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

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*Judgment delivered on: 26.09.2024*

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W.P.(C) 14764/2022

CABLE AND WIRELESS GLOBAL INDIA PRIVATE  
LIMITED .....Petitioner

Through: Ms. Fereshte Sethna & Mr.  
Ameya Pant, Advs.

versus

ASSISTANT COMMISSIONER, CGST & ORS.

.....Respondents

Through: Ms. Sonu Bhatnagar, Sr.  
Standing Counsel along with  
Ms. Nishtha Mittal, Ms. Apurva  
Singh and Ms. K.S. Mary Jonet,  
Advs.  
Mr. Santosh Kumar Pandey,  
Adv. for UOI.

**CORAM:**

**HON'BLE MR. JUSTICE YASHWANT VARMA**

**HON'BLE MR. JUSTICE RAVINDER DUDEJA**

### **J U D G M E N T**

#### **YASHWANT VARMA, J. (Oral)**

1. The writ petitioner is aggrieved by the refusal of the respondents to accord it refund of unutilized **Input Tax Credit**<sup>1</sup> amounting to INR 47,33,053/-. The prayer for refund has come to be negated in terms of an Order-in-Original dated 29 June 2021 and which has been affirmed by the Order-in-Appeal dated 07 June 2022 passed by the second respondent.

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<sup>1</sup> ITC



2. On facts which have remained undisputed, it would appear that the petitioner is a company incorporated in India and has its registered office in Karnataka and **Branch Offices**<sup>2</sup> in Delhi and Maharashtra. It is stated to be engaged in providing Business Support Services to **Vodafone Group Services Limited**<sup>3</sup> from its BO situate in Delhi. Admittedly, the petitioner holds registration certificates under the **Central Goods and Services Tax Act, 2017**<sup>4</sup> for both its Delhi and Bangalore establishments.

3. The petitioner is stated to have entered into an Inter-Company Agreement with VGSL for providing Business Support Services on 16 August 2018. Pursuant to the aforesaid, it is its case that the Delhi BO of the petitioner provided various services in discharge of its obligations flowing from that Agreement and raised invoices on VGSL and which invoices had recorded the GST number and address of the Delhi BO. The petitioner avers that in **Financial Year**<sup>5</sup> 2019-20 various input services were utilized in the course of export of services and it was in connection with the aforesaid that it availed of ITC in the sum of INR 47,33,053/-. The application for refund was made in the aforesaid context.

4. The dispute, however, arises in the backdrop of the remittances concerned with those services having been channelled by VGSL to the bank account of the Bangalore office. It is in the aforesaid backdrop that the respondents contend that since the definition of export of

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<sup>2</sup> BO

<sup>3</sup> VGSL

<sup>4</sup> CGST Act

<sup>5</sup> F.Y.



service is indelibly linked to the payment for such service being received by the supplier, the claim for refund would not sustain. The stand, in essence, is that notwithstanding services having been provided by the Delhi BO and amounting to an export of service, since the payment was received by the Bangalore office, the claim for refund was rightly negated since the payment for such service was not received by the asserted supplier.

5. Ms. Bhatnagar, learned counsel appearing for the respondents has taken us through Section 2(6) of the **Integrated Goods and Services Tax Act, 2017**<sup>6</sup> which defines “export of services” in the following terms:-

#### “2. Definitions

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XXXX

XXXX

(6) “export of services” means the supply of any service when,-

(i) the supplier of service is located in India;

(ii) the recipient of service is located outside India;

(iii) the place of supply of service is outside India;

(iv) the payment for such service has been received by the supplier of service in convertible foreign exchange [or in Indian rupees wherever permitted by the Reserve Bank of India]; and

(v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with *Explanation 1* in section 8;”

6. Our attention was also drawn to Section 25 of the CGST Act and which, while making provisions for separate registrations being obtained by establishments in different States, makes the following

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<sup>6</sup> IGST Act



provisions:-

**“25. Procedure for registration**

(1) Every person who is liable to be registered under section 22 or section 24 shall apply for registration in every such State or Union territory in which he is so liable within thirty days from the date on which he becomes liable to registration, in such manner and subject to such conditions as may be prescribed:

Provided that a casual taxable person or a non-resident taxable person shall apply for registration at least five days prior to the commencement of business:

[Provided further that a person having a unit, as defined in the Special Economic . Zones Act, 2005, in a Special Economic Zone or being a Special Economic Zone developer shall have to apply for a separate registration, as distinct from his place of business located outside the Special Economic Zone in the same State or Union territory.]

