

IN THE HIGH COURT OF SIKKIM
(CIVIL EXTRA ORDINARY JURISDICTION)

IA No. 05/2018 in WP (C) No. 38/2017

M/S SUMMIT ONLINE TRADE
SOLUTIONS PVT. LTD.

Petitioner (s)

VERSUS

UNION OF INDIA & ORS.

Respondent (s)

For Petitioner (s) : Mr. A.R. Madhav Rao, Ms. Laxmi
Chakraborty and Ms. Manju Rai,
Advocates.

For Respondent (s)
For R-1 & R-2 : Mr. B.K. Gupta, Advocate.

For R-3 & R-4 : Mr. J.B. Pradhan, Addl. Advocate
General with Mr. Karma Thinlay, Sr.
Govt. Advocate, Mr. Thinlay Dorjee
Bhutia, Govt. Advocate, Mr. S.K. Chettri,
Ms. Pollin Rai, Assistant Government
Advocates.

For R-5 & R-6 : None.

For R-7 : Mr. Salvador Santosh Rebello and Mr.
Ugang Lepcha, Advocates.

WITH

IA No. 07/2018 in WP (C) No. 36/2017

M/S FUTURE GAMING & HOTEL SERVICES
PVT. LTD. & ANR.

Petitioner (s)

VERSUS

UNION OF INDIA & ORS.

Respondent (s)

For Petitioner (s) : Mr. Karma Sonam Lhendup, Advocate

For Respondent (s)
For R-1 : Mr. B.K. Gupta, Advocate.

For R-2 : Mr. J.B. Pradhan, Addl. Advocate
General with Mr. Karma Thinlay, Sr.
Govt. Advocate, Mr. Thinlay Dorjee
Bhutia, Govt. Advocate, Mr. S.K. Chettri,
Ms. Pollin Rai, Assistant Government
Advocates.

For R-3 : Ms. Prarthana Ghataney, Advocate.

For R-4 : Ms. Karma Yangchen Bhutia, Advocate.
 For R-7 : Mr. Manish Kr. Jain, Advocate.
 For R-9 : Mr. Salvador Santosh Rebello and Mr. Ugang Lepcha, Advocates.
 For R-10 : Ms. Babita Rai and Ms. Ranjeeta Kumari, Advocates.
 For R-5 & 6,
 R-11 and R-12 : None.
 ...

WITH

IA No. 01/2018 in WP (C) No. 59/2017

PAN INDIA NETWORK LTD. & ANR. Petitioner (s)

VERSUS

UNION OF INDIA & ORS. Respondent (s)

For Petitioner (s) : Mr. Passang Tsh. Bhutia and Mr. Sushant Subba, Advocates.
 For Respondent (s)
 For R-1 : Mr. B.K. Gupta, Advocate.
 For R-2 : Mr. J.B. Pradhan, Addl. Advocate General with Mr. Karma Thinlay, Sr. Govt. Advocate, Mr. Thinlay Dorjee Bhutia, Govt. Advocate, Mr. S.K. Chettri, Ms. Pollin Rai, Assistant Government Advocates.
 For R-3 & R-4 : None.
 For R-5 : Mr. Salvador Santosh Rebello and Mr. Ugang Lepcha, Advocates.
 ...

Date: 21/05/2018

CORAM:

**HON'BLE THE CHIEF JUSTICE
 HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN**

ORDER
 06.06.2018

Pradhan, J.

1. Three Writ Petitions are pending before this Court for adjudication. The present applications filed by the State of Goa

under consideration seek the deletion of the State of Goa as a party Respondent in WP(C) No.36/2017, WP(C) No.38/2017 and WP(C) No.59/2017.

