

Court No. - 39

Case :- WRIT TAX No. - 1435 of 2018

Petitioner :- M/S Ram Kamal Healthcare Pvt. Ltd.

Respondent :- Union Of India And 3 Others

Counsel for Petitioner :- Nishant Mishra,Suyash Agarwal,Vipin Kumar Kushwaha

Counsel for Respondent :- A.S.G.I.,Aditya Bhushan Singhal,C.S.C.,Om Prakash Srivastava

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Vinod Diwakar,J.

1. Heard Shri Suyash Agarwal, learned counsel for the petitioner, Shri Ankur Agarwal, learned Standing Counsel for the State and Shri Aditya Bhushan Singhal, learned counsel for respondent no. 3.

2. Upon earlier order passed, the matter was listed in top ten cases to ensure that this five year old tax matter could be heard and decided. Today, upon the matter being taken up, first a request for adjournment was pressed by Shri Singhal stating that his client has authorized another panel counsel to appear in this matter. The request made has been declined.

3. The present petition has been filed to quash the letter/communication dated 24.08.2018 issued by the Advisor to Yamuna Expressway Industrial Development Authority (hereinafter referred to as 'YEIDA') requiring the petitioner to deposit GST at the rate of 18% on the premium Rs. 3.80 crores charged by the YEIDA against Institutional Plot H-02, Sector 22-A, YEIDA admeasuring 4,000 square meters, allotted to the petitioner on 28.04.2015.

4. Submission of the learned counsel for the petitioner is, the case of the petitioner falls squarely within the exemption granted by the Central Government under Section 11 of the Goods and Services Tax Act, 2017 (hereinafter referred to as the 'Act'), vide Notification No. 12/2017, dated

28th June, 2017 read with Notification No. 32/2017, dated 13th October, 2017. In any case, at present there exists no doubt as to the availability of exemption. Earlier YEIDA had entertained such doubt. It applied to the Authority for Advance Ruling under Section 97 of the Act vide application dated 9th March, 2018. That application was allowed by the Authority for Advance Ruling vide its order dated 06.06.2018. It has attained finality. Even otherwise, no demand of tax has been raised by the Revenue Authorities, either on YEIDA or on the petitioner.

5. As to the status of YEIDA, it has been stated that the same is an authority in State within the meaning of article 12 of the Constitution of India. It is obligated to act fairly and reasonably. Inasmuch as there is no legal mandate for demand of any GST on premium paid by the petitioner to YEIDA for allotment of Institutional Plot to set up a Hospital, the demand letter dated 24.08.2018 is wholly illegal and without authority of law and arbitrary.

6. In reply, learned Standing Counsel would submit, as on date the revenue authority has not intervened. Thus, it has neither demanded any tax nor it has taken any view over the matter. At the same time, in all fairness, learned Standing Counsel would submit that there exist Exemption Notifications referred to by the learned counsel for the petitioner and also there is no doubt that the order of the Authority for Advance Ruling dated 06.06.2018 has attained finality.

7. Shri Singhal would however contend that the YEIDA has demanded the tax as the petitioner does not fulfil the conditions of the Exemption Notification. However, as to the condition not complied by the petitioner, Shri Singhal could not satisfy the Court either as to any specific condition existing under the Exemption Notification or the compliance that may not have been made by the petitioner. Last, it has been submitted that demand of tax made by the YEIDA is only provisional. The petitioner after depositing that amount may seek its refund from the revenue authorities.

8. Having heard learned counsel for the parties and perused the record, there is no doubt that the petitioner was allotted Institutional Plot H-02 at Sector 22-A, YEIDA, by the YEIDA on 28.04.2015. On 01.07.2017, the Act was enforced. Thus GST provisions became relevant to the allotment made to the petitioner with respect to instalments that were required to be paid by the petitioner, after 30.06.2017. Here, it may be noted, the entire premium amount Rs. 3.80 crores was required to be paid by the petitioner in 12 instalments carrying 12% interest.

9. Section 11 (1) of the Act reads as below:

“11. Power of grant exemption from tax.- (1) where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by notification, exempt generally, either absolutely or subject to such conditions as may be specified therein, goods or services or both of any specified description from the whole or any part of the tax leviable thereon with effect from such date as may be specified in such notification.”

