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

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Date of Decision: 18.07.2024+ **W.P.(C) 9741/2024, CM APPL. 39956-57/2024**

MALAYSIA AIRLINES BERHAD

.....Petitioner

Through: Mr. Tarun Jain and Mr. Divyansh
Singh, Advocates.

versus

COMMISSIONER OF DELHI GOODS AND SERVICES TAX

DEPARTMENT OF TRADE AND TAXES & ANR.Respondents

Through: Mr. Udit Malik, Additional Standing
Counsel (Civil) for GNCTD along
with Mr. Vishal Chanda, Advocates
for R-1 and R-2.**CORAM:****HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MR. JUSTICE SACHIN DATTA****VIBHU BAKHRU, J. (Oral)**

1. Issue notice. Learned counsel for the respondents accept notice.
2. The petitioner has filed the present petition, *inter alia*, impugning the order dated 27.04.2024 (hereafter *the impugned order*) and the consequent demand notices issued by respondent no.2.
3. The impugned order was passed under Section 73 of the Central Goods and Services Tax Act, 2017 (hereafter *the CGST Act*) in respect of the tax period from April, 2018 to March, 2019.
4. The impugned order was passed pursuant to the Show Cause Notice dated 30.01.2024 (hereafter *the SCN*) based on a Special Audit Report. The SCN is founded on the reasoning that that the petitioner's response to the Special Audit Report has been found to be incomplete/ inconclusive.



Accordingly, respondent no.2 proposed to raise a demand of ₹163,91,65,902/- on account of Integrated Tax, Central Tax and State Tax. In addition, respondent no.2 also proposed to recover interest and penalty. It is apparent from the SCN that it did not specifically deal with the replies sent by the petitioner to the Special Audit Report. It merely stated that the same had been found to be incomplete or inconclusive.

5. In the given circumstances, the petitioner furnished a detailed reply to the SCN, seeking to counter the allegations made in the Special Audit Report.

6. It is material to note that the petitioner has also contested the allegation that it had incorrectly disclosed lower revenue in the Goods and Services Tax (GST) returns in comparison to its receipts as reflected in its bank statements. It is the petitioner's case that it held separate registrations in respect of its offices and had filed separate returns in respect of each registration. However, the bank account was common.

7. Paragraph 7 of the reply to the SCN reads as under:-

“7. **Less revenue disclosed in GST return in comparison to bank statements:** It has been further observed by the special auditor and alleged by your good self that there is difference of INR 815,19,62,101/- between total receipts as credited in bank account of the Company and outward supplied reported in GST returns for the State of Delhi. Based on the said difference, your good self has raised a tax demand amounting to INR 146,73,53,178/- along with applicable interest and penalty.

At the outset, the Company would wish to submit that the demand raised in this observation is based upon multiple assumptions and presumptions. The auditor has recorded its finds without any application of mind to the extent that a Company having multiple GST registrations can operate



a single bank account for its PAN India operations.

It has been submitted by the Company that the Company maintains a single bank account for its PAN India operations. Further, there is no requirement under GST laws to maintain separate bank accounts for separate GST registrations.

Since the Company has GST registrations in multiple states, all receipts from sale of tickets in different states are received in the same bank account.

The special auditor has, without any application of mind and based on irrelevant assumptions has compared the revenue for the State of Delhi with receipts for PAN India operations which is totally absurd.

As submitted above, SCN which is based on assumptions and presumptions is not tenable in eyes of law and consequential demand raised in SCN needs to be dropped.

Reference can also be placed in a similar matter in the case of **TVL. FUTURE GENERAL INDIA INSURANCE COMPANY LIMITED Vs 1. THE ASSISTANT COMMISSIONER (ST) (FAC), CHENNAI 2. THE ASSISTANT COMMISSIONER (ST), AMAINDAKARAI ASSESSMENT CIRCLE, CHENNAI [2024-VIL-161-MAD]**, wherein the tax authorities had compared the turnover of single GST registration with the turnover as per financials and had raised tax demand on differential amount. The matter was heard by Hon'ble High Court of Madras, wherein the Court had quashed the demand order and observed that:

"5. On examining the impugned order, I find that the assessing officer has accepted the explanation of the petitioner with regard to certain defects. As regards defect No. 10, as contended by learned counsel for the petitioner, the assessing officer has recorded findings



without applying his mind to the fact that the turnover for an entity operating in multiple States in India, as reflected in the financial statements, and the turnover attributable to its operations in Tamil Nadu would vary. From the findings, it also appears that tax liability was imposed merely because the Chartered Accountant's certificate did not provide State-wise turnover. This finding does not stand to reason because only the bifurcation of total and Tamil Nadu turnover is germane.

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The total tax imposed under this head is about Rs.14.56 crores and the patent errors justify interference with the assessment order even without examining the order in respect of other defects for which liability was imposed. Therefore, the impugned assessment order cannot be sustained."

The Company would wish to submit that all proceeds are received by the Company through banking channels and all GST liability is duly discharged on the sale of tickets made from Delhi location and other GST registrations. Accordingly, the demand raised in the captioned point does not hold good.

Basis the above, Company would request your good self to drop the observation."

8. In addition, the petitioner has also submitted additional submissions dated 15.03.2024 to the SCN.
9. It is apparent from the reading of the impugned order that the issue regarding mismatch between the GST returns filed by the petitioner and the credit entries in its bank account is the basis of majority of the demand. However, the impugned order does not refer to any of the contentious issues



and respondent no.2's analysis on the same. It merely mentions that the demand raised in the SCN is confirmed. The only reason reflected in the impugned order for confirming the demand reads as under:-

“The undersigned has gone through the reply of the taxpayer and found there is no substantial fact to counter the observation of the auditor who has conducted Special Audit under section 66 of GST Act.

And whereas, the undersigned with the consider opinion that the observations/facts derived during the course of audit must be confirmed.”

10. It is apparent from the above that the impugned order is bereft of any reasons. It is also apparent that the Adjudicating Authority/respondent no.2 has failed to consider the contentious issues.

11. In view of the above, the impugned order is liable to be set aside. It is so directed.

12. The matter is remanded to the Adjudicating Authority for considering afresh. The Adjudicating Authority shall consider the reply and the additional submissions filed by the petitioner and take an informed decision after affording the petitioner an opportunity of being heard. The Adjudicating Authority is also at liberty to call for such other documents or material, as may be necessary, for the aforesaid purpose.

13. The present petition is allowed in the aforesaid terms. All pending applications also stand disposed of.

VIBHU BAKHRU, J

SACHIN DATTA, J

JULY 18, 2024

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