*Explanation.*—Every person who makes a supply from the territorial waters of India shall obtain registration in the coastal State or Union territory where the nearest point of the appropriate baseline is located.

(2) A person seeking registration under this Act shall be granted a single registration in a State or Union territory:

[Provided that a person having multiple places of business in a State or Union territory may be granted a separate registration for each such place of business, subject to such conditions as may be prescribed.]

(3) A person, though not liable to be registered under section 22 or section 24 may get himself registered voluntarily, and all provisions of this Act, as are applicable to a registered person, shall apply to such person.

(4) A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.

(5) Where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act.



(6) Every person shall have a Permanent Account Number issued under the Income- tax Act, 1961 in order to be eligible for grant of registration:

Provided that a person required to deduct tax under section 51 may have, in lieu of a Permanent Account Number, a Tax Deduction and Collection Account Number issued under the said Act in order to be eligible for grant of registration.

[(6A) Every registered person shall undergo authentication, or furnish proof of possession of Aadhaar number, in such form and manner and within such time as may be prescribed:

Provided that if an Aadhaar number is not assigned to the registered person, such person shall be offered alternate and viable means of identification in such manner as Government may, on the recommendations of the Council, prescribe:

Provided further that in case of failure to undergo authentication or furnish proof of possession of Aadhaar number or furnish alternate and viable means of identification, registration allotted to such person shall be deemed to be invalid and the other provisions of this Act shall apply as if such person does not have a registration.

(6B) On and from the date of notification, every individual shall, in order to be eligible for grant of registration, undergo authentication, or furnish proof of possession of Aadhaar number, in such manner as the Government may, on the recommendations of the Council, specify in the said notification:

Provided that if an Aadhaar number is not assigned to an individual, such individual shall be offered alternate and viable means of identification in such manner as the Government may, on the recommendations of the Council, specify in the said notification.

(6C) On and from the date of notification, every person, other than an individual, shall, in order to be eligible for grant of registration, undergo authentication, or furnish proof of possession of Aadhaar number of the Karta, Managing Director, whole time Director, such number of partners, Members of Managing Committee of Association, Board of Trustees, authorised representative, authorised signatory and such other class of persons, in such manner, as the Government may, on the recommendations of the Council, specify in the said notification:

Provided that where such person or class of persons have not been assigned the Aadhaar Number, such person or class of persons shall be offered alternate and viable means of identification in such manner as the Government may, on the recommendations of the



Council, specify in the said notification.

(6D) The provisions of sub-section (6A) or sub-section (6B) or sub-section (6C) shall not apply to such person or class of persons or any State or Union territory or part thereof, as the Government may, on the recommendations of the Council, specify by notification.

*Explanation.*—For the purposes of this section, the expression “Aadhaar number” shall have the same meaning as assigned to it in clause (a) of section 2 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016.]

(7) Notwithstanding anything contained in sub-section (6), a non-resident taxable person may be granted registration under sub-section (1) on the basis of such other documents as may be prescribed.

(8) Where a person who is liable to be registered under this Act fails to obtain registration, the proper officer may, without prejudice to any action which may be taken under this Act or under any other law for the time being in force, proceed to register such person in such manner as may be prescribed.

(9) Notwithstanding anything contained in sub-section (1),—

(a) any specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries; and

(b) any other person or class of persons, as may be notified by the Commissioner, shall be granted a Unique Identity Number in such manner and for such purposes, including refund of taxes on the notified supplies of goods or services or both received by them, as may be prescribed.

(10) The registration or the Unique Identity Number shall be granted or rejected after due verification in such manner and within such period as may be prescribed.

(11) A certificate of registration shall be issued in such form and with effect from such date as may be prescribed.

(12) A registration or a Unique Identity Number shall be deemed to have been granted after the expiry of the period prescribed under sub-section (10), if no deficiency has been communicated to the applicant within that period.”