- 2.** The aforesaid Writ Petitions seek to challenge *inter alia* impugned notifications of various States including State of Goa to the extent it levies differential rate of tax on the supply of the lottery tickets.
- 3.** The Applicant states that the Writ Petitions have been filed by the Petitioners challenging the notifications issued by the Central Government and different State Governments in exercise of powers under the Goods and Services Tax Act both Central as well as State. The Applicant submits that the notification or order or action of one State cannot be subjected to judicial scrutiny within the jurisdiction of a High Court beyond the territorial jurisdiction of that State more so when no cause of action has arisen within the jurisdiction of that High Court. It is the Applicant's case that as far as challenge to the notification issued by the State of Goa is concerned and charging of the Tax thereunder, the cause of action, if any, has arisen in Goa and thus, the appropriate Court where the notification and the consequential actions if at all can be challenged is the High Court of Bombay at Goa. Consequently, the Applicant submits that this Court would not entertain such a challenge to the notification of the Government of Goa is concerned.
- 4.** The Applicant further states that an identical Writ Petition No. 759/2017 has already been filed before the High Court of Bombay at Goa by one Serenity Trades Private Limited which has been

admitted by the said High Court vide order dated 20.09.2017 and is pending final hearing.

5. The Applicant thus submits that the Petitioner can either challenge the impugned notification issued by the State of Goa by filing a Writ Petition before the High Court of Bombay at Goa or apply for intervention in Writ Petition 759/2017. The challenge to the impugned notification cannot continue before this Court as no cause of action has arisen vis-a-vis the said notification within the jurisdiction of this Court. The Applicant states that the State of Goa does not have its office within the jurisdiction of this Court.

6. Article 226 of the Constitution of India provides:

"226. Power of High Courts to issue certain writs

(1) Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that

period, or, as the case may be, the expiry of the aid next day, stand vacated

(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme court by clause (2) of Article 32."

7. In view of sub-clause (2) of Article 226 of the Constitution of India the power conferred by clause (1) to issue directions, orders or Writs to any Government Authority or person may also be exercised by this Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such powers, notwithstanding that the seat of such Government or Authority or the residence of such person is not within those territories.

8. Article 246 A of Constitution of India provides:-

" (1) Notwithstanding anything contained in articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.

(2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

Explanation.—

The provisions of this article, shall, in respect of goods and services tax referred to in clause (5) of article 279A, take effect from the date recommended by the Goods and Services Tax Council."

9. The Central Government in exercise of the powers conferred by 246 A of the Constitution of India has enacted the Central Goods and Services Act, (CGST Act) 2017 as well as Integrated Goods and Services Act, (IGST Act) 2017. The State of Sikkim, the Government of Goa as well as some other States have also enacted their respective State Goods and Services Act, 2017. The Government of

Goa has also enacted Goa Goods and Services Act, 2017 (GGST Act, 2017) under the provisions of 246 A (1) of the Constitution of India.

10. The Petitioner in WP(C) No.36/2017 is the distributor of State lottery organized, promoted and conducted by the State of Sikkim and is selling its lotteries in the State of Goa.

11. The Petitioner in WP(C) No.38/2017 is engaged in the business of purchase and sale of "lottery tickets, run, conducted and organized by the Government of Sikkim" within the State of Sikkim as well as its lottery tickets in the State of Goa.

12. The Petitioner in WP(C) No.59/2017 is the marketing Agent/distributor of State organized online lotteries organized, promoted and conducted by the State of Sikkim and is marketing the State organized online lotteries of the State of Sikkim in the State of Goa.

13. It is the case of the Petitioner in the aforesaid Writ Petitions that the State of Goa having issued the impugned notification under the GGST Act, 2017 to impose tax on the lotteries organized, run and conducted by the State of Sikkim is unconstitutional and illegal.

14. In WP(C) No.36/2017 the State of Goa is Respondent No.9. In the said Writ Petition the following prayers are sought :-

"(a) issue a writ in the nature of mandamus or certiorari or any other writ order or direction to hold and declare that the provisions of Serial No.6 of Schedule III read with Section 7(2) of the Central Goods and Service Act, 2017 and also serial No.6 of Schedule III read with Section 7(2) of the States Goods Service Act, 2017 of Respondent Nos. 2 to 11 exempting "actionable claims" as activities or transactions which shall be treated neither as supply of goods nor a supply of service but not excluding "lottery" from such exemption is

unconstitutional, illegal and non-est as "lotteries" cannot at all be subjected to tax under the GST Act, 2017, IGST Act, 2017 and SGST Acts, 2017.

