WWW.TAXSCAN.IN - Simplifying Tax Laws - CITATION - 2022 TAXSCAN (HC) 521

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

Before :-
The Hon'ble Justice Hiranmay Bhattacharyya

WPO 547 OF 2019

RAMESH KUMAR PATODIA
VS.
CITI BANK NA AND ORS.

For the Petitioner	:	Mr. Romendra Kumar Biswas, Ms. Ujani Pal (Samanta) .....Advocates
For the Respondent No.1	:	Mr. Prabhat Kumar Srivastawa .....Advocate
For the Respondent No.4	:	Mr. K. K. Maiti .....Advocate
For the Respondent No.5	:	Mr. Rajesh Kumar Shah .....Advocate
Heard on	:	11.05.2022
Judgment on	:	24.06.2022

Hiranmay Bhattacharyya, J. :-

1. The borrower has filed this Writ petition praying for a declaration that the interest component of the Equated Monthly Instalments (for short "EMI") of the loan granted by the respondent Bank is exempted from levy of Integrated

Goods and Service Tax (for short "IGST") and for a direction upon the Bank and the IGST authorities to refund the IGST collected from the petitioner.

2. The facts leading to the filing of the writ petition are as follows-

Petitioner is holder of a valid Citi Bank Credit Card issued by the respondent no. 1/Bank. He received an email communication on 21.02.2019 from the Bank offering an instant loan of Rs. 6,50,000/- at 13% interest above the credit limit. A similar email communication was also received on 28.02.2019. Petitioner expressed his willingness to the said offer by a SMS communication on 28.02.2019. On 02.03.2019, petitioner received an email communication from the Bank that a loan on his credit card has been disbursed and is repayable in EMIs along with an additional initial interest amount. Thereafter a demand draft of Rs. 6,50,000/- was dispatched to the home address of the petitioner and he encashed the said draft. Upon receipt of the credit card statements of two successive periods, the petitioner detected that IGST @ 18% was charged on the initial interest as well as interest component of EMI. Petitioner by several letters protested against charging of IGST on the interest component of the EMI and requested the Bank to reverse the said IGST charges.

Since the respondents did not take any steps for reversing the said IGST charges and was continuing to charge IGST, this writ petition was filed.

3. The learned advocate for the petitioner contended that grant of loan by the bank to the petitioner squarely comes within the meaning of "supply" as provided in Section 7 of the Central Goods and Services Tax Act, 2017 (for short CGST Act) and the interest component of the loan which is included in the EMI is the value of such supply of service of granting the loan. Such consideration for supply of service by way of granting loan cannot be said to be a credit card service merely because the EMI is indicated in the credit card statement. Learned Advocate for the petitioner contended that the interstate supply of services by way of extending loans for the consideration of payment of interest is exempted from levy of Integrated Tax as per Serial No. 28 of the Notification No. 9/2017. Integrated Tax (Rate) dated June 28, 2017 issued by the Government of India, Ministry of Finance, Department of Revenue. He contended that the respondent authorities acted *de hors* the said notification by charging IGST on the interest component of EMI.

4. The learned advocate for the petitioner submitted that while interpreting the exemption notification the Court has to give it the meaning which clearly and plainly flows from the said notification. In support of such contention he relied upon a

decision of the Hon'ble Supreme Court of India in the case of *Collector of Central Excise and ors. vs. Himalayan Co-operative Milk Product Union Ltd. and Ors.* reported at (2000) 8 SCC 642.

5. Mr. K.K. Maiti, learned Counsel representing the respondent no. 4 namely Principal Chief Commissioner of Central Tax raised the point of maintainability of this writ petition on two fold grounds. Firstly, that the reliefs claimed against the respondent no. 1/Bank, not being a nationalized Bank, is not maintainable under Article 226 of the Constitution of India. Secondly, the registered office of the respondent Bank is situated outside the State of West Bengal and as such this Hon'ble Court lacks territorial jurisdiction to entertain and try this writ petition. With regard to the applicability of the Exemption Notification dated June 28, 2017, Mr. Maiti submitted that the loan was extended to the petitioner on the basis of the credit card issued by the Bank and the interest component of EMI is on account of Credit Card services which is not exempted as per the said notification.

6. The learned advocate for the Bank also raised similar objections with regard to the maintainability of the writ petition. On merits, he submitted that the said Exemption Notification is not applicable in the instant case as the interest component of EMI was for credit card services.

7. In reply the learned advocate for the petitioner submitted that in the instant case the cause of action arose within the territorial jurisdiction of this Hon'ble Court and as such this Hon'ble Court has jurisdiction to entertain and try the instant writ petition notwithstanding the fact that the registered office of the respondent no. 1 bank is situated outside the territorial jurisdiction of this Hon'ble Court. In support of such contention the learned advocate for the petitioner relied upon a decision of the Hon'ble Supreme Court of India in the case of *Om Prakash Srivastava vs. Union of India and another* reported at (2006) 6 SCC 207.

