IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 715 OF 2019

Myrayash Hotels Pvt. Ltd.
Through its Director/ Aut.
Rep. Dhaval Barot. ... Petitioner

Versus

The Union of India, Thr.
The Secretary, Ministry of
Law and Justice, New Delhi
and 4 Others. ... Respondents

Mr. Ishaan Patkar and Mr. Amay Phadte, Advocates for the Petitioner.

Ms. Asha A. Desai, Advocate for the Respondent nos.1 and 2.

Mr. D. Pangam, Advocate General with Ms. Ankita Kamat, Additional Government Advocate for the Respondent nos.3 and 4.

Mr. Shivan Desai, Advocate for the Respondent no.5.

Coram :- M. S. SONAK &
M. S. JAWALKAR, JJ.

Date : 21st January, 2020.

ORAL ORDER

1. Heard Mr. Patkar, the learned Counsel for the petitioner, Mr. Pangam, the learned Advocate General for the respondent nos.3 and 4, Ms. Asha Desai, the learned Counsel for the respondent nos.1 and 2 and Mr. Shivan Desai, the learned Counsel for the respondent no.5.

2. In this petition, the petitioner seeks the following substantive reliefs :

> *"(a) That this Hon'ble Court may be pleased to declare that the para 2 of the Schedule II to the Central Goods and Services Tax Act, 2017 and the Goa Goods and Services Tax Act, 2017 read with Sections 7 and 9 thereof are ultra vires the Constitution of India and consequently strike down the same;*
>
> *(b) That this Hon'ble Court may be pleased to issue a writ of certiorari and/or any other appropriate writ, direction or order quashing and setting aside the*

Order dated 22.3.2019 issued by the Appellate Authority for Advance Rulings, Goa."

3. Insofar as prayer clause (a) is concerned, Mr. Patkar, the learned Counsel has very fairly pointed out to the judgment of the Division Bench of this Court in the case of ***Retailers Association of India (RAI) vs. Union of India & Ors., 2011(5) Mh.L.J. 660*** and submitted that the issue of constitutional validity now raised in this petition stands answered against the petitioner in the said judgment. He pointed out that though the judgment in ***RAI*** (supra) was rendered to the context of Service Tax, the principle laid down therein will also apply insofar GST is concerned.

4. In view of the aforesaid, we dismiss this petition insofar as prayer clause (a) is concerned.

5. Insofar as prayer clause (b) is concerned, Mr. Patkar, the learned Counsel, pointed out that both the Central as well as the State GST enactments are to apply only prospectively. He, therefore, submits that the Advanced Ruling Authority and the Appellate Authority for Advance Ruling, which has made the impugned orders referred to in prayer clause (b) above, were not at all justified in applying the said enactments to the petitioner's transaction with respondent no.5, which, was entered into prior to the said enactments coming into force. He also relied on the decision of this Court in the case of ***Commercial Corporation of India Ltd. vs. Income-Tax Officer & Ors. (1993) 201 ITR 348,*** to submit that even though the petitioner was not a party before the Advanced Ruling Authority, still, the petitioner has the necessary *locus standi* to institute the present petition.

6. Insofar as the orders made by the Advanced Ruling Authority and the Appellate Authority for Advance Rulings are concerned, the respondent no.5, who had in fact sought for the Advanced Ruling, had earlier instituted Writ Petition No.1094 of 2019 before us, questioning these very orders. The said petition was however withdrawn with liberty to file proceedings under

Section 102 of the Central Goods and Services Tax Act, 2017 (*Act*, for short). There is no dispute that such application has in fact been filed by the respondent no.5 and the same is pending adjudication.

7. According to us, if the respondent no.5 secures any favourable orders in the proceedings under Section 102 of the Act, then, perhaps, no occasion will arise for the present petitioner to institute a petition of the present nature. However, if the respondent no.5 fails, we grant the petitioner liberty to institute a fresh petition. No doubt, we clarify, that the issue of *locus standi* will be open for adjudication if and when the occasion arises. Accordingly, we do not propose to entertain the present petition insofar as the relief (b) is concerned for the aforesaid reasons. However, we grant the petitioner liberty as aforesaid, no doubt, by keeping the issue of *locus standi* as also any other issues which may arise, open.

8. This petition is disposed off in the aforesaid terms.

M. S. JAWALKAR M. S. SONAK, J.

arp/*