

*** THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN
AND
THE HON'BLE SRI JUSTICE C.V.BHASKAR REDDY**

+ W.P.No.26145 OF 2022

% Date: 17-08-2022

M/s. Srico Projects Pvt. Ltd.,

... Petitioner

v.

\$ Telangana State Authority For Advance Ruling,
(Constituted under sec.96(1) of the TGST Act, 2017),
Commercial Taxes Complex, M.J.Road,
Nampally, Hyderabad and another

... Respondents

! Counsel for the Petitioner : Dr. S.R.R. Viswanath

^ Counsel for respondent No.2: Ms. Sapna Reddy

< **GIST:**

> **HEAD NOTE:**

? **CASES REFERRED:**

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN
AND
THE HON'BLE SRI JUSTICE C.V.BHASKAR REDDY

Writ Petition No.26145 of 2022

ORDER: *(Per the Hon'ble the Chief Justice Ujjal Bhuyan)*

Heard Dr. S.R.R. Viswanath, learned counsel for the petitioner and Ms. Sapna Reddy, learned counsel appearing for respondent No.2.

2. By filing this writ petition, under Article 226 of the Constitution of India, petitioner seeks quashing of order dated 03.06.2022 passed by respondent No.1 i.e., Telangana State Authority for Advance Ruling (briefly, 'the Authority' hereinafter), further seeking a direction to respondent No.1 to consider its application for advance ruling under Section 98 of the Central Goods and Services Tax Act, 2017 (briefly, 'the CGST Act' hereinafter) and thereafter pass appropriate order.

3. Petitioner is a private limited company incorporated under the Companies Act, 1956. It is engaged in the business of undertaking works contract mostly with the Central and State Governments. Petitioner is a registered

supplier under the CGST Act and related Acts. According to the petitioner, the rate of GST for works contract undertaken with the Central Government Employees Welfare Housing Organisation would be 18% (CGST 9% + SGST 9%). According to Central Government Employees Welfare Housing Organisation, GST would be 12% (CGST 6% + SGST 6%). Accordingly, Central Government Employees Welfare Housing Organisation paid GST to the extent of 12% and after deducting the same made payment to the petitioner. This caused loss to the petitioner besides being susceptible to the charge of underpaying GST. In these circumstances, petitioner submitted an application for advance ruling on 11.05.2019 on the question as to what would be the rate of tax on works contract services rendered by it to the Central Government Employees Welfare Housing Organisation. However, there was inordinate delay in providing advance ruling. In the meanwhile, respondent No.2 issued letter dated 15.02.2021 to the petitioner alleging short payment of GST i.e., 12% instead of 18%. This was followed by issuing of summons to the Managing Director of the petitioner under

Section 70 of the CGST Act directing his appearance before respondent No.2 on 05.01.2022 and issuance of subsequent summons by respondent No.2.

4. After long three years, the Authority issued notice to the petitioner on 25.04.2022 scheduling personal hearing on 27.04.2022. The authorised representative of the petitioner appeared for such personal hearing and requested the Authority to give a ruling on the question raised by it in the application dated 11.05.2019. By the impugned order dated 03.06.2022, the application for advance ruling was rejected. Aggrieved thereby, present writ petition has been filed.

5. On 20.06.2022, this Court had issued notice and had called upon the respondents to file counter affidavit.

6. Ms. Sapna Reddy, learned counsel appearing for respondent No.2 submits that counter affidavit has been filed, a copy of which has been placed before us.

7. From a perusal of the order dated 03.06.2022, we find that the Telangana State Authority for Advance Ruling (already referred to as 'the Authority' hereinbefore) noted

that Directorate General of GST Intelligence (DGGI), Hyderabad Zonal Division, had initiated enquiry into the business activities of the petitioner and in this connection had issued notice to the petitioner on 15.12.2021. Holding that case of the petitioner falls under the first proviso to Section 98(2) of the CGST Act, the Authority rejected the application for advance ruling.

8. In the counter affidavit, stand taken by respondent No.2 is that DGGI started investigation into the business activities of the petitioner and petitioner knew about such investigation as would be evident from its letter dated 15.12.2021 addressed to DGGI, but this fact was not disclosed. On this basis, decision of the Authority has been justified.

