

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17-04-2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP Nos.446, 6124, 29797 & 30685 of 2018

And

WMP Nos.504, 7548, 40088, 34770, 35794, 35792 of 2018

WP No.446 of 2018

M.Srinivasan

.. Petitioner

vs.

1.Union of India,
Rep.by its Secretary to Government,
Ministry of Railways,
Rail Bhawan,
New Delhi.

2.Railway Board,
Represented by its Chairman,
Rail Bhawan,
New Delhi.

3.Financial Adviser & Chief Accounts Officer,
Office of the General Manager,
Park Town,
Chennai-600 003.

4.The Senior Divisional Commercial Manager,
Office of the Divisional Commercial Manager,
Southern Railways,
Park Town,
Chennai-600 003.

...Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the fourth respondent with reference to instructions vide his letter No.M/C.300/Vehicle Parking/2017 dated 29.06.2017 and letter No.M/C.300/Policy dated 24.07.2017, respectively and quash the same as prima facie illegal, improper and not in accordance with the provisions of the GST Act and consequently, direct the respondents to permit the petitioner to collect GST on the usage of the vehicle parking lot from the recipient of the said service.

For Petitioner : Mr.Velayutham Pichaiya
For Respondents : Mr.P.T.Ramkumar
Standing Counsel

WP No.6124 of 2018

R.Subburaj .. Petitioner

vs.

- 1.Union of India,
Rep.by its Secretary to Government,
Ministry of Railways,
Rail Bhavan,
New Delhi.
- 2.The General Manager,
Southern Railway,
Park Town, Chennai-600 003.
- 3.The Senior Divisional Manager,
Commercial Branch,
Southern Railways (Chennai District),
Park Town,
Chennai-600 003.
4. The Commissioner,
O/o.The Principal Commissioner of CGST and Central Excise,
No.26/1, Mahathma Gandhi Road,
Chennai-600 034.Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the third respondent herein dated 29.06.2017 in No.M/C.300/Vehicle Parking/2017 and quash the same and consequently, direct the 3rd respondent to allow the petitioner to collect GST at 18% from the customers in addition to the parking charges.

For Petitioner : Mr.L.Shanmuga Sundara Perumal
for J.Vivekanandan

For Respondents : Mr.P.T.Ramkumar
Standing Counsel for RR1 to 3
Mr.V.Sundareswaran
SPC for R4

WP No.29797 of 2018

Ashok Annal

.. Petitioner

vs.

1.Union of India,
Rep.by its Secretary to Government,
Ministry of Railways,
Rail Bhawan,
New Delhi.

2.Railway Board,
Represented by its Chairman,
Rail Bhawan,
New Delhi.

3.The General Manager,
Office of the General Manager,
Southern Railway,
Park Town,
Chennai-600 003.

4.The Senior Divisional Commercial Manager,
Office of the Divisional Commercial Manager,
Southern Railways,
Park Town,
Chennai-600 003.

5.Financial Advisor & Chief Accounts Officer,
Office of the General Manager,
Southern Railway,
Park Town,
Chennai-600 003.

...Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the fourth respondent with reference to his Letter of Information No.M/C.300/Cycles/CGL-Site No.I dated 22.03.2018 with reference to the requirement of payment of 18% GST on then Licence Fee and quash the same as prima facie illegal, improper and not in accordance with the provisions of the GST Act and consequently, direct the respondents to permit the petitioner to collect GST on the usage of the vehicle parking lot from the recipient of the said service.

For Petitioner : Mr.Velayutham

For Respondents : Mr.P.T.Ramkumar
Standing Counsel

WP No.30685 of 2018

R.Vishnu

.. Petitioner

vs.

- 1.Union of India,
Rep.by its Secretary to Government of India,
Ministry of Railways,
Rail Bhawan,
New Delhi.
 - 2.Railway Board,
Represented by its Chairman,
Rail Bhawan,
New Delhi.
 - 3.The General Manager,
Office of the General Manager,
Southern Railway,
Park Town,
Chennai-600 003.
 - 4.Financial Advisor & Chief Accounts Officer,
Office of the General Manager,
Southern Railway,
Park Town,
Chennai-600 003.
 - 5.The Senior Divisional Commercial Manager,
Office of the Divisional Commercial Manager,
Southern Railways,
Park Town,
Chennai-600 003.
 - 6.The Principal Chief Commissioner of CGST and Central Excise,
Tamil Nadu & Pondicherry Zone,
No.121, Nungambakkam High Road,
Nungambakkam,
Chennai-600 034.
- ..Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the 5th respondent with reference to his Letters of Acceptance No.M/C.300/Cycles/KBT, dated 12.04.2017 with reference to the requirement of payment of 18% GST on the Licence Fee and quash the same as prima facie illegal, improper and not in accordance with the provisions of the GST Act and consequently, direct the respondents to permit the petitioner to collect GST on the usage of the vehicle parking lot by collecting the same from the recipient of the said service.