7. Reliance was essentially placed on sub-sections (4), (5) and (6)



of Section 25 of the CGST Act to contend that once a person obtains a registration in a State or Union Territory in respect of an establishment, such establishments are liable to be treated as establishments of distinct persons for the purposes of the statute. This, according to Ms. Bhatnagar, thus constitutes a departure from the general principle of a branch or an establishment not being liable to be viewed as a separate juridical entity.

8. However, and on going through the returns which have been filed in these proceedings, we find that the export of services by the petitioner is an aspect which is neither disputed nor doubted. The only objection which is raised and which constitutes the basis for denial of refund is the remittance by VGSL to the bank account of the Bangalore office.

9. In light of the disclosures made by the petitioner pursuant to the earlier orders passed on this writ petition, it transpires that while originally the writ petitioner, while applying for registration for its Delhi BO had not provided any details of a bank account at Bangalore, at the time of the first core field amendment and review exercise and the filing submitted on 29 December 2020, bank account details including in respect of the one maintained at the Standard Chartered Bank Limited at Bangalore were also uploaded and mapped along with the original registration. It becomes relevant to note that the remittances from VGSL were credited to this account.

10. While it is true that the aforesaid mapping of the Bangalore bank account has occurred after the remittances were received, they



are clearly in validation of the fact that services had been exported by the Delhi BO and which has now clearly disclosed an additional bank account maintained at Bangalore. That these remittances are connected with the services rendered by the Delhi BO to VGSL was neither questioned nor doubted by the respondents before us. The objection as taken thus clearly appears to be overly technical and unsustainable.

11. We bear in mind that the IGST Act while defining the expression “export of service” in Section 2(6) lays emphasis on the payment for such service being received by the “*supplier of service*”. Section 2(6)(iv) does not tie the receipt of payment to a particular bank account. Of equal significance is how the IGST Act identifies and fixes the “*location of the supplier of services*” in Section 2(15) and which reads thus:-

“(15) “location of the supplier of services” means,—

(a) where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;

(b) where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;

(c) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply; and

(d) in absence of such places, the location of the usual place of residence of the supplier;”

12. It is apparent from a reading of the aforesaid provision that the location of the supplier, in the facts of the present case, would



undoubtedly be the Delhi BO of the petitioner. Merely because the remittance was received in a bank account situate at Bangalore, the same would neither warrant the location of the supplier identified in accordance with Section 2(15) being altered nor impact the determination of the actual supplier of service.

13. Similar would be the position which would obtain if one were to test the validity of the objection taken on the anvil of the provisions enshrined in the CGST Act. The phrase “*location of the supplier of services*” is defined in that enactment by Section 2(71) in the following terms:-

“(71) “location of the supplier of services” means,—

(a) where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;

(b) where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;

(c) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provisions of the supply; and

(d) in absence of such places, the location of the usual place of residence of the supplier;

14. Section 2(71) in unambiguous terms prescribes that the location of the supplier would be determined with reference to the situs of the place of business for which registration has been obtained and the same being the place which had effected the supply. This thus reinforces the pre-eminence which the statute accords upon the



registered place of business which has made the supply and thus the remittance being directed towards a particular bank account piling into insignificance.

15. The argument based on sub-sections (4) and (5) is equally misconceived. One must bear in mind that the CGST Act is principally concerned with the levy of a tax on intra-State supply of goods and thus presupposes the possibility of an entity having more than one establishment or a place of business in different States of the Union. It is this basic objective of the enactment that informs sub-sections (4) and (5) of Section 25 and the Legislature thus, out of abundant caution, having overridden the otherwise jurisprudential precept of branch offices not being separate and distinct juridical entities.

16. On an overall conspectus of the aforesaid, we find ourselves unable to sustain the impugned orders.

17. We accordingly allow the instant writ petition and quash the impugned Order-in-Appeal dated 07 June 2022 which had upheld the Order-in-Original dated 29 June 2021. The prayer for refund shall be attended to accordingly and disposed of with due expedition.

**YASHWANT VARMA, J.**

**RAVINDER DUDEJA, J.**

**SEPTEMBER 26, 2024/RW**