



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 9<sup>TH</sup> DAY OF JULY, 2024**

**BEFORE**

**THE HON'BLE MR JUSTICE S SUNIL DUTT YADAV**

**WRIT PETITION NO. 23915 OF 2023 (T-RES)**

**BETWEEN:**

1. M/S ALSTOM TRANSPORT INDIA LIMITED  
3<sup>RD</sup> FLOOR, 66/2, EMBASSY PRIM,  
C.V. RAMAN NAGAR,  
BAGMANE TECH PARK  
BENGALURU,  
KARNATAKA-560 093  
REPRESENTED BY  
VISHWANATH HUCHCHAPARANNAVAR  
TAX MANAGER-GST  
INCORPORATED UNDER THE COMPANIES ACT 1956  
... PETITIONER

(BY SRI. RAVI RAGHAVAN., ADVOCATE A/W  
MS. MEGHNA LAL, ADVOCATE)

**AND:**

1. THE STATE OF KARNATAKA  
THROUGH THE GOVERNMENT PLEADER,  
HIGH COURT OF KARNATAKA  
BENGALURU - 01
2. COMMISSIONER OF COMMERCIAL TAXES  
"VANIJYA THERIGE KARYALAYA",  
GANDHINAGAR,  
BANGALORE-560 009.





3. ADDITIONAL COMMISSIONER OF  
COMMERCIAL TAXES  
(ENFORCEMENT), SOUTH ZONE,  
ROOM NO. 401, 4<sup>TH</sup> FLOOR,  
V.T.K. -2 BUILDING,  
RAJENDRANAGARA, KORAMANGALA,  
BENGALURU-560 047.
  
4. THE DEPUTY COMMISSIONER OF  
COMMERCIAL TAXES  
(ENFORCEMENT)-08,SOUTH ZONE,  
ROOM NO. 401, 4<sup>TH</sup> FLOOR, V.T.K. -2 BUILDING,  
RAJENDRANAGARA, KORAMANGALA,  
BENGALURU-560 047.

... RESPONDENTS

(BY SRI. K. HEMA KUMAR, AGA)

THIS W.P. IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OF CERTIORARI OR A WRIT IN THE NATURE OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT OR ORDER OR DIRECTION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA QUASHING THE IMPUGNED SHOW CAUSE NOTICE BEARING NO. ADCOM/ENF/SZ/SUMMONS-480/2023-24 DTD 26/09/2023 ISSUED BY THE R-4 IN FORM GST DRC-01 ENCLOSED AT ANNEXURE-A DEMANDING IGST OF RS. 59,57,19,228/- ALONG WITH INTEREST AND PENALTY AND ETC.

THIS PETITION COMING ON FOR ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:



**ORDER**

The petitioner has sought for issuance of writ in the nature of certiorari seeking to quash the impugned show-cause notice dated 26.09.2023 issued by respondent no.4 at Annexure-A demanding IGST of Rs.59,57,19,228/- along with interest and penalty.

2. The petitioner has also sought for declaration that payment of salary made to expats by the petitioner does not attract IGST as the same does not amount to manpower and recruitment supply of services from the overseas group entities to the petitioner.

3. The learned counsel for petitioner would point out that the petitioner is engaged in the business of designing, manufacturing, supplying, installing and commissioning of goods relating to railways and metro projects and during the period from July, 2017 and March, 2023 employees of overseas group entities (expats) were on the payroll of the petitioner in India. It is submitted that in connection with



the same, the petitioner had entered into employment agreement with the respective expats.

4. It is further submitted that during the period of employment with the petitioner salary was paid to them directly by the petitioner. It is further submitted that overseas group entity continued to provide social service benefits available at home country to the expats employees and the cost incurred in respect of such benefits is recovered as reimbursements from the petitioner.

5. It is submitted that respondent no.4 has sought to initiate proceedings and sought for details on the amounts paid to expats deputed from overseas group entities along with the payment details.

6. It is the contention of the learned counsel for petitioner that the value of supply and services by the overseas entities is to be determined by taking the value of supply and the services by overseas entities is to be



determined by taking the value prevalent in the invoices, which would be open market value in terms of Section 15 (4) of the CGST Act, 2017 read with Second Proviso to Rule 28 of the CGST Rules, 2017. Reference is also placed by the learned counsel for petitioner to Circular No.199/11/2023-GST dated 17.07.2023.

7. It is further submitted that the latest Circular bearing No.210/4/2024-GST dated 26.06.2024 issued after the petition was filed reiterates clear position of law which if taken note of would result in show-cause notice being dropped to that extent.

8. Sri.K.Hema Kumar, learned AGA submits that the purport of Circular needs to be examined in the facts of the case and even otherwise, the applicability of the Circular requires adjudication and accordingly the matter may be relegated back to the stage of reply to the show-cause notice.



9. After hearing the matter and noticing the contention raised by the petitioner as referred to above, it must be noticed that Circular dated 26.06.2024 referred to above may have bearing on the stand of the petitioner insofar as show-cause notice is concerned.

Para 3.6 to Para 4 of Circular dated 26.06.2024 reads as hereunder:

*"3.6 In case of import of services by a registered person in India from a **related person located outside India, the tax is required to be paid by the registered person in India under reverse charge mechanism.** In such cases, the registered person in India, is required to issue self-invoice under Section 31(3)(f) of CGST Act and pay tax on reverse charge basis.*

*3.7 In view of the above, it is clarified that in cases where the foreign affiliate is providing certain services to the related domestic entity, and where full input tax credit is available to the said related domestic entity, the value of such supply of services declared in the invoice by the said related domestic entity may be deemed as open market value in terms of second proviso to rule 28(1) of CGST Rules. Further, in cases where full input tax credit is available to the recipient, if the invoice is not issued by the related domestic entity with respect to any service provided by the foreign affiliate to it, the value of such services may be deemed to be declared as Nil, and*



*may be deemed as open market value in terms of second proviso to rule 28(1) of CGST Rules.*

4. *It is requested that suitable trade notices may be issued to publicize the contents of this Circular"*

10. In view of the above, without entering into the merits of the matter, the petitioner is relegated to the stage of reply to the show-cause notice. The authorities while considering the reply to the show-cause notice ought to take note of the Circular bearing No.210/4/2024-GST dated 26.06.2024, part of which has been extracted above. Insofar as other points for consideration are concerned, no observation is made regarding the same and it is open to the authority to take considered decision regarding other contentions not referred to above.

11. With the above observations, the matter is relegated to the stage of reply to the show-cause notice. Needless to state the authorities concerned can take note of applicability of the Circular to the facts on hand. Reply of the petitioner to be made within a period of three weeks from the date of receipt of certified copy of the order.



After the reply to show-cause notice is made out, authorities concerned to adjudicate regarding reply within eight weeks thereafter. All contentions are kept open.

**Sd/-  
JUDGE**

NP