For Petitioner in : Mr.Velayutham Pichaiya
all Petitioner

For Respondents in : Mr.P.T.Ramkumar
all Petitioners Standing Counsel for RR1 to 5
Mr.V.Sundareswaran
SPC for R6.

C O M M O N O R D E R

These writ petitions were filed questioning the demand made by the Southern Railway to pay 18% of GST in respect of the license fee granted to the Private Contractors to run parking of vehicles.

2. At the first instance, this Court would like to look into the provisions of law with reference to collection of 18% GST as far as the parking areas, more specifically, in these batch of cases by the Southern Railway through their Private Contractors.

3. Section 2 of the CGST Act enumerates definitions. Section 2 (102) defines:-

"services" means "anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;

[Explanation : For the removal of doubts, it is hereby clarified that the expression "services" includes facilitating or arranging transactions in securities;]"

4. Let us now consider Chapter III levy and collection of tax. Section 7 denotes the scope of supply, which reads as under:-

"7. Scope of supply.--

(1) For the purposes of this Act, the expression 'supply' includes--

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

(b) import of services for a consideration whether or not in the course or furtherance of business; [and]

(c) the activities specified in Schedule I, made or agreed to be made without a consideration; and

(d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.]

[(1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.]

(2) Notwithstanding anything contained in sub-section (1),--

(a) activities or transactions specified in Schedule III; or

(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.

(3) Subject to the provisions of 5 [sub-sections (1), (1A) and (2)], the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as--

(a) a supply of goods and not as a supply of services; or

(b) a supply of services and not as a supply of goods."

5. With reference to Section 7(1-A) Schedule II deals with activities or transactions to be treated as supply of goods or supply of services. Schedule II Sub-clause (2) stipulates Land and Building

(a) any lease, tenancy, easement, licence to occupy land is a supply of services;

(b) any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.

6. Thus, any lease, tenancy, license to occupy land is also a supply of services as contemplated under Schedule with reference to Section 7 of the Act. Sub-clause (5) to Schedule II speaks about supply of services:-

The following shall be treated as supply of services, namely:-

(a) renting of immovable property;

(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.

Explanation.-For the purposes of this clause-

(1) the expression 'competent authority' means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:- (i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972); or

(ii) a chartered engineer registered with the Institution of Engineers (India); or

(iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;

(2) the expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure;

(c) temporary transfer or permitting the use or enjoyment of any intellectual property right;

(d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software;

(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; and

(f) transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.

Therefore, both as license to occupy a land or renting of an immovable property, both falls under the supply of services.

7. A conjoint reading of Section 7 as well as Schedule II unambiguously portrays that license is granting for supply and as per Schedule II, license to occupy land and renting of an immovable property are supply of services.

8. With reference to the above provisions of the CGST Act, the Deputy Commissioner of Central Tax and Customs, issued Press Note in C.No.V/30/155/2017-CC (VZ) Media dated 17.11.2017, which reads as under:-

"Doubts have been raised regarding the collection of GST on parking charges at Railway Station and such public places. It is informed that under the GST law, "Parking Lot Services" fall under HSN Code No.996743 and liable to GST @ 18% on the parking charges paid.

In this connection, contractors of Parking Lot Services are advised to obtain GST Registration and to pay the GST as applicable on all parking charges collected by them. In case of any difficulty, they may contact the local Central GST Seva Kendras in the matter of Registration, filling of Returns, Payment of Taxes, etc."

9. Following the above Press Note, Ministry of Railways, more specifically, Joint Director Traffic Commercial (G), Railway Board, issued a clarification regarding levy of Goods and Services Tax (GST) for parking contract and the said clarification, reads as under:-

"Please refer to Board's letter no. of even no. dated 29.06.2017 regarding details of operating instructions for levy of GST for ATM/STD-PCO/parking and booking of retiring room. In continuation of the same, following instructions are issued for

parking contracts:-

A. In old and new parking contracts, licensee shall be charged GST @ 18% of license fee and the same shall be deposited along with the license fee. Public/user charges shall be revised/fixed by Railways accordingly.

