

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 18.06.2020

+ W.P.(C) 3597/2020

M/S ALLIED ENGINEERS & BUILDERS PVT. LTD.Petitioner

Through: R.M. Sinha and Prateek M.
Sinha, Advocates.

versus

M/S MUTHOOT FINANCE LIMITED & ANRRespondents

Through: Arvind Kumar, Assistant
Commissioner of Central GST.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral)

CM APPL. 12795/2020

1. Exemption allowed, subject to just exceptions.
2. The application is disposed of.

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3. The Petitioner has preferred the present petition under Article 226 of the Constitution of India seeking the following reliefs:

"It is therefore respectfully prayed that this Hon'ble Court may kindly be pleased to issue writ of mandamus or certiorari any other similar writ or order or direction, directing the respondent no.2 to disclose as to whether the respondent no.1 has taken credit of the GST amount earlier Service Tax qua (GST REGN. NO.07AABCT0343BIZO) - charged by the petitioner in the rent bills raised against respondent no.1-the tenant-the end user, so

as to the petitioner can recover the Service Tax now GST amount from the Tenant -the respondent no 1.

Such other or further orders may be passed in favour of the petitioner and against the respondents as this Hon'ble Court deems fit and proper under the facts and circumstances of the case."

4. The Petitioner avers that it is the sole/absolute owner/lease rights holder and in possession of shop/office premises situated on the ground floor, Plot No. C- 2, J Block, L.S.C., Wazirpur, Opp. Water Tank Ashok Vihar, Delhi – 110052. The afore-noted property has been leased in favour of Respondent No.1, vide lease agreement dated 27th June 2011, on a monthly rent of ₹ 81,000/-, for a term of 15 years. Clause 13 of the lease deed is stated to be the bone of contention between the Petitioner and Respondent No. 1. The said clause reads as under:

"That the lesser shall be liable to pay all taxes/charges in respect of the demised premises including property/Municipal Taxes, levies etc, Service Tax and all other taxes" the lesser shall also be responsible and liable for payment of any new/additional charges rates, taxes, surcharges, penalties, etc. whatsoever raised by the competent authority/forum etc, at any time, pertaining to the demised premises for its use or otherwise."

5. It is asserted that earlier when the total turnover of the Petitioner was below the threshold limit required for service tax registration, the invoices for the monthly rent were issued without levying service tax. Later, when the turnover crossed threshold limit, it got registered with the service tax department and started levying service tax on the rent amount. Presently, Petitioner is raising invoices with GST at the prevailing rate.

6. Mr. Sinha, Learned Counsel for the Petitioner argues that Petitioner has been charging Service Tax/GST at the rate of 18% on the monthly rent, but

Respondent No.1 has not been paying the said taxes. Notwithstanding the said default, Petitioner has been regularly depositing the taxes with the tax department. Mr. Sinha draws our attention to the tabulation in the petition, enumerating the monthly rent invoices for the period from November 2012 to June 2020. The said table captures the bill amount, Service Tax/GST component and the balance amount due and payable by Respondent No. 1 against each invoice. Mr. Sinha argues that even though Respondent No.1 has discharged the liability towards the rent amount, but the taxes levied on the invoices are outstanding.

7. Relying upon the provisions of the Finance Act and the judgement of this court in the case of *Pearey Lal Bhawan Association Vs. Satya Developers Pvt. Ltd*, 173 (2010) DLT685, it is contended that even though the primary liability for payment of service tax/GST is on the owner of the property, but the same is ultimately payable by the tenant. It is further argued that both service tax as well as GST can be adjusted against the out-going taxes. Therefore, whatever amount is paid by Respondent No.1 towards the said taxes, would eventually be entitled for adjustment. Keeping in view the scheme of taxation, Respondent No. 1 in all likelihood would have taken credit of the Service Tax/GST deposited by the Petitioner with the tax department. However, despite taking credit, Respondent No. 1 has not reimbursed the taxes and therefore the availment is unauthorised. In order to verify this position, Petitioner issued legal notice dated 20th May, 2020 to Respondent No. 1 and requested them to provide Tax returns. Despite the service of the notice there has been complete silence making it evident that credit of Service Tax/GST has been availed.

8. Mr. Sinha submits that since there is no other efficacious remedy under law to seek the requisite information, he is making an innocuous prayer of

directing Respondent No. 2 to disclose and confirm as to whether Respondent No.1 has taken credit of Service Tax/GST amount charged by the Petitioner in the monthly rent invoices. Petitioner is not seeking any reimbursement of the taxes by way of the present petition. Mr. Sinha submits that the tax liability has been discharged by payment to the tax department, but since the ultimate liability of payment of service tax and GST is on the end user – tenant, Respondent No. 2 should be directed to provide the requisitioned information.

9. In our view, the present petition is misconceived. Apparently, Petitioner has not received the entire amount against the monthly rent invoices for the period commencing from November 2012 to June 2020. Petitioner contends that the outstanding amount is towards the tax component levied on the said invoices. In the present case, we have not been called upon to adjudicate as to whether the liability to pay the taxes is on the Petitioner or Respondent No. 1. This question would have to be determined inter-se Petitioner and Respondent No.1, in appropriate proceedings, having regard to the terms and conditions of the lease agreement and in particular the Clause 13, extracted in the foregoing paragraphs. Here, we are only concerned with respect to the prayer made in the present petition seeking a direction to Respondent No. 2 [Principal Chief Commissioner of GST and Central Excise] to furnish the information sought for by the Petitioner. Concededly, as the owner/ landlord of the property in question, Petitioner was required to register itself, and discharge the service tax liability from the date it was covered under the threshold limit applicable to service tax. Likewise, under the CGST Act, 2017, renting of certain immovable properties is treated as taxable services. Here also it is the Petitioner who has the obligation to discharge the GST liability. The service tax/GST paid on the rent can be availed as Input Tax Credit for utilisation against outgoing payments,

provided, however, the criteria for availing Input Tax Credit is met. However, the availment of credit of the taxes paid by the Lessee does not affect the liability of the registered taxpayer to pay the taxes. In so far as the tax department is concerned, it is the Petitioner who is registered with them and is liable to pay taxes. Under GST, the point of taxation, that is the liability to pay GST will arise at the time of supply, as determined for goods and services. This obligation to pay Service Tax/GST is irrespective of Respondent No. 1 taking credit of the taxes paid. Thus, in our view whether Respondent No. 1 has availed the credit of Service Tax/GST or not is immaterial and will not effect Petitioner's right, if any, to recover the same. At the cost of repetition, we reiterate that this right of recovery would have to be determined in the context of the clauses contained in the lease agreement, in appropriate proceedings.

10. Lastly, we would also like to observe that Learned counsel for the Petitioner is also unable to show any provision of law that puts an obligation on the tax department to furnish the information for which the mandamus is being sought. In case the petitioner has no such legal right, the prayer cannot be granted. We find no merit in the petition and the same is dismissed. Needless to say, the rights and contentions of the parties are left open.

SANJEEV NARULA, J

MANMOHAN, J

JUNE 18, 2020

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