10. It is also not in doubt that the Central Government issued Notification No. 12/2017, dated 28th June, 2017 under Section 11 (1) of the Act. The relevant extract of the said Notification reads as below:

“Notification No. 12/2017-Central Tax (Rate)

New Delhi, the 28th June, 2017

G.S.R.....(E).- In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts the intra-State supply of services of description as specified in column (3) of the Table below from so much of the central tax leviable thereon under sub-section (1) of section 9 of the said Act, as is in excess of the said tax calculated at the rate as specified in the corresponding entry in column (4) of the said Table, unless specified otherwise, subject to the relevant conditions as specified in the corresponding entry in column (5) of the said Table, namely:-

Table

Sl. No.	Chapter, Section, Heading,	Description of Service	Rate (per cent.)	Condition
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	Group or Service Code (Tariff)			
(1)	(2)	(3)	(4)	(5)
41	Heading 9972	One time upfront amount (called as premium, salami, cost, price, development charges or by any other name) leviable in respect of the service, by way of granting long term (thirty years, or more) lease of industrial plots, provided by the State Government Industrial Development Corporations or Undertakings to industrial units.	Nil	Nil

11. The above Notification was amended vide further Notification No. 32/2017, dated 13th October, 2017. The relevant extract of the said notification reads as below:

“Notification No. 32/2017-Central Tax (Rate)

New Delhi, the 13th October, 2017

G.S.R.....(E).- In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No. 12/2017-Central Tax (Rate), dated 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (I), vide number G.S.R. 691 (E), dated the 28th June, 2017, namely:-

(e) in serial number 41, for the entry in column (3), the following entry shall be substituted namely:-

“Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease of thirty years, or more) of industrial plots or plots for development of infrastructure for financial business, provided by the State Government Industrial Development Corporations or Undertakings or by any other entity having 50 per cent. or more ownership of Central Government,

State Government, Union territory to the industrial units or the developers in any industrial or financial area.”

12. Perusal of the said Notifications clearly reveals that the Central Government granted specific exemption to upfront amounts, by whatever name called, when paid with respect to service of grant of long term lease of 30 years or more of industrial plots, by the Development Corporations/ Undertakings etc.

13. The plain letter of the law, as noted above, does not allow for any elaborate submissions to arise. At the same time, it is a fact that YEIDA had not entertained any doubt that the disputed transaction is for execution of a lease deed for a period in excess to 30 years by a Government Industrial Development Authority. The doubt that was entertained, was with respect to availability of exemption to allotment made for public health care purpose such as to set up a Hospital or Nursing Home or Diagnostic Centre etc.

14. Thus in the application made on the prescribed form before the Authority for Advance Ruling, the YEIDA made the following disclosure against Column nos. 1, 2, 12-B, 13(3) and 14:

“Application Form for Advance Ruling

1.	<i>GSTIN Number, if any/User id</i>	09AAALT0341DIZC
2.	<i>Legal Name of Applicant</i>	YAMUNA EXPRESSWAY INDUSTRIAL DEVELOPMENT AUTHORITY
12.	<i>Nature of Activity (s) (proposed/present) in respect of which advance ruling is sought.</i>	
	<i>B. Description (in brief)</i>	<i>Whether the amount paid as premium and lease rent on the plots allotted to hospitals come under the ambit of GST</i>
13.	<i>(iii) Applicability of notification issued under the provisions of the Act</i>	<i>S. No. 41 of the notification no. 12/2017 dated 28-06-2017</i>
14.	<i>Questions (s) on which advance ruling is required.</i>	<i>Whether GST is applicable on upfront amount (called as premium salami) payable in respect of</i>

	<i>services by way of granting long term lease of thirty years or more for plots catering to public health care such as hospital, nursing homes, disgnostic centers etc.</i>
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15. Thus, a specific doubt was expressed by the YEIDA, to the Authority for Advance Ruling, whether GST was chargeable on premium and lease rent on plots allotted to hospitals against lease granted for more than 30 years.