(b) in the alternative, issue a writ in the nature of mandamus or certiorari or any other writ order or direction to hold and declare that the GST Act, 2017, IGST Act, 2017, SGST Act, 2017 of Respondent Nos. 2 to 12, the Rules framed or the Notification(s) issued thereunder cannot sub-classify "State Organized Lotteries" as "Lotteries run by State Governments" and recommend and/or levy two different and varying rates on the State Lotteries based on such non-existent classification i.e. 12% and 28% respectively;

(c) in the further alternative, issue a writ in the nature of mandamus or certiorari or any other writ order or direction quashing and setting aside Serial No.228 in Schedule-IV of the impugned Central Notification, impugned IGST Notification and the impugned State Notifications providing for taxation of "Lottery authorized by State Governments" and to further quash, set aside and/or read down S.No.242 in Schedule-II of the impugned Central Notification, impugned IGST Notification and the impugned State Notifications of Respondent Nos.2 to 12 providing for taxation of "Lottery run by State Governments";

(d) in the further alternative, issue a writ in the nature of mandamus or any other writ order or direction to hold and declare that even if State lotteries are subject to tax, the prize money in a lottery ticket or under the lottery scheme of the State Government cannot be taxed at all and the tax i.e. Central tax and the State tax imposed on State Organized lotteries under the CGST Act, 2017 IGST Act, 2017 and the SGST Act, 2017 of the Respondents can only be levied only on the face value of the lottery ticket minus the prize money in the scheme under which the State Govt. sells its lotteries through its Distributors/ Selling Agents;

(e) in the further alternative, issue a writ in the nature of mandamus or any other writ order or direction to hold and declare that the value of the lottery tickets supplied by the States to its Distributor should be the invoice value and /or the transaction value of the actually paid by the Distributor and received by the Respondent No.2 as reflected in the invoice raised by the State Govt. on the Petitioner and quash and set aside the fixation of the arbitrary value of the lottery tickets

supplied on the basis of 100/112 in respect of Serial No.242 of Schedule II and 100/128 in respect of Serial No.228 of Schedule IV of the face value of the lottery ticket and to hold the said fixation under the impugned Central Notification, impugned IGST Notification and impugned State Notification;

(f) in the further alternative, issue a writ in the nature of mandamus or any other writ order or direction to hold and declare that the Respondents shall give credit of Central tax, integrated tax and/or the State tax to the Petitioners in respect of the "unsold lottery tickets" under Section 34 of the CGST Act of 2017, IGST and Section 34 of the SGST Acts, 2017;

(g) in the further alternative, issue a writ in the nature of mandamus or any other writ order or direction to quash and set aside the "impugned GST Notification- Reverse Charge", impugned IGST Notification – Reverse Charge, and the impugned State Notification – Reverse Charge providing that in case of Lottery supply the Lottery Distributor or selling agent shall be liable to pay tax on reverse charge basis;

(h) pass any other directions/s, relief/s, order/s that may be deemed fit and proper in the circumstances of this case.

(i) all the costs of Writ Petition"

15. In WP(C) No.38/2017 the State of Goa is arrayed as Respondent No.7 and the Petitioner has sought for the following prayers:-

"(i) Set aside the Impugned Notifications 01/2017 Central Tax (Rate), 01/2017 Integrated Tax (Rate), 01/2017, and the State rate Notifications of the States of Sikkim, Goa, Punjab and Maharashtra to the extent it levies differential rates of tax on the supply of Lottery tickets by creating an illusory sub-classification between "Lottery run by the State Government" as discriminatory and violative of Article 14, 19(1)(g) , 301, 304 of the Constitution of India and of the CGST, SGST and IGST Act, and further hold that only 12% ad valorem tax can be levied uniformly in cases of all State run lotteries irrespective of where the tickets are sold.

(ii). Direct refund of differential duty paid at the rate of 28% as against the liability of the Petitioner to pay duty only at the rate of 12% with interest.

