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

% ***Judgment delivered on: 01.10.2024***

+ **W.P.(C) 4136/2024, CM APPL. 16885-86/2024**

AXA FRANCE VIE-INDIAPetitioner

Through: Mr. Tarun Gulati, Sr. Adv. with
Mr Sandeep Chilana, Mr
Priyojee Chatterjee, Mr.
Pramod, Advs.

versus

UNION OF INDIA & ORS.Respondent

Through: Mr Ravi Prakash, CGSC for
R1/UOI with Ms. Isha, Mr.
Ashu, Ms.Taha Yasin, Advs.
Mr R Ramchandran, SSC.
Mr Anurag Ojha SSC and Mr
Subham Kumar, Adv. for R-5.
Mr Abhishek Gola, Advocate
for R6 & R7.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

YASHWANT VARMA, J. (Oral)

1. The present petition has been preferred seeking the following reliefs:-

“(a) Issue a writ of mandamus or any other appropriate writ(s), or order(s) or direction(s) in the nature thereof, declaring that Notification No. 14/2018 - Central Tax (Rate) dated 26.07.2018 issued by Respondent No. 1 whereby Entry 36A to the Principal Exemption Notification No. 12/2017 - Central Tax (Rate) dated 28.06.2017 (*as inserted vide Notification No. 02/2018 - Central*



Tax (Rate) dated 25.01.2018) was amended to include all reinsurance services with respect to government sponsored insurance schemes is curative, clarificatory and thereby applicable with retrospective effect from 25.01.2018 and therefore all reinsurance services with respect to government insurance services were exempt from levy of GST with effect from 25.01.2018;

(b) Issue a writ of mandamus or a writ or order or direction in the nature of mandamus declaring that Notification No. 09/2023 – Central Tax dated 31.0.3.2023 under section 168A of the CGST Act, issued by Respondent No. 1 suffers from the vice of excessive delegation and is ultra vires the provisions of Section 168A of the CGST Act;

(c) Issue a writ of certiorari or any other appropriate writ(s) or direction(s) or order(s) in the nature thereof quashing the Order-In-Original dated 20.12.2023 along with FORM DRC 07 issued by Respondent No. 4 along with Impugned SCN dated 12.06.2023 issued by Respondent No. 5 and Corrigendum dated 06.12.2023 being bad in law, contrary to exemption notifications and barred by limitation;

(d) Issue a writ of certiorari or any other appropriate writ(s) or directions(s) or order(s) in the nature thereof and quash the Corrigendum dated 06.12.2023 issued by Joint Director, DGGI, without any jurisdiction being an alien authority along with consequential proceedings i.e. Impugned Order dated 20.12.2023 along with Impugned Show Cause Notice dated 12.06.2023;

(e) In alternate, issue a writ of mandamus or any other appropriate writ(s) or direction(s) or order(s) in the nature thereof directing the Respondent No. 2 & Respondent No. 3 to decide the representation filed by IRDAI dated 03.11.2023 as well as the Petitioner's representation dated 01.06.2018, 16.09.2023 and 20.01.2023 to clarify that Notification No. 02/2018 Central Tax (Rate) dated 25.01.2018 issued pursuant to 25th GST Council meeting and Notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017 issued pursuant to the recommendation of the 28th GST council meeting are curing, clarificatory in nature and applicable with effect from 01.07.2017 or at least with effect from 25.01.2018;

(f) In alternate, issue a writ of mandamus or any other appropriate writ(s) or direction(s) or order(s) in the nature thereof directing Respondent No. 6 and 7, wholly owned government companies, to deposit the disputed GST demanded in Impugned Order dated 20.12.2023 along with interest and penalty with the Respondent No. 4 in terms of the contractual obligation and being the ultimate



beneficiary.

(g) Pass any such order or orders in the interest of justice.”

2. Although the writ petitioner also calls in question Notification No.09/2023 and Notification No.56 issued under Section 168A of the **Central Goods and Services Tax Act, 2017**¹ in light of the subsequent developments which have taken place, Mr. Gulati, learned senior counsel submits that the aforesaid challenge need not be gone into in the present proceedings.

3. The reliefs, as claimed, would indicate that the petitioner was principally aggrieved by the impugned order dated 20 December 2023 which created a demand for the period 01 July 2017 to 25 July 2018 in respect of non-payment of IGST on reinsurance services.

4. Admittedly, the petitioner is stated to be a leading multinational insurance company which is also registered as a foreign reinsurance branch with the **Insurance Regulatory and Development Authority of India**². It also holds a registration issued by the Ministry of Corporate Affairs, Government of India under the category of foreign companies.

5. It had on 28 December 2017 and 15 January 2018 entered into a Facultative Proportional Reinsurance Agreement with the New India Assurance Company, the sixth respondent herein, which is a wholly owned government company and the principal insurer designated for providing health insurance coverage to the residents of the State of Rajasthan under the aegis of the Government Health Insurance

¹ Act

² IRDAI



Scheme “*Bhamashah Swasthya Bima Yojna*”.

6. The petitioner had also entered into a separate Facultative Proportional Reinsurance Agreement with the sixth respondent in relation to health insurance coverage to residents of the State of Maharashtra under the “*Rajiv Gandhi Jeevandayee Arogya Yojna/Mahatma Jyotibha Phule Jan Arogya Yojna*” on 11 January 2018.

