

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.03.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P (MD)No.2129 of 2018

and

WMP(MD)No.2373 of 2018 & 2980 of 2019

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Flemingo Dutyfree Shop Private
Limited,

Rep.by its Asst.Vice President R.Murali
Duty Free Shop at Tiruchirappalli
International Airport,
Tiruchirappalli.

... Petitioner

Vs.

- 1.Union of India,
Rep.by the Secretary,
Ministry of Finance,
North Block, New Delhi - 110 001.
- 2.State of Tamil Nadu, Rep.by the Secretary,
Ministry of Finance,
Finance Department, Secretariat,
Chennai - 600 009.
- 3.Airports Authority of India,
Rep.by its Chairman,
Rajiv Gandhi Bhavan,
Safdarjung Airport, New Delhi - 110 003.
- 4.Airport Director,
Tiruchirappalli International
Airport,
Tiruchirappalli,
Tamil Nadu - 620 007.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents not to impose Goods and Service Tax under the Central Goods and Service Tax Act, 2017, the Integrated Goods and Service Tax Act, 2017, the Tamil Nadu Goods and Service Tax Act, 2017 and other Rules thereunder to the Petitioner's Arrival and Departure Duty Free Shops operated at Tiruchirappalli International Airport, Trichy in terms of the Concession Agreement dated 04.12.2015 and the payments being made by the Petitioner towards Minimum Guarantee/Revenue Share pursuant to and/or under concession agreement, and refund to the



petitioner, the sum of Rs.46,73,691/ (Rupees Forty Six Lakh Seventy Three Thousand Six Hundred and Ninety One only), as collected by the respondent Nos.3 and 4 on behalf of the first and second respondent on wrongful applicability of the Central Goods and Service Act, 2017; the Tamil Nadu Goods and Service Tax Act, 2017 and other Rules thereunder.

For Petitioner : Mr.V.Sridharan, Senior Counsel
for Mr.S.P.Maharajan

For Respondents : Mr.G.Rajaraman for R1
Mr.C.Godwin for R3 & R4
Mr.G.Arjunan for R2

ORDER

Heard Mr.V.Sridharan, learned Senior Counsel representing Mr.S.P.Maharajan for the petitioner, Mr.G.Rajaraman, Central Government Standing Counsel for R1, the learned Government Advocate Mr.G.Arjunan for R2 and the learned counsel Mr.C.Godwin for the third and fourth respondents.

2.The petitioner is a company incorporated under the Companies Act, 1956 and it is operating duty free shops in the various airports in India. The case on hand pertains to the duty free shop run by the petitioner at Trichy International Airport. The question raised in the writ petition is regarding the applicability of Central Goods and Service Tax Act, 2017 and the Integrated Goods and Service Tax Act, 2017 and the Tamil Nadu Goods and Service Tax Act, 2017 and other Rules framed thereunder on the concession fees paid by the petitioner to the airport authority under the petition mentioned agreement. This writ petition was filed in January 2018 and on 16.02.2018, this Court granted an order of interim injunction restraining the airport authority from collecting GST from the petitioner herein.

3.The learned Senior Counsel appearing for the petitioner submitted that following the introduction of the GST regime, the petitioner was paying the concession fee under the petition mentioned agreement and also GST to the airport authority. Pursuant to the interim order granted by this Court on 16.02.2018, the petitioner stopped paying GST to the fourth respondent and the concession fees. However, the fourth respondent was paying GST to the government till 31.03.2018. From 01.04.2018, the fourth respondent also did not pay any GST to the government in this regard.

4.During the pendency of the writ petition, the very same issue came up for consideration before the Hon'ble Bombay High Court in the decision reported in 2019 (31) GSTL 398-Review Petition (Sandeep Patil vs. Union of India). The Hon'ble Bombay High Court <https://hcservices.courts.gov.in/hcservices/> 07.10.2019 held that since the duty free shop is



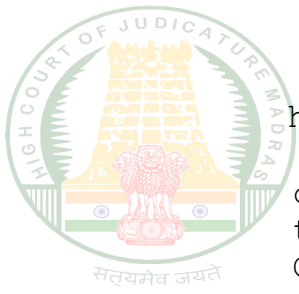
located outside the customs frontier of India, it would be entitled to refund of ITC on the GST first paid by them. The department originally wanted to question the said decision before the apex court. But then, the central government declined to grant permission. The said decision was followed by the Hon'ble Kerala High Court. In a batch of writ petitions filed by the petitioner herein and others (WP(C)No.13237 of 2020 (D) in Flemingo Dutyfree Shop Private Limited vs. Union of India) and etc.,) the Kerala High Court vide order dated 22.09.2020 held as follows :

"33.In W.P.(C) No.6850 of 2018, I refrain myself from giving any declaration as sought qua applicability of GST at Calicut International Airport but since this Court had granted the stay, which is operational during the pendency of the present writ petition, no GST is payable by respondent No.4 Airport Authority and no useful purpose would be served in directing respondents No.1 to 3 to recover any GST on concession fee till 30.06.2020, which respondent No.4 will seek to recover from the petitioner since as per judgment dated 07.10.2019, the supply of goods by DFSs to outgoing passengers is export of goods under IGST and zero rated supply, it would entitle the petitioner (s) to claim 100% of ITC and refund thereof effective from 01.07.2020 onwards. As per the reasoning assigned in para 37 of the judgment referred to above in Sandeep Patil, the petitioner shall pay the GST on input services including Concession Fee to respondent No.4 and claim ITC of the entire tax amount and thereafter claim refund of the same by following the procedure prescribed under Section 54(3) of the Central Goods and Services Tax Act, 2017 and Kerala Goods and Services Tax Act, 2017 read with Rule 89 of Central Goods and Services Tax Rules, 2017 and Kerala Goods and Services Tax Rules, 2017."

5.I am of the view that the very same approach can be adopted in the case on hand also. Of course, a slight tweaking will be required. This is because the fourth respondent had paid GST to the first respondent for the period from 01.01.2018 to 31.03.2018. In this view of the matter, this writ petition is disposed of in the following terms :

a)In as much as the petitioner would be entitled to refund of ITC on the GST paid by them, I am of the view that no purpose will be served by asking the petitioner to pay GST and thereafter claim refund. Therefore, for the period prior to 28.02.2021, the petitioner need not pay any GST to the fourth respondent.

b)Since the fourth has paid GST for the period from 01.01.2018 to 31.03.2018, even though the petitioner has not paid, the first respondent



has to refund to the fourth respondent.

c)The petitioner has to pay GST on the concession fee to the fourth respondent and thereafter claim refund as per Section 54 of the CGST Act with effect from 01.03.2021.

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Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Secretary, Ministry of Finance,
North Block, New Delhi - 110 001.

2.The Secretary, Ministry of Finance,
Finance Department, Secretariat,
Chennai - 600 009.

+1 CC to M/s.G.RAJARAMAN, Advocate (SR-10621[F] dated 12/03/2021)
+1 CC to M/s.C.GODWIN, Advocate (SR-10622[F] dated 12/03/2021)
+1 CC to M/s.S.P.MAHARAJAN, Advocate (SR-10753[F] dated
12/03/2021)
+1 CC to M/s.SPL GP (SR-10926[F] dated 12/03/2021)

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