(iii) Set aside the Impugned Notifications 01/2017 Central Tax (Rate), 01/2017 Integrated Tax (Rate) 01/2017 and the State rate Notifications of the States of Sikkim, Goa, Punjab and Maharashtra to the extent it levies tax on the face value of the lottery ticket without abating the prize money component of the lottery ticket when the said amount never forms part of the income of the Petitioner the lottery trade.

(iv) Pass such other orders that his Hon'ble Court may consider proper in the above case."

16. In WP(C) No.59/2017 the State of Goa has been arrayed as Respondent No.5 and the Petitioner has sought for the following prayers:-

"(a) issue a writ in the nature of mandamus or certiorari or any other writ order or direction to hold and declare that "lottery" are not "actionable claims" for the purpose of Section 3 of the Transfer of Property Act and assumption and treatment of lotteries as "actionable claims" for the purpose of subjecting lotteries to tax under the GST Act, 2017, IGST Act, 2017 and SGST Act, 2017 is illegal and unconstitutional and beyond the scope and powers of the said GST legislations.

(b) Or in the alternative to issue a writ in the nature of mandamus or certiorari or any other writ order or direction to hold and declare and S.No.6 of Schedule III read with Section 7(2) of the Central Goods and Service Act, 2017 and also S.No.6 of Schedule III read with Section 7(2) of the States Goods and Service Act, 2017 of Respondent Nos.2 to 11 exempting "actionable claims" as activities or transactions which shall be treated neither as supply of goods nor a supply of service but not excluding "lottery" from such exemption is unconstitutional, illegal and non –est as "lotteries" cannot at all be subjected to tax under GST Act, 2017, IGST Act, 2017 and SGST Acts, 2017:

(c) issue a writ in the nature of mandamus or certiorari or any other writ order or direction to hold and declare that the GST Act, 2017, IGST Act, 2017, SGST Act, 2017 of Respondent Nos.2 to 12, the Rules framed or the Notifications(s) issued thereunder cannot sub-classify "State Organized Lotteries" as "Lotteries run by State Governments" and/or "Lotteries authorized by State Governments" and recommend and/or levy two different and varying rates on the State Lotteries based on such non-existent classification i.e. 12% and 28% respectively;

(d) in the further alternative, issue a writ in the nature of mandamus or certiorari or any other writ order or direction quashing and setting aside S.No.228 in Schedule-IV of the impugned Central Notification, impugned IGST Notification and the impugned State Notifications providing for taxation of "Lottery authorized by State Governments" and to further quash, set aside and/or read down S.No.242 in Schedule-II of the impugned Central Notification, impugned IGST Notification and the impugned State Notifications of Respondent Nos.2 to 12 providing for taxation of "Lottery run by State Governments";

(e) in the further alternative, issue a writ in the nature of mandamus or any other writ order or direction to hold and declare that even if State lotteries are subject to tax, the prize money in a lottery ticket or under the lottery scheme of the State Government cannot be taxed at all and the tax i.e. Central tax and the State tax imposed on State Organized lotteries under the CGST Act, 2017, IGST Act, 2017 and the SGST Act, 2017 of the Respondents can only be levied only on the face value of the lottery ticket minus the prize money in the scheme under which the State Govt. sells its lotteries through its Distributors/ Selling Agents;

(f) in the further alternative, issue a writ in the nature of mandamus or any other writ order or direction to hold and declare that the value of the lottery tickets supplied by the States to its Distributor should be the invoice value and/or the transaction value actually paid by the Distributor and received by the Respondent No.2 State as reflected in the invoice raised by the State Govt. on the Petitioner and quash and set aside the fixation of the arbitrary value of the lottery tickets supplied on the basis of 100/112 in respect of S.No.242 of Schedule II and 100/128 in respect of S.No.228 of Schedule IV of the face value of the lottery ticket and to hold the said fixation under the impugned

Central Notification, impugned IGST Notification and impugned State Notification;

(g) in the further alternative, issue a writ in the nature of mandamus or any other writ order or direction to quash and set aside the "impugned GST Notification - Reverse Charge", impugned IGST Notification -Reverse Charge, and the Impugned State Notification - Reverse Charge providing that in case of Lottery supply the Lottery Distributor or selling agent shall be liable to pay tax on reverse charge basis;

(h) pass any other direction/s, relief/s, order/s that may be deemed fit and proper in the circumstances of this case.