16. In its turn, the Authority for Advance Ruling cleared that doubt raised by YEIDA, in the following terms:

“RULING

GST is not applicable i.e. exempted on upfront amount, if the conditions are satisfied as mentioned Sl. No. 41 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 as amended by Notification No. 32/2017-Central Tax (Rate) dated 13.10.2017”

17. In absence of any challenge raised to that order by any party and it being a fact that the said order has attained finality, it is strange to note that the YEIDA which is not the revenue authority chose to issue the communication dated 24.08.2018, to the petitioner. In material part, that communication reads as below:-

"उपरोक्त विषय पर मुझे यह सूचित करने का निर्देश हुआ कि प्राधिकरण के वित्त विभाग द्वारा अवगत कराया गया है कि उक्त आवंटन एडवांस रूलिंग के आदेश संख्या 09 दिनांक 06.06.2018 के क्रमांक-05 के नोटिफिकेशन नं० 12/2017 Central Tax (Rate) दिनांक 28.06.2017 तथा नोटिफिकेशन नं० 32/2017 Central Tax (Rate) दिनांक 13.10.2017 के क्रम संख्या 41 की शर्तों को पूरा नहीं करता है अतः उक्त भूखण्ड पर 18 प्रतिशत जी०एस०टी० लागू होगा।

संलग्नक- एडवांस रूलिंग के आदेश संख्या 09 दिनांक 06.06.2018।"

18. We find, the stand taken by the YEIDA to be wholly unfounded in law. Any doubt that may have arisen from the language of the Exemption Notification stood resolved by the Authority for Advance Ruling. A specific query had been raised by the YEIDA, if the premium charged on the plot allotted to set up a Hospital would be covered under the exemption notification. Section 97 of the Act reads as below:-

“97. Application for advance ruling.-(1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and manner and accompanied by such fee as may be prescribed, stating the question on which the advance ruling is sought.

(2) The question on which the advance ruling is sought under this Act, shall be in respect of,--

(a) classification of any goods or services or both;

(b) applicability of a notification issued under the provisions of this Act;

(c) determination of time and value of supply of goods or services or both;

(d) admissibility of input tax credit of tax paid or deemed to have been paid;

(e) determination of the liability to pay tax on any goods or services or both;

(f) whether applicant is required to be registered;

(g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.”

19. The question posed by the YEIDA to the Authority for Advance Ruling clearly appears to be one that was covered under Section 97 (2) (b) and (e). Therefore, the order passed by the Authority for Advance Ruling does appear to be an order within the jurisdiction of the Authority for Advance Ruling as has been defined under Section 95(a) of the Act. It reads:-

“95. Definitions.- In this Chapter, unless the context otherwise requires,--

(a) "advance ruling" means a decision provided by the Authority or the Appellate Authority [or the National Appellate Authority] to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100 [or of section 101C] in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;"

20. In view of the above, we find, the Authority for Advance Ruling has answered the query of the YEIDA in unequivocal terms. It has specifically held that the premium amount described as upfront amount charged by the YEIDA was exempt from tax under serial no. 41 of Notification No. 12/2017, dated 28.06.2017 as amended by Notification No. 32/2017, dated 13.10.2017. Therefore, as to tax of exemption of the transaction in question, there could never arise any doubt as to its basic applicability. The only rider that was added by the Authority for Advance Ruling was that such exemption would be available subject to conditions as mentioned at serial no. 41 of the above described Notifications.

21. As has been extracted above, the Exemption Notification though does contain Column no. 5, to specify the condition for grant of exemption yet, against Entry no. 41 of that Notification there never existed any specification or condition for grant of exemption. In fact, the original Notification No. 12/2017, dated 28th June, 2017 mentions the word 'Nil' against Column no. 5, against Entry no. 41 thereto. Thus the legislature chose to grant unconditional exemption with respect to payment of upfront amounts. While amending that Notification, vide Notification No. 32/2017, dated 13th October, 2017 though other changes were made to add by way of an activity for which allotment of plots were made exempt from tax and certain Corporations were also sought to be included wherein ownership of the Central Government or the State Government etc. may exceed 50%, at the same time, no amendment was made to the original Notification to introduce any condition for grant of that exemption.

22. Seen in that light, we find, the exemption made available to the petitioner by virtue of the original Notification issued under Section 11 read with order of the Authority for Advance Ruling, is unconditional. Consequently, the letter dated 24.08.2018 issued on behalf of YEIDA is wholly unfounded in law and also in facts. Besides absence of conditions imposed by the legislature while granting exemption, no fact allegation has been made in the said communication of any specific condition having been violated by the petitioner.

23. Consequently, the writ petition is **allowed**. The impugned communication dated 24.08.2018 is quashed. Any amount that may have been deposited by the petitioner pursuant to the impugned communication may be refunded forthwith within a period of one month, failing which the same shall attract interest at the rate of 8% from the date of deposit till the date of refund.

24. No orders as to costs.

Order Date :- 5.10.2023

Shafique

(Vinod Diwakar, J.) (S.D. Singh, J.)