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

\+ W.P.(C) 3646/2018

SUMAN METHA & ORS. .....Petitioners

Through: Mr. Anand Nandan and Mr. Kuldeep Mishra, Advs.

versus

UNION OF INDIA .....Respondent

Through: None.

**CORAM:**
**HON'BLE MR. JUSTICE YASHWANT VARMA**
**HON'BLE MR. JUSTICE DHARMESH SHARMA**

**O R D E R**

% **20.11.2024**

1. This writ petition has been preferred seeking the following reliefs:-

> "(i) ISSUE a writ, order or direction in the nature of mandamus directing the respondents to frame a mechanism to be implemented with effect from $1^{st}$ of July 2017 for waiver of the payment of taxes on the taxes already paid by the Petitioners on the leased cars provided by their establishments and,
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> (ii) ISSUE a writ, order or direction in the nature of mandamus directing the respondents to make provisions for the extra taxes collected post July 2017 on the pre July 2017 leased cars to be adjusted/refunded with respect to forthcoming lease rentals on the pre July 2017 leased cars, and,
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> (iii) PASS such other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case;"

2. The argument addressed on behalf of the petitioners essentially is that since leased vehicles had suffered a duty of excise, they should stand relieved from all other levies including those imposed in terms

of the **Central Goods and Services Tax Act, 2017**[1].

3. We find ourselves unable to appreciate the line of challenge which stands adopted, bearing in mind the undisputed position that excise duty was one which came to be levied on the manufacture of goods. The respondents while dealing with the challenge as raised to the levy of **Goods and Services Tax**[2] have taken the following position:-

> "**B. Leased cars have already suffered Excise Duty, Infrastructure Cess etc. and hence cannot be taxed with GST which has the same subsumed components.**
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> i. In so far as the argument that leased cars have already suffered Excise Duty, Infrastructure Cess etc. and hence cannot be subjected to GST, it is important to note the following facts:
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> ii. Section 2(33) of the CGST Act defines "continuous supply of services" to mean a supply of services which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for a period exceeding three months with periodic payment obligations. Section 13 of the CGST Act states that the liability to pay tax on services shall arise at the time of supply, as determined in accordance with the provisions of the said section. Section 13 read with Section 31(5) provides that the liability to pay tax in case of a continuous service shall arise on the date of issue of invoice or the date of receipt of payment, whichever is earlier. [Section 31(5) of the CGST Act provides that in case of a continuous supply of service, the invoice shall be issued on or before the scheduled date of payment]. Therefore, in case of leasing of cars, which is a continuous supply of service, the liability to pay GST arises on the date of issue of invoice for the periodic payment of lease rental. Therefore, levy of GST on ongoing lease of cars, which were purchased prior to GST and have suffered Central Excise Duty and VAT, is neither retrospective, nor without the authority of law. Further, taxable event is not the signing of the lease agreement but the continuous supply of leasing service. This position in GST law is a continuation of the legal position that existed prior to GST. Prior to GST also, Service Tax and VAT was payable at the time of issue of invoice for payment of each lease rental and not at one go at the time of signing of lease agreement.
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> iii. As regards, the cars having suffered central excise duty, it is

[1] Act
[2] GST

submitted that had the petitioner taken the ITC of central excise duty paid on cars, they would have definitely been able to carry forward such credit under GST under the existing transitional provisions. They were entitled to take ITC of central excise duty paid on cars for the purpose of paying service tax on 10% of the lease installments which was deemed to be the value of service provided by a car leasing company. However, car leasing companies instead chose to take depreciation of central excise duty paid on cars under the Income Tax law and were thus ineligible to take CENVAT Credit (under CENVAT Credit Rules).

**C. In the present system there is no system of 'Input Tax Credit' on the taxes already paid prior to 01.07.2017.**

i. The contention that in the present system there is no system of 'Input Tax Credit' on the taxes already paid prior to 01.07.2017 is incorrect. Section 140 of the CGST Act deals with the transitional arrangements for Input Tax Credit (ITC). Cars purchased by the leasing companies prior to GST implementation have suffered central excise duty for which they were entitled to take ITC. The ITC could have been used for the purpose of paying service tax on the service component involved in a leasing transaction, which was deemed to be 10% of the amount charged for the lease. Had the leasing companies taken ITC of central excise duty paid on cars, they would have been able to carry forward such credit under GST under the existing transitional provisions. However, leasing companies instead chose to take depreciation of central excise duty paid on cars under the Income Tax Act and were thus ineligible to take CENVAT Credit (under CENVAT Credit Rules). This was a deliberate choice exercised by the leasing companies and not mandated by system."

4. Bearing in mind the undisputed position of the writ petitioner having failed to raise any question to the constitutional validity or legislative competence underlying the promulgation of the Act, we find no merit in the challenge raised.

5. The writ petition, consequently, shall stand dismissed.

**YASHWANT VARMA, J.**

**DHARMESH SHARMA, J.**

**NOVEMBER 20, 2024/**RW