B. As regards charging of GST from public by licensee, this will depend upon the taxable turnover, thresholds for registration in GST etc of licensee. Only those licensees who are registered in GST shall be responsible for collection of GST from public and depositing the same to the Government.

This issues with the concurrence of Finance Dte. Of Ministry of Railways."

10. Beyond these two Circulars, the Railway Board issued detailed approach paper for implementation of Goods and Services Tax (GST) on the subject of Traffic Commercial Directorate in proceedings No.TC-II/2910/2017/GST/2 dated 09.06.2017, wherein Clause 3 stipulates renting of space and the same reads as under:-

"3. Renting of space-ATM/STD-PCO/Shops/Parking, catering stalls operated by licensee:

(i) The place of supply will be the place where space is located and place of supplier (Railways) will also be the same as Railways intend to register in every State for GST. In this case CGST+SGST/UTGST will be applicable.

(ii) Zonal Railways shall be issued instructions to issue Money Receipt as tax invoice accordingly and charge applicable GST.

(iii) The details of the money receipt shall be fed into the CRIS system for filing of GST return.

Generation of tax complaint invoice is mandatory. At present this activity is treated as 'renting of immovable property' so applicable rate is 18%."

11. The above Clause deals with parking also.

12. With reference to provisions of the CGST Act as well as the consequential Circulars issued by the Railway Board, another Circular was issued to all the General Managers of all Zonal Railways regarding GST implementation issues in proceedings No.2017/AC-II/01/6/Cab.Sec dated 02.08.2017 and the

same reads as under:-

"PMO vide their ID Note No.280/31/C/02/2017-ES.I Vol.III dated 25.07.2017 has brought out certain social media references received in their office relating to either not charging GST or charging both GST and VAT. It has been advised that appropriate action may be taken in this regard. This matter has been examined in the Accounts Directorate and it is mentioned that instructions for levy of GST for services rendered by Railways to outside agencies viz., on Transportation of Passenger, Transportation of Goods and Rental of Immovable Property has been issued by the concerned Directorate of Railway Board from time to time. However, it is also equally important that the agency appointed by Railways to render a services viz., Parking Contractors, Catering Stall (mobile or static), Food Courts at Railway Station or establishments also levy the GST Rates appropriately as per the GST Rules. In other words, these Contractors have to generate the Tax Invoice containing their GSTIN, CGST/SGST-UTGST or IGST amount duly bifurcated, etc so that there is no case for any complaint from any quarters. It is therefore incumbent upon the executive Departments who administer these agency to advise the agencies of the compliances expected from them in the GST regime. Following action may kindly be taken by the Nodal Officers in each Zonal Railways and Production Units immediately:-

a) Nodal Officer may direct all the Departments in their jurisdiction to immediately issue directives to raise GST Complaint Invoices. In fact, the GST Registration of the agencies should be displayed in the premises;

b) For the next few months, Officers may be directed to do test check of the agencies to ensure that they are carrying out activity as per the GST Rules. Some of the illustrative checks could be to call for the GSTIN registration certificate of the agencies, sample invoices of the services rendered by them to passengers, etc so that corrective action can be taken.

Compliance report in this regard may

kindly be sent to Accounts Directorate by 16th August, 2017."

13. Perusal of all the above provisions as well as the consequential Board orders and the clarificatory letters issued by the Chief Commissioner of Central Tax and Customs, it is made clear that license, rental, lease amounts to supply and as per Schedule II of the Act, license to occupy the land and renting of an immovable property, are also supply of services.

14. In the above context, let us consider the facts relating to the writ petitions on hand.

15. It is an admitted fact that all the writ petitioners are Contractors, who were granted license to run parking areas for vehicles in the Railway premises by the Southern Railway. All the writ petitioners participated in the tender process and were successful in the tender and entered into an agreement with the Southern Railway, agreeing certain terms and conditions stipulated.

