

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.2963 OF 2022

Arun Krishnachandra Goswami

... Petitioner

Vs.

Union of India & Ors.

... Respondents

Mr. Dharmendra J. Damani for Petitioner.

Mr. Anil C. Singh, Additional Solicitor General a/w Mr. Jitendra B. Mishra i/by Ms. Pankti Shah for Respondent Nos. 1 to 6.

Mr. Jitendra B. Mishra a/w Mr. Satyaprakash Sharma for Respondent No.7.

Ms. Jyoti Chavan, AGP for Respondent No.8.

**CORAM : K.R. SHRIRAM &
A.S. DOCTOR, JJ.**

DATED : 05th SEPTEMBER 2022

PC. :

1. The Petition has been filed through a Director of a Company, Aagya OOH Media Solutions Private Limited. We refer to the said Aagya OOH Media Solutions Private Limited as Petitioner.

2. Petitioner has been carrying on business of advertising and providing advertising solutions to various parties. Petitioner submitted a bid in response to a tender floated by Respondent No.1 through Respondent No.6. Petitioner's bid was accepted and a Letter of Acceptance

dated 16th July 2014 was issued to Petitioner by Respondent No.6 on behalf of Respondent No.1. Clause 2.14 of the General Conditions of Contract (GCC) provided for payment of service tax. It says "*As & when it is notified for collection of service tax on commercial publicity contracts on railways, the contractor should pay the service tax at the applicable rates on the license fee to the Railway Administration*". Petitioner was paying the applicable service tax.

3. In July, 2017 the service tax regime was replaced by Goods and Services Tax (GST)-Central GST and State GST.

4. As was done in the past, Petitioner continued to pay the amount to Respondent No.6 together with GST component of 18% per annum on the value of the services. The fact Petitioner made these payments to Railways, together with the GST of 18% per annum, has been admitted by Respondent No.6. The last assignment that Petitioner had with Railways was for the Financial Year 2017-18.

5. On or about 21st December 2020, Petitioner received a notice from Deputy Commissioner of State Tax for conducting audit whereby

Petitioner was directed to attend in person or through an authorised representative along with the books of accounts and records for the Financial Year 2017-18. Petitioner responded by submitting requisite documents and by answering all the queries of the audit team to the best of its knowledge and ability.

6. During the course of audit, Petitioner realised that the issue is related to the amount of GST that Petitioner had paid to Railways, viz., through Respondent No.6. Petitioner addressed communications dated 3rd February 2022 and 23rd February 2022 to the office of Respondent Nos.4 and 5 seeking intervention on getting the issue of GST payment resolved for the last five years. Petitioner realised that though Petitioner was paying 18% GST to the Railways, that amount was not being paid by Railways to the concerned authorities, i.e., 9% to the Central Government and 9% to the State Government. To cut the matter short, this is where the problem of Petitioner arose and Petitioner approached this Court for appropriate relief.

7. Respondent No.5, through one Manika Jaiswal, has filed Affidavit-in-Reply, affirmed on 1st August 2022. In the Affidavit-in-Reply,

Respondent No.5 admits that Petitioner had paid the tax amounts to Railways. The stand taken by Respondent No.5, however, is that as per the provisions of Section 9 (3) of CGST/SGST Act, 2017 and Section 5(3) of the IGST Act, 2017 the tax payable by the recipient of the goods or services or both, as was applicable in the case at hand, shall be paid on reverse charge basis.

8. Learned ASG submitted that when it says on reverse charge basis, the obligation was on Petitioner, who was recipient of services under the contract, to pay the GST directly to the Central Government and State Government at the applicable rates. Learned ASG also pointed out that copy of the tax invoices raised on Petitioner, which has been annexed to the Affidavit-in-Reply, also provides “*Is Tax payable on Reverse Charge Basis – yes*”. Learned ASG pointed out that the CGST amount as well as the SGST amount has also been mentioned in the invoice. Mr. Damani stated that this is the first time Petitioner even could sight a copy of the invoice.

9. The fact is Petitioner has paid the SGST and CGST, but has paid those amounts to Railways instead of paying it directly to the

concerned tax authorities. In the Affidavit-in-Reply of Respondent No.5 it is stated that the amount mentioned can be refunded to Petitioner or if Petitioner wishes the amounts can be paid directly to the concerned authorities in the proportion mentioned in the invoice within such period as the Court may direct.

10. We have to note that this is a case where Petitioner has not attempted to evade any tax. This is a clear case where Petitioner has made a mistake and instead of paying the Government of India through the CGST authorities and the State of Maharashtra through the SGST authorities, the entire amount has been paid to Government of India, through Indian Railways. In the Affidavit-in-Reply, Respondent No.5 admits that Petitioner has paid the amount wrongly to Railways and due to huge Railway network, Railway was not in an immediate administrative position to check and react to such wrongful deposits.

11. We, therefore, direct Respondent No.5 to ensure that the amounts which have been wrongly paid by Petitioner to Railways should be paid to the CGST authorities and SGST authorities within two weeks from today.

12. We also hope that in view of the unusual facts and circumstances of this case, the CGST authorities and SGST authorities would consider Petitioner's case sympathetically when it comes to interest and penalty. Unless they have some other reason, Petitioner should not be saddled with interest and penalty.

13. As and when Railway deposits the amount and we have already observed that it will be done within two weeks from today, the CGST and SGST authorities will give input tax credit to Petitioner.

14. Petition disposed. No order as to costs.

15. After this order was dictated, learned ASG pointed out that since the GST payments are made electronically and the system will only accept when the payment is made by party concerned, his instructions are that it will not be possible to pay the amount directly to the CGST/SGST authorities. Respondent No.5 is, therefore, directed to pay this amount to Petitioner within one week. Petitioner shall pay this amount within one week after receiving the credit in its account. The CGST/SGST authorities

are directed to open the portal for Petitioner. Mr. Mishra and Ms. Chavan state that they will inform the concerned authorities of CGST/SGST, respectively, to provide within one week the link/portal details to Petitioner to make this payment. Statement accepted.

(A.S. DOCTOR, J.)

(K.R. SHRIRAM, J.)

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