9. Submissions made have been considered.

10. Chapter XVII of the CGST Act deals with advance ruling. Sections 95 to 106 form part of Chapter XVII. Section 95(a) defines “advance ruling” to mean a decision provided by the Authority or the Appellate Authority or the National Appellate Authority to an applicant on matters or

on questions specified in sub-section (2) of Section 97 or sub-section (1) of Section 100 or Section 101C in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant. Section 96 provides that the Authority constituted under the provisions of the State Goods and Services Tax Act or under the Union Territory Goods and Services Tax Act shall be deemed to be the Authority in respect of that State or Union Territory. While Section 97 provides for filing of application for advance ruling, Section 98 lays down the procedure to be followed on receipt of such application. Sub-section (2) of Section 98 says that the Authority may, after examining the application and the records called for and after hearing the applicant or his authorised representative and the concerned officer or his authorised representative, by order, either admit or reject the application. Proviso thereto says that the Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of the applicant under any of the provisions of the CGST Act. As per sub-section (4), where

an application is admitted under sub-section (2), the Authority shall, after examining such further material as may be placed before it by the applicant or obtained by the authority and after providing an opportunity of being heard to the applicant or his authorised representative as well as to the concerned officer or to his authorised representative, pronounce its advance ruling on the question specified in the application.

11. From the above, it is seen that the Authority shall not admit an application for advance ruling where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of the CGST Act.

12. Though the word “proceedings” has neither been defined in Chapter XVII nor in the definition clause i.e., in Section 2 of the CGST Act, if the said word is understood in the context in which it is being applied, namely, any proceedings pending or decided in the case of an applicant under the provisions of the CGST Act, it would mean proceedings where the question raised in the application

for advance ruling has already been decided or is pending decision. Therefore, inquiry or investigation would not come within the ambit of the word “proceedings”.

13. Be that as it may, in so far the present case is concerned, there is no dispute to the fact that the petitioner had filed the application for advance ruling on 11.05.2019. From the order dated 03.06.2022, it is evident that notice was issued to the petitioner by DGGI on 15.12.2021 much after filing of the application for advance ruling. In our considered opinion, the same cannot be a bar under the first proviso to sub-section (2) of Section 98 of the CGST Act and the question of petitioner informing the Authority that it was being enquired into did not arise because the application was filed much prior in point of time.

14. In the hearing, Dr. S.R.R. Viswanath, learned counsel for the petitioner, has placed before us an order dated 14.03.2022 passed by the Telangana State Authority for Advance Ruling in A.R.Com/28/2021 wherein the question raised was whether the sale of produces Distillery Wet

Grain Soluble ('DWGS') and Distillery Dry Grain Soluble ('DDGS')-'Cattle feed' undertaken by the applicant would be covered by serial No.102 of Notification No.02/2017 dated 28.06.2017 and whether the above commodities were exempt from payment of GST. The ruling given was in the negative holding that both the commodities are taxable at the rate of 5%. But the moot point is that the application for advance ruling in that case was filed on 11.07.2020 subsequent to which in August 2020, DGGI had initiated investigation on the question raised by the applicant. In that case, Telangana State Authority for Advance Ruling held that such investigation post filing of application would not debar the applicant from seeking advance ruling and accordingly advance ruling was granted.

15. On due consideration and following the above, we are of the view that respondent No.1 i.e., Telangana State Authority for Advance Ruling was not justified in rejecting the application of the petitioner vide the order dated 03.06.2022. Accordingly the said order dated 03.06.2022 is set aside and quashed. Respondent No.1 is directed to

take on board the application filed by the petitioner on 11.05.2019 and pass an appropriate order thereon under sub-section (4) of Section 98 of the CGST Act after giving due opportunity of hearing to the petitioner. The above exercise shall be carried out within a period of two months from the date of receipt of a copy of this order.

16. The writ petition is accordingly allowed.

Miscellaneous applications pending, if any, shall stand closed. However, there shall be no order as to costs.

UJJAL BHUYAN, CJ

C.V.BHASKAR REDDY, J

17.08.2022
JSU

Note: LR copy be marked.
(By order)
JSU