8. Heard the learned advocates for the parties and considered the materials placed.

9. From the pleadings of the writ petition, affidavits filed by the respondents and the arguments advanced by the respective learned counsels, the following issues arise for consideration.

   I. Whether the instant writ petition is maintainable at all and also whether this Court can entertain and try the same; and

   II. Whether the interest component of EMI of loan advanced by the Bank is exempted under notification dated June 28, 2017.

10. The first issue relates to the maintainability of this writ petition as well as lack of jurisdiction of this Hon'ble Court and as such, the same is to be decided first.

11. The principal objection of the respondents against maintainability of the instant writ petition is that the writ petition against the bank, which is not a nationalised bank is not maintainable. Article 226(1) of the Constitution of India lays down that notwithstanding anything in Article 32, High Court shall have power throughout the territories in relation to which it exercises 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, prohibition, 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.

12. Thus, from a reading of the said constitutional provision it is evident that the High Court has power to issue directions, orders or writs to any person or authority.

13. The Hon'ble Supreme Court in the case of *Federal Bank Ltd. vs. Sagar Thomas and others* reported at (2003)10 SCC 733 referred to several decisions of the Hon'ble Supreme Court of India and held that a writ petition under Article 226 of the Constitution of India may be maintainable against a private body discharging public duty or positive obligation of public nature and also against a person or a

body under liability to discharge any function under any statute to compel it to perform such a statutory function. The Hon'ble Supreme Court in paragraphs 18 and 33 of the said reports held as–

> *"18. From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Government); (ii) an authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (vii) a person or a body under liability to discharge any function under any statute, to compel it to perform such a statutory function."*
>
> *"33. For the discussion held above, in our view, a private company carrying on banking business as a scheduled bank, cannot be termed as an institution or a company carrying on any statutory or public duty. A private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon it.********** "*

14. In the light of the aforesaid legal proposition laid down by the Hon'ble Supreme Court on the maintainability of a writ petition this court has to consider whether the instant writ petition is maintainable in the case on hand.

15. The following facts are however, not in dispute.

(i) The share capital of the respondent no. 1 bank is not held at all by the government nor any financial assistance provided by the State.

(ii) The bank does not enjoy any monopoly status nor can it be said to be a institution having state protection.

(iii) No governmental agency or officer is connected with the affairs of the respondent no. 1 bank nor is anyone of them a member of the Board of Directors.

(iv)There is no participation or interference of the State or its authorities in the normal functioning of the respondent bank.

16. The respondent no. 1 Bank is carrying on a profession of banking. Though, it may be true that the said bank being a scheduled bank has to carry on its business according to the banking policy of the Reserve Bank of India and also that various regulatory measures are also applicable to the respondent bank for the purpose of carrying on their commercial activity in banking, but merely for such reason the respondent bank cannot be said to be an institution or a company carrying on any statutory or public duty and the activity carried on by the bank in the normal course of business cannot also be classified as one falling in the category of discharging duties or functions of a public nature as held in *Federal Bank Ltd.* (supra).

17. It is, however, not in dispute that the respondent no. 1/Bank is a registered person under Section 25 read with Section 22 of the CGST Act. The respondent bank is collecting IGST from the petitioner under the provisions of the Integrated Goods and Services Tax Act, 2017 (for short "IGST Act").

18. The respondent bank has to act in terms of the provisions of the IGST Act read with the CGST Act while charging IGST. The allegation of the petitioner is that the respondent bank is charging IGST de hors the exemption notification dated June 28, 2017.

19. The petitioner has prayed for a declaration that the interest component of the EMI of the loan granted by the bank to the petitioner is exempted from the levy of IGST in view of the notification dated June 28, 2017. Apart from the bank the service tax authorities have also been impleaded as party respondents in this writ petition. This writ petition has been filed to compel the Bank and the Service Tax authorities to perform their obligations in accordance with the provisions of the statute regarding levy and collection of IGST and to grant exemption which the petitioner may be entitled to as per the notifications issued under the relevant statutes.

20. Thus, by applying the proposition of law laid down by the Hon'ble Supreme Court in *Federal Bank* (supra) this court is of the considered view that since the petitioner has prayed for a relief to compel the respondent bank to grant exemption as per the

provisions of the relevant statute upon a declaration being made in that regard, the instant writ petition is maintainable.

21. Now, this court has to decide the other limb of the objection as to the maintainability of the instant writ petition on the ground of lack of territorial jurisdiction of this court. It is not in dispute that the office of the respondent no. 1 is beyond the territorial jurisdiction of the High Court at Calcutta. In the credit card statements issued by the respondent no. 1 bank, it has been mentioned that the place of supply is the State of West Bengal. The demand draft was despatched to the petitioner at his residential address which falls