16. The agreement for manning the vehicle parking stand in Railway Stations were admittedly signed by all the writ petitioners, who all are Contractors and all the writ petitioners could pay the license fee as per the terms and conditions. The agreement Clause (8) contemplates that:-

"8. (i) I/We shall during the continuance of this license agree to pay to the Administration for the use of the said premises under the conditions of this license an annual/quarterly licensee fee of Rs.2,75,000/- (Rupees Two Lakhs and Seventy Five Thousand only). I agree to pay enhanced license fee of 10% every year. The Licensee/Licensees shall also duly pay during the continuance of this license all cesses, rates, water charges, taxes and other charges or taxes in respect of the said premises or proportion of all cesses, rates, water charges, taxes and other charges of taxes of the said premises if Administration in giving such intimation to recover such charges of taxes shall not prejudice and right of the Administration to recover the correct amount of such charges or taxes due from the licensee/licensees from the date of occupation by him/them of the said premises. The cess and other charges will be payable annually with first installment

while the license fee will be payable in quarterly installments every year."

17. It is further admitted that the writ petitioners had agreed for the terms and conditions stipulated in the agreement and as per the said agreement, the licensee shall pay during the continuance of the license all cesses, rates, water charges, taxes and other charges or taxes in respect of the said premises. Thus, it is made clear and further admitted that they are liable to pay taxes as admissible.

18. The respective learned counsel appearing on behalf of the parties informed that the period of license already expired, except in few cases, in respect of all these writ petitions. However, in respect of expired license, the respondent-Southern Railways is not refunding the deposit amount and therefore, they are constrained to move the present writ petitions. The deposits are not refunded on the ground that they are liable to pay CGST/SGST at 18% as per the terms and conditions of the agreement.

19. In view of the fact that the deposits are not refunded by the Southern Railways to the writ petitioners, they are constrained to move the present writ petitions and the learned counsel appearing on behalf of the writ petitioners mainly contended that the Statute does not contemplate such payment of 18% CGST/SGST.

20. When there is no provision to collect the GST from the contractors on the license fee, then the terms and conditions of the agreement became null and void and therefore, the conditions imposed in the agreement would not be binding on the contractors. In this regard, the learned counsel for the petitioner relied on Section 32 of the CGST Act and sub-clause (2) to Section 32 stipulates that "no registered person shall collect tax except in accordance with the provision of this Act or the Rules made thereunder".

21. In the present cases, even before the introduction of the present CGST Act, the Contractors were paying the taxes based on the erstwhile Act, mainly Service Tax Act. After the implementation of the CGST Act, when there is prohibition of unauthorised collection of tax, the demand now made by the Southern Railways is in violation of the provisions of the CGST Act and therefore, the writ petitions are to be allowed.

22. One of the contention raised is that presuming that the respondents are entitled to collect GST under RCM, then also they can do it only in the case of services supplied by the Central Government by way of renting of an immovable property as

per the notification dated 25.01.2018.

23. As far as the present writ petitions are concerned, the respondents had admitted that they are treating 'Parking' as 'Renting of an immovable property', which is against the provisions of the GST Act. In other words, as per the agreement, it is renting of an immovable property, which is not falling under the scope of the GST Act and therefore, the writ petitioners are not liable to pay tax as demanded by the Southern Railways.

24. Learned counsel for the writ petitioners relied on the judgments of the Hon'ble Supreme Court of India, in the case of Mannalal Khetan and Others vs. Kedar Nath Khetan and Others [(1977) 2 SCC 424], wherein it has been held in paragraph-21, which reads as under:-

"21. If anything is against law though it is not prohibited in the statute but only a penalty is annexed the agreement is void. In every case where a statute inflicts a penalty for doing an act, though the act be not prohibited, yet the thing is unlawful, because it is not intended that a statute would inflict a penalty for a lawful act."

25. In the case of P.C.Paulose, Sparkway Enterprises vs. Commissioner of Central Excise and Customs [2011 (21) STR 353 (SC)], the Supreme Court, in paragraphs 5, 13, 14, 15 and 16, held as under:-

"5. It is evident from the aforesaid terms and conditions of the agreement that the appellant was granted licence by AAI to collect the admission ticket charges so as to provide amenities and facilities to the passengers and visitors at the airport. Under the said agreement, the appellant was also required to pay all rates, assessment, outgoings and other taxes as leviable on the licensee as per law. It is also clear therefrom that AAI has only provided bare space and all expenses for providing services to passengers/visitors are to be borne by the appellant.

