

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5801 OF 2019

C.M.S. Info Systems Ltd.

.. Petitioner

v/s.

The Commissioner, CGST, Mumbai
East & Ors.

.. Respondents

Mr. Sriram Sridharan a/w Mr. Jas Sanghavi I/b PDS Legal for the petitioner

Mr. Ram Ochani for the respondent no.1

Ms. Shruti B. Vyas, B Panel Counsel for the respondent Nos. 2 and 4
State

**CORAM : M.S. SANKLECHA &
M.S. SONAK, J.J.**

DATED : 9th JULY, 2019

P.C.

1. This petition under Article 226 of the Constitution of India challenges the order dated 6th August, 2018 passed by the Maharashtra Appellate Advance Ruling Authority (AARA) under Section 101 of the Central Goods and Service Tax Act, 2017 and Maharashtra Goods and Service Tax act, 2017 (GST Act). By the impugned order dated 6th August, 2018, the AARA ruled that input tax credit is not available on purchase of motor vehicles to carry cash.

2. In fact, the petitioner had sought an advance ruling from Advance Ruling Authority (ARA) ruling on the following two questions

of law :-

(i) Whether supply of such motor vehicles as scrap after its usage can be treated as supply in the course of furtherance of business and whether such transaction would attract GST? If yes, please provide the rate of GST and / or Compensation Cess.

(ii) If answer to question (i) is in affirmative, whether Input Tax Credit is available to CMS Info Systems Ltd. on purchase of motor vehicles i.e. cash carry vans which are purchased, used for cash management business and supplied post usage as scrap.

3. So far as question no.(i) is concerned, the ARA by order dated 19th March, 2018 answered the question no.(i) in the affirmative i.e. motor vehicles sold after usage as scrap would be chargeable to Goods and Services Tax. However, there was a difference of opinion between the members of the AAR in respect of question no.(ii) above. This resulted in the AAR making a reference to the AARA under Section 98(5) of the CGST Act.

4. It is the above question no.(ii) as referred to the AARA that the impugned order dated 6th August, 2018 held that the input tax credit would not be available on purchase of motor vehicles i.e. cash carry vans. This particularly on the ground that money is excluded

from the definition of goods as provided under the GST Act, 2017. Thus, not entitled to input tax credit in view of Section 17(5) of the GST Act.

5. A challenge to the order of the AARA was the subject-matter of consideration before this Court in **JSW Energy Ltd. Vs. Union of India** (Writ Petition No.5 of 2019, rendered on 7th June, 2019). We set out the parameters for exercise of writ jurisdiction in respect of the order passed by the AARA under the GST Act. In particular, we observed as under :-

“15. At the outset, we make it clear that we do not propose to examine the impugned orders on their substantive merits or demerits, merely because Statutes in question have not provided for any further appeal against the decision of the Appellate Authority. Any such attempt, would virtually amount to converting these proceedings under Article 226/227 of the Constitution of India, which are essentially proceedings seeking judicial review, into appellate proceedings.

16. The circumstances that the Statutes in question have provided for no further appeal against the decision of the Appellate Authority, will have to be respected and the validity or otherwise of the impugned orders will have to be examined by applying the principles of judicial review and not the principles which apply in

case of an appeal.

17. In Appropriate Authority and another Vs. Smt. Sudha Patil and Anr. (1999) 235 ITR 118 (SC), the Supreme Court has held that merely because no appeal is provided for, against the order of appropriate authority directing compulsory acquisition by the Government, the supervisory power of the High Court does not get enlarged nor can the High Court exercise an appellate power.

18. The principles of judicial review, normally do not concern themselves with the decision itself, but are mostly confined to the decision making process. Such proceedings are not an appeal against the decision in question, but a review of the manner in which such decision may have been made. In judicial review, the Court sits in judgment over correctness of the decision making process and not on the correctness of the decision itself. In exercise of powers of judicial review, the Court is mainly concerned with issues like the decision making authority exceeding its jurisdictional limits, committing errors of law, acting in breach of principles of natural justice or otherwise arriving at a decision which is ex-facie unreasonable or vitiated by perversity.

19. In M/s. R.B. Shreeram Durga Prasad and Fatehchand Nursing Das Vs. Settlement Commission (IT & WT) and Anr. (1989) 1 SCC 628, the Supreme Court was concerned with judicial review of the orders of Settlement Commission, which were alleged to have been made in breach of the principles of natural justice. The

Supreme Court emphasized that principles of natural justice would certainly apply in such matters and the Settlement Commission was duty bound to adopt procedure consistent with such principles. The Supreme Court, also held that in exercise of powers of judicial review of the decision of the Settlement Commission, the Court ought to be concerned with the legality of the procedure validity and not with the validity of the order itself. The Supreme Court referred to observations of Lord Hailsham in Chief Constable of the North Wales Police Vs. Evans (1982) 1 WLR 1155, in which it is held that judicial review is concerned not with the decision but with the decision making process.

20. Therefore, in view of the aforesaid, we decline the invitation of Mr. Dada to go into the merits of the impugned orders, merely because the Statutes in question have not provided any further appeals in such matters. The challenge in this petition, will have to be examined by confining ourselves to the principles of judicial review, which, inter alia, will include the issue as to whether there has been a failure of natural justice at the appeal stage, thereby vitiating the decision making process leading to making of the impugned order dated 2nd July, 2018.”

6. In the light of the above, Mr. Sriram, learned Counsel in support of the petition challenges the impugned order dated 6th August, 2018 for flaw in the decision making process i.e. not dealing with the principal submissions of the petitioners (after recording the same in the

impugned order) viz. input tax credit would be available in respect of motor vehicles used for transport of money, in view of the definition of 'goods' and 'money' in the GST Act. Our attention is drawn to paragraph 3 and 4 of the impugned order which records the submission of the petitioner that though 'goods' as defined in Section 2(52) of the GST Act excludes 'money' from its ambit, the meaning to be given to 'money' for the purpose of Section 2(52) of the Act would be as defined in Section 2(75) of the GST Act. On the basis of the above, the submission of the petitioner was that the goods would include money as the cash being transported by them in motor vehicles is not as a legal tender but as goods. It was further pointed out that Section 17(5) of the GST Act at the relevant time had excluded the benefit of input tax credit in respect of motor vehicles, unless used for transport of goods. Thus, it is submitted that if the above submissions were considered, it is likely that the the outcome may have been different. In any case, there is a flaw in the decision making process of the AARA in passing the impugned order dated 6th August, 2018.

7. As against the above, Ms. Vyas, the learned AGP for the respondent submits that the impugned order does deal with the petitioner's submission. Thus, no case for interference in writ

jurisdiction is justified. In support, our attention is drawn to the fact that the impugned order records recommendation of the GST Council issued in a press note which proposed to allow input tax credit in respect of the motor vehicles used for transportation of money. Thus, the contention of the petitioner was considered and there is no flaw in the decision making process.

8. We find that the fundamental submission of the petitioner before the AARA was the fact that money would stand covered by the definition of 'goods' under Section 2(52) of the GST Act so long as the same is not used as legal tender. This on the basis of the definition of money provided in Section 2(75) of the GST Act. The aforesaid principal submission though recorded, has not been dealt with at all in the impugned order. Reliance placed in the impugned order upon the press note issued subsequent to a GST Council recommending to allow of input tax credit in respect of the motor vehicles used for transportation of money, would not by itself lead to the conclusion that prior thereto, money was not included within the definition of goods. This has to be examined in terms of the definition of 'goods' and 'money' found in GST Act. The entire issue before the AARA as raised by the petitioner was whether the vans / motor vehicles in which the

petitioners were transporting cash, would be money for the purpose of Section 2(52) of the GST Act. This aspect has not been dealt with in the impugned order dated 6th August, 2018 of the AARA.

9. In the light of the above, we note that the decision making process has not been complied with by the Authority. It is necessary for the Authority to consider the submissions made by the parties before it and give its findings in the context of the submissions made. Ignoring a submission would render the order vulnerable to judicial review by this Court.

10. Therefore, we set aside the impugned order dated 6th August, 2018 of the AARA and restore the question no. (ii) above to the AARA for fresh disposal in accordance with law. Needless to state that the AARA would consider the submissions made by the appellant and give its conclusion thereon duly supported by the reasons.

11. Petition is disposed of in the above terms.

(M.S. SONAK, J.)

(M.S. SANKLECHA, J.)