has duly deposited 18% of IGST and as such the demand of 18% CGST+RGST is unjustified and amounts



to double taxation. The respondents are incorrectly treating the supply of said services to be intra-state so as to levy CGST+RGST.

6. Mr. M.S. Singhvi, learned Advocate General has opposed the petition on the ground that on the facts and the findings returned by the two authorities below, it is evident that the matter of providing services of supply of manpower by the petitioner is an intra-state transaction, on which CGST+RGST is payable and, therefore, the demand has rightly been raised and confirmed. He has also cited decisions to the effect that in the matters involving revenue, the Court should be very slow in granting interim protection and that even direction for submitting bank guarantee in lieu of deposit of the revenue is not very appropriate. He has also pointed out that the petitioner got himself registered with the GST in Rajasthan and in the application for such registration, he has disclosed its place of business in Rajasthan itself and, therefore, it is incorrect on part of the petitioner to allege that manpower was supplied by it from a place outside Rajasthan. He has drawn attention of the Court to Section 2(71) and Section 2(85) of the Act, which defines "location of the supplier of the services" and "place of business" to demonstrate that the services were rendered intra-state and not inter-state.

7. In response, learned counsel for the petitioner argued that the petitioner was compelled to get itself registered in the State of Rajasthan and that registration was obtained with effect from 25.02.2020 and the said registration will not affect the transaction of services rendered by it in the years 2017-18, 2018-19 and 2019-20.

8. Mr. R.D. Rastogi, learned Additional Solicitor General appearing on behalf of the Union of India submits that there is no



difficulty for the petitioner to deposit the entire amount, as demanded, and if necessary, it can seek the refund of the IGST in accordance with the provisions of the Act, which provides for a complete mechanism for refund in such cases.

9. The facts, as revealed, make it clear that the core issue which arises for consideration in this writ petition is whether the transaction of supply of manpower by the petitioner to a company in Rajasthan is an inter-state transaction taxable as CGST+RGST, or it is an intra-state transaction liable to be taxed as IGST. The petitioner admittedly has deposited 18% of IGST and that 35% of the CGST+RGST has been recovered by the respondents by attaching the accounts of the petitioner.

10. The issue of inter-state transaction/intra-state transaction is a legal issue, though depending upon the facts of the case and as such, requires deeper consideration.

11. In view of the above and for the reasons that validity of certain provisions is also under challenge, we consider it appropriate to entertain the writ petition and call upon the State of Rajasthan and the Union of India to submit their response to the writ petition within a period of one month, so that the matter may be heard finally immediately thereafter.

12. Insofar as the grant of interim protection is concerned, the petitioner cannot be compelled to pay tax on the services rendered by it twice, therefore, in the interest of justice, it is provided that the petitioner may apply for the refund of the IGST in the prescribed form as per the Act and the Rules within a period of two weeks from today and in the event such application is moved and is found to be in order, the respondents shall get it processed within a period of two months from the receipt of the



said application, as has been provided under the Rules, and the petitioner is directed to deposit the balance 65% of CGST+RGST within a period of three months from today. It is further provided that on the petitioner applying for the refund of the IGST, its accounts attached for the purposes of realizing the disputed amount shall stand released.

13. List this petition alongwith D.B. Civil Writ Petition No.60/2023 for admission/final disposal after six weeks.

(SHUBHA MEHTA),J

(PANKAJ MITHAL),CJ

N.K. GANDHI/LAKSHYA SHARMA /11