13. The licence agreement clearly stipulates that AAI is entitled in law to grant licence at its Calicut Airport for the purpose of airport admission so as to provide amenities and facilities to

passengers and visitors at the airport and that the licensee i.e. the appellant, has agreed under the licence agreement to render such services to AAI on the terms and conditions mentioned in the said licence agreement. One of such stipulations was that the licensee would pay all rates, assessment, outgoings and other taxes as leviable on the licensee in laws.

14. Another responsibility that vested on the licensee was to maintain regular and proper account books along with other supporting documents regarding sales effected by the licensee in the said premises which could be inspected by AAI in such manner as may be prescribed. The licensee was also responsible under the licence agreement to operate the subject facility by charging the rate from users, as may be approved in advance by AAI.

15. Albeit, it is true that the appellant deposits a licence fees of Rs. 2,66,797 per month to AAI but it collects the required fees from the users of the facility and provides all facilities to such customers. Section 65 clause (105) (zzm) of the Finance Act, 1994 defines "taxable service" to mean any person, by Airports Authority or any person authorised by it, in an airport or a civil enclave. It is thus crystal clear that the appellant being a person authorised by AAI to provide service in express terms and conditions, it becomes liable to pay such tax as it was an authorised person to provide taxable service and collect the admission ticket charges on a contract basis.

16. Under the terms and conditions set out hereinbefore of the agreement the appellant is authorised to provide all the services as mentioned therein and, therefore, as per the statutory definition the appellant steps into the shoes of AAI for the service provided on the basis of the authorisation and becomes liable to pay such taxes in terms of the operation of Section 65 clause (105) (zzm) of the Finance Act, 1994."

26. The CESTAT, Principal Bench of the Tribunal, New Delhi in the case of Airport Authority of India vs. Commissioner of Service Tax, Delhi [2015 (39) STR 35 (Tri.-Del.)], in paragraphs-22.3 and 22.5 held as under:-

"22.3 Inside an Airports/Civil Enclaves there are a number of business establishments like Restaurants, Duty free Shops, Book Shops and other Shops, Counters of the Airlines, Money Changers etc. All these persons have been given space inside the Airports/Civil Enclave on rent, which is to be used for the purpose of their business. Some spaces have been given for display of hoardings/advertisements.

22.5 With regard to charging of service tax on the amount received by the appellant from the concessionaires/licensees managing access to the visitors' gallery, car parking and issue of season tickets and temporary passes, it is pleaded by the appellant that in terms of the Apex Court's judgment in case of P.C.Paulose, Sparkway Enterprises vs. CCE (supra), it is the licensees, authorised by the appellant who manage the services, who would be liable to pay service tax and not the appellant who are only charging a fixed amount from them as licensee fee/royalty. However, the Department's plea on this point is that firstly, since the licensees are providing the service of managing car parking, visitor's entry into Airports/Civil Enclaves and issue of temporary passes and season tickets on behalf of the appellant, it is the appellant who would be liable to pay service tax on these services and secondly in any case, the activity of the appellant of transferring their right to the licensees to collect the entry tickets or parking fee or fee for issue of temporary passes and season tickets for fix amount of licensing fee/royalty is like renting of business and on the amount of licence fee/royalty being received by the appellant from the concessionaires/licensees managing the visitor's entry, car parking and issue of season tickets and temporary passes, service tax would be chargeable under Section 65(105) (zzm)."

27. Relying on the above said judgments, the learned counsel for the writ petitioners reiterated that what is not contemplated under the provisions of the Act, cannot be permitted to be exercised. When there is a specific bar under the Act, more specifically, under Section 32, there is no reason whatsoever to make a demand for recovery of GST from the writ petitioners. Such a collection of tax is unauthorised and the above judgments clarify that the collection of tax in such circumstances, more specifically, from the licensees are impermissible.

28. In these cases, the respondent-Railways have treated the parking as rented out of property and therefore, the same would not fall under the provisions of the CGST Act and the writ petitioners are not liable to pay the tax.

29. Learned counsel appearing on behalf of the Southern Railways, objected to the said contentions of the learned counsel appearing on behalf of the writ petitioners, by stating that all the agreements and pre-contract proposals were signed by the writ petitioners, agreeing to pay the taxes as applicable under the CGST Act. When the contractors have signed the pre-agreement proposals, even before entering into a contract, and thereafter, entered into a contract by signing the agreement, now cannot turn around and say that they are not liable to pay the service tax as applicable under the provisions of the CGST Act.

30. In this regard, the learned counsel for the Southern Railways relied on the Circulars issued by the Railway Board, which were extracted in the aforementioned paragraphs of this common order.

31. It is further contended that the Southern Railways has to pay the GST Tax with reference to the license fee collected from the contractors and the contractors are liable to pay the service tax with reference to the parking fee collected from the customers, who all are end users. Thus, both the Railways as well as the contractors are bound to pay, if they are falling within the ceiling contemplated under the provisions of the CGST Act.

32. This being the Scheme of the CGST Act, there is no reason whatsoever to grant exemption as far as these contractors are concerned and the grounds raised for exemption, is not contemplated and the writ petitioners are attempting to mis-interpret the provisions of the CGST Act and therefore, the writ petitions are liable to be dismissed.

33. The respective learned counsel appearing on behalf of the GST, strenuously contended that the provisions of the CGST Act are unambiguous in the matter of recovery of service tax, as applicable and they relied upon the definition of 'Services' as contemplated under Section 2(102) of the Act and Section 7 along with Schedule II of the Act.

34. It is contended that Section 7 of the CGST Act, for levy and collection of tax and scope of supply is unambiguous. Accordingly, 'supply' includes, license, rental, lease or disposal made. The scope of supply contemplated under the Act is wider enough to cover the services rendered both by the Railways to their contractors as well as the contractors to the end users.

35. This apart, Section 7(1-A) of the Act, enumerates "where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II."

36. Sub-clause (2) to Schedule II of Section 7 contemplates 'Land and Building' and accordingly license to occupy the land is a supply of service. Clause 5(a) renting of an immovable property also shall be treated as supply of services.

37. When license to occupy the land and renting of an immovable property, both are considered as supply of services, within the meaning of Section 7(1-A) of the CGST Act, there is no ambiguity in respect of the transactions made with reference to the facts of the present writ petitions.

38. The facts admitted are that the land belongs to the Southern Railways, the writ petitioners were given license to run vehicle parking and while entering into an agreement of license, the Southern Railways, in clear terms, stated that the contractors are liable to pay taxes as applicable under the CGST Act. In turn, the contractors are also liable to pay the service tax, if they are falling within the ceiling prescribed under the Act. Thus, the Railway has to pay tax for the services rendered to the contractors by collecting license fees and the contractors, in turn, have to pay service tax for collection of parking fee from the end users.

39. This being the pattern of liability to pay tax, which is contemplated under the provisions of the Act, there is no question of granting exemption to anyone of the persons, either the Railways or the contractors, who all are licensees and permitted to run the vehicle parking areas and therefore, their liability under the provisions of the Act, is unambiguous.

40. Considering the facts and circumstances, this Court is of the considered opinion that, the liability regarding tax regime is concerned, the Courts are expected to adopt strict interpretation of law. Liberal interpretation is impermissible, which can be adopted only in respect of certain welfare legislations and as far as the tax laws are concerned, it is to be borne in mind that strict interpretation of provisions are to be adopted, so as to recover taxes from the assesseees by following the procedures contemplated.

41. In the present cases, liability of the licensees are well enumerated with reference to Section 7 and Schedule II to the Act. As discussed above, when the liability is unambiguous and the nature of services are also falling within the scope of Section 7 r/w Schedule II, then there is no reason to consider the claim of the writ petitioners for invoking Section 32 of the Act.

42. Section 32 deals with prohibition of unauthorised collection of tax. Here the question of unauthorised collection does not arise at all. When the collection of tax is in consonance with the provisions of the Act, the provisions of Section 32, cannot be invoked at all. Thus, the arguments with reference to Section 32 stands rejected.

43. The judgments referred to are not relatable in respect of the present transactions. The first judgment cited by the writ petitioners is of the year 1977 and the judgment in the case of Dr.Lal Path Lab Pvt Ltd vs. Commissioner of Central Excise, Ludhiana [2006 (4) STR 527 (Tri.-Del.)], by the CESTAT, Principal Bench of New Delhi, was of the year 2006. The High Court of Punjab and Hariyana, confirmed the judgment of the Tribunal, in the year 2007, and the case of the Supreme Court of India in P.C.Paulose, Sparkway Enterprises vs. Commissioner of Central Excise and Customs [2011 (21) STR 353 (SC)], is of the year 2011. Even the case of the CESTAT, Principal Bench of the Tribunal, New Delhi in the case of Airport Authority of India vs. Commissioner of Service Tax, Delhi [2015 (39) STR 35 (Tri.-Del.)], is again of the year 2015.

44. Therefore, all the above mentioned cases were decided prior to implementation of the CGST Act and those cases would not be of any avail to the cases of the present writ petitioners, so as to seek exoneration from payment of tax under Section 32 of the CGST Act. In other words, liability cannot be waived when the provisions of the Act is unambiguous. Thus, the arguments advanced based on the above mentioned judgments, cannot be held in favour of the writ petitioners and this Court is bound to go by the provisions of the CGST Act, which was implemented with effect from 01.07.2017.

45. As discussed above, the provisions of the CGST Act is crystal clear that the services rendered are liable for payment of service tax and more specifically, with reference to Section 7 r/w Schedule II, the services rendered by the Railways to the writ petitioners/contractors and the writ petitioners/contractors to the end users, are falling within the scope of Section 7 r/w Schedule II of the CGST Act and therefore, all the writ petitioners are liable to pay tax, as applicable and as demanded by the Southern Railways.

46. This Apart, the writ petitioners have agreed to pay the taxes even during pre-contract, when the proposals were released and therefore, now they cannot turn around and seek exoneration from payment of service tax as applicable.

47. Thus, it is made very clear that the Southern Railways is liable to pay service tax for the license fee collected from the respective contractors and the respective contractors are liable to pay service tax for the collections made from the end users/customers in respect of the parking slot services. Such contractors are bound to register their name under the CGST Act, by following the procedures contemplated therein.

48. By repetition, it is to be reiterated that the Southern Railways is bound to pay service tax on the license fee collected from the contractors for whom license is granted to run vehicle parking in the premises of the Southern Railways and such contractors, who all are the licensees, are bound to register their names under the CGST Act and on such registration, they are bound to pay service tax for the parking fee collected from the end users.

49. Thus, there are two services involved in the entire transactions and the first service is from the Railway to the contractors and the second service is from the contractors to the customers/end users.

50. As far as the exempted services under the provisions of the Act, are concerned provided by the contractors to the customers/end users, in such an event, the contractors are not liable to pay tax to the GST Department. However in respect of the license fee, the Railway is liable to pay service tax to the GST by collecting from the contractors on the license fee. However, exemption would be applicable only in respect of the services provided by the contractors to the customers/end users and in such cases, the contractors are not liable to pay taxes directly to the GST Department.

51. This being the clarification only with reference to the exempted services under the provisions of the CGST Act, the non-exempted cases, cannot seek any exoneration. Whether such services rendered by the writ petitioners are exempted or not, is to be verified by the Competent Authorities of the GST Department and accordingly suitable orders may be passed.

52. This being the provisions of the CGST Act, which is unambiguous and explicitly provided under the Act, there is no scope for entertaining the grounds as raised in the present writ petitions and consequently, all the writ petitions are devoid of merits and accordingly, they stand dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

ssb

To

1. The Secretary to Government,
Union of India,
Ministry of Railways,
Rail Bhawan,
New Delhi.
2. The Chairman,
Railway Board,
Rail Bhawan,
New Delhi.
3. Financial Adviser & Chief Accounts Officer,
Office of the General Manager,
Park Town,
Chennai-600 003.
4. The Senior Divisional Commercial Manager,
Office of the Divisional Commercial Manager,
Southern Railways,
Park Town,
Chennai-600 003.

5.The General Manager,
Southern Railway,
Park Town, Chennai-600 003.

6.The Senior Divisional Manager,
Commercial Branch,
Southern Railways (Chennai District),
Park Town,
Chennai-600 003.

7. The Commissioner,
O/o.The Principal Commissioner of CGST and Central Excise,
No.26/1, Mahathma Gandhi Road,
Chennai-600 034.

8.The Principal Chief Commissioner of CGST and Central Excise,
Tamil Nadu & Pondicherry Zone,
No.121, Nungambakkam High Road,
Nungambakkam,
Chennai-600 034.

+4cc to Mr.P.T.Ramkumar, Advocate SR.No.23565 to 23568

+2cc to Mr.V.Sundareswaran, Advocate SR.No.23452, 23453

WP Nos.446, 6124, 29797 & 30685 of 2018 of 2018

RSV(CO)
GMY(16/06/2021)

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