7. It appears that on 18 January 2018, the GST Council introduced a new entry in Notification No.12/2017 dated 28 June 2017 exempting reinsurance services when offered in relation to government insurance schemes. It becomes pertinent to note that the said exemption notification at Serial No.40 had made the following provision: -

“40	Heading 9971 Or Heading 9991	Services provided to the Central Government, Union territory under any insurance scheme for which total premium is paid by the Central Government, State Government, Union territory.	Nil	Nil”
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8. The said original notification saw an amendment which was promulgated on 25 January 2018 and in terms of which Entry 36A came to be introduced and the said amending entry read as follows: -

(1)	(2)	(3)	(4)	(5)
“36A	Heading 9971 or Heading 9991	Services by way of reinsurance of the insurance schemes specified in serial number	Nil	Nil”



		35 or 36.		
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9. A doubt appears to have arisen in light of the amended Serial No.36A while speaking of services by way of reinsurance specifying it to be relatable to Serial Nos. 35 or 36 in the original notification. There was thus, perhaps an inadvertent error in failing to take note of Serial No.40 which too formed part of the original notification dated 28 June 2017.

10. Upon this apparent error coming to light, yet another amending notification came to be issued on 26 July 2018 and clause (k) of which provided as follows:-

“(k) against serial number 36A, in the entry in column (3), after figures “36”, the word and figures “or 40” shall be inserted;”

11. Entry 36A thus came to include Serial No.40 specifically. The issue which therefore remained for consideration was whether the aforesaid amendments would be liable to be viewed as curative, and thus being applicable to the period prior to 27 July 2018, the date from which the said notification was stated to be applicable and whether the same would clarify the position which would obtain prior thereto.

12. These aspects ultimately fell for deliberation before the GST Council in its meeting held on 22 June 2024 and in which the recommendations of the Fitment Committee for regularization of payment of GST on reinsurance services came to be accepted.

13. This becomes apparent from a reading of Note 5.46 and the decision expressly taken by the Council in that regard and which is reproduced hereinbelow:-

“5.46 Joint Secretary, TRU then presented the next agenda item



relating to a request to clarify that reinsurance services of the insurance schemes for which total premium is paid by the Government (Sl. No. 40 of the notification No. 12/2017 CTR) are exempt from GST for the period 01.07.2017 to 26.07.2018. She stated that in the 28th GST Council meeting held on 21.07.2018, it was decided to exempt re-insurance of insurance schemes already exempt under Sl. No. 40 of Notification No. 12/2017-CTR. The said exemption was notified w.e.f. 27.07.2018. The issue was examined by the Fitment Committee and it recommended to regularize the payment of GST on reinsurance services of the insurance schemes for which total premium is paid by the Government (SI No. 40 of Notification No. 12/2017-CT(R) dated 28.06.2017) for the period from 01.07.2017 to 26.07.2018 on 'as is where is' basis by way of issuance of a Circular.

Decision: The Council approved the recommendation of the Fitment Committee to regularize the payment of GST on reinsurance services of the insurance schemes for which total premium is paid by the Government (SL. No. 40 of Notification No. 12/2017-CT(R) dated 28.06.2017) for the period from 01.07.2017 to 26.07.2018 on 'as is where is' basis by way of issuance of a Circular. ”

14. Pursuant to the said decision taken by the GST Council, a clarificatory Circular came to be issued by the Department of Revenue in the Ministry of Finance on 15 July 2024 and insofar as GST liability on reinsurance is concerned it was clarified as under:-

“6. GST liability on the reinsurance of specified general and life insurance schemes.

6.1 Representations have been received to either exempt or regularize the GST liability, for the period from 01.07.2017 to 24.01.2018, on reinsurance of specified general insurance and life insurance schemes, which are exempt from GST.

6.2 Certain specified general insurance and life insurance schemes are exempt from GST under Sl. Nos. 35 and 36 of notification No. 12/2017- CT(R) dated 28.06.2017. Vide entry at Sl. No. 36A of the said notification, reinsurance of the aforesaid exempted insurance schemes has also been exempted w.e.f. 25.01.2018.

6.3 GST Council in its 53rd meeting held on 22nd June, 2024 has recommended to regularize the GST liability on such reinsurance

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of exempt general insurance and life insurance schemes for the past period, i.e. from 01.07.2017 to 24.01.2018, on 'as is where is' basis.

6.4 Thus, as recommended by the GST Council, GST liability on the services by way of reinsurance of the insurance schemes specified in Sl. Nos. 35 and 36 of notification No. 12/2017-CT(R) dated 28.06.2017 is regularized for the period from 01.07.2017 to 24.01.2018 on 'as is where is' basis."

15. The GST Council as well as the Union Government, thus appear to have taken a conscious decision to regularize the period between 01 July 2017 and 26 July 2018.

16. Undisputedly, the impugned order relates to that very period. While it is true that on 20 December 2023, when the impugned order came to be passed, these clarifications had not been rendered, undisputedly, the same would not sustain in light of the stand which has been taken by the respondents and is principally noticed hereinabove.

17. In view of the aforesaid, we allow the instant writ petition and quash the impugned order dated 20 December 2023. The petitioner shall be entitled to all consequential reliefs.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

OCTOBER 01, 2024/neha