106 and 107

CWP Nos.27034 and 27036 of 2023

M/s. BMW India Pvt. Ltd. vs. UOI and others

Present:- Mr. Rajat Bose, Advocate,
Ms. Shohini Bhattacharya, Advocate,
Mr. Rishab Singla, Advocate,
and Mr. Nitish Bansal, Advocate,
for the petitioner.

****

Counsel *inter alia,* while referring to the facts of CWP-27034-2023, contends that the petitioner's parent company is BMW AG based in Munich, Germany and an agreement dated 01.04.2006 (Annexure P-2) was entered into for employing personnel having requisite skills and expertise. Part of their remuneration (salary, bonus benefits, reimbursement etc.) were to be paid outside India to the extent permissible under the laws and regulations of India. The said amounts were to go through the parent company for administrative convenience and the said company was to act as a paying office. The balance amount was to be paid by way of employment agreements to be entered into with each identified Expatriate and the petitioner was to bear all personnel costs and expenses. Reference is made to one such agreement dated 20.11.2015 (Annexure P-3) whereby a Whole-time Director was employed for a period of 3 years to show that the said Director was getting a package as such which was salary payable subject to deduction of income tax and statutory levies.

It is contended that on an earlier occasion also, dispute as such had arisen and the Tribunal vide order dated 17.10.2017 (Annexure P-16) had ruled in favour of the petitioner-company for the period 2006-07 to September, 2011 that the payment of service tax on the amount of salaries and perquisites relating to expats under Manpower Recruitment or Supply Agency Service was not sustainable. It is pointed out that on account of the judgment of the Apex Court in ***C.C., C.E. & S.T., Bangalore [Adjudication] V. Northern Operating Systems Pvt. Ltd., 2022 [61] GSTL 129,*** the issue was again raised and the investigation had started on 22.09.2022 (Annexure P-4).

It is the case of the counsel that thereafter the company had voluntarily deposited a sum of Rs.1,32,88,959/- towards IGST on amount reimbursed to overseas entity for the Haryana GST Registration Number. A similar payment of Rs.11,30,474/- was made for the Tamil Nadu GST Registration Number, totalling Rs.1,44,19,433/- plus interest of Rs.42,17,774/-. It is submitted that the notice under Section 73(5) of the Central Goods Service Tax Act, 2017 (in short 'the CGST Act') for payment of IGST alongwith applicable interest payable by them was issued on 21.09.2023 (Annexure P-10) in which the factum of the deposits was also noticed and outstanding demand of Rs.25,28,02,998/- was assessed. It is the case of the counsel that this is on account of the salary which has been paid in Indian rupees.

It is pointed out that a reply was given on 26.09.2023 (Annexure P-11) giving the details as such that the amount would not be taxable as such. In spite of that, a show cause notice dated 27.09.2023 (Annexure P-1) has been issued under Section 73(1) of the CGST Act. It is submitted that the matter would go to the root of the jurisdiction as such and the respondents are still proceeding ahead. Reliance is also placed upon the fact that similar issue has also been raised before the Delhi High Court in ***Metal One Corporation India Pvt. Ltd. vs. Union of India and others*** apart from the fact that this

Court has also taken notice in ***CWP-25351-2023, M/s. Mitsubishi Electric India Pvt. Ltd. vs. Union of India and others*** and passed an interim order on 09.11.2023.

Notice of motion.

Mr. Sourabh Goel, Sr. Standing Counsel accepts notice on behalf of the respondents and prays for time.

Adjourned to ***13.02.2024.*** To be heard with CWP-25351-2023.

Keeping in view the above, we are of the considered opinion that since the petitioners have already represented and have taken time as such before the Revenue on 20.11.2023 that they are in the process of collating the documents to prepare a comprehensive response, the necessary response be filed by 15.01.2024. The respondents shall then take a decision on the same. In case any adverse order is passed against the petitioners during the pendency of the writ petition, the respondents shall not take any coercive steps to recover the amount.

Photocopy of the order be placed on the file of connected case.

(G.S. SANDHAWALIA)
JUDGE

01.12.2023
shivani

(LAPITA BANERJI)
JUDGE