(i) all the costs of Writ Petition."

17. It is the case of the Petitioners in the Writ Petitions that the State of Goa is also engaged in the business of State organized lotteries and has been organizing, conducting and promoting its State organized lotteries and is one of the States in the Union of India where lotteries can be sold. It is the case of the Petitioners that the Petitioners distribute, purchase and sell lotteries and online lotteries both within the State of Sikkim as well as in the State of Goa. It is the case of the Petitioners that the Central Government issued impugned notifications in exercise of the powers conferred by the Sub-section (1) of the Section 9 of the CGST Act, 2017 and similarly identical notifications have also been issued by the State Governments including the State of Goa under the GGST Act, 2017. It is the case of the Petitioner that the Central Government has also issued impugned notification under the provisions of the IGST Act, 2017 and an identical notification to the impugned Central Government notification under the IGST Act, 2017 have also been issued by the State of Goa.

18. It is submitted by the Petitioners that if the distinction between lotteries run by the State Government and the lotteries authorized by the State Government is made as has been done by the impugned notifications the same would be ex-facie illegal and would be mis-used by the States in order to monopolize the business of lottery by selling its lottery within its own State by classifying and certifying its own lotteries as lotteries run by State Governments whereas on one or several ground stating that the lotteries of the other State as "*lotteries authorized by the State Governments*" which would wipe out the competition apart from the fact that it would be in violation of the Section 5 of the Lotteries Regulation Act, 1998.

19. Thus it is seen that the Petitioners are aggrieved by not only impugned notification issued by State of Goa under the GGST Act, 2017 but also by the act of the Centre of issuing the impugned notifications under the CGST Act, 2017 as well as the IGST Act, 2017 which seeks to levy Goods and Services Tax on lotteries organized, promoted and conducted by the State of Sikkim. It is not the actual incidence of GST under the GGST Act, 2017 which are impugned in the present Writ Petitions but the provisions of law made by the Parliament as well as the respective State Governments including the State of Goa by which it seeks to levy GST on lotteries.

20. Perusal of the prayers, as prayed for, in the said three Writ Petitions also makes it evident that at least a part of the cause of action has arisen within the jurisdiction of this Court.

- 21.** WP(C) No.36/2017 was filed on 07.07.2017, WP(C) No.38/2017 was filed on 14.07.2018 and WP(C) No.59/2017 was filed on 07.10.2017.
- 22.** In WP(C) No.36/2017 and WP(C) No.38/2017 notice was issued on 17.07.2017 and in WP(C) No.59/2017 notice was issued on 31.10.2017. A perusal of the Order passed by the High Court of Bombay at Goa in re: **Serenity Trade Pvt. Ltd.** reflects that Rule was issued in the said Writ Petition on 28.09.2017 much after notices had been issued by this Court in WP(C) No.36/2017 and WP(C) No.38/2017 on 17.07.2017.
- 23.** The aforesaid I.A (s) were all filed on 27.02.2018.
- 24.** A part of the cause of action for the present Writ Petition having arisen within the jurisdiction of this Court coupled with the fact that the said Writ Petitions WP(C) No. 36/2017 and WP(C) No.38/2017 having been filed prior in time before this Court to the Writ Petition filed by Serenity Trades Private Limited in WP(C) No.759/2017 in the High Court of Bombay at Goa and WP(C) No.59/2017 is being heard together with the said two Writ Petitions this Court is of the view that the aforesaid applications filed in the aforesaid Writ Petitions for deletion of State of Goa from the array of Respondents in the said Writ Petitions are liable to be dismissed.
- 25.** All the aforesaid I.A (s) stands dismissed. Ordered accordingly.

26. The State of Goa may file the counter affidavit, if they desire to do so.

Sd/-
Judge
06.06.2018

Sd/-
Chief Justice
06.06.2018

jk/avi/
Index : ~~Yes~~ / No
Internet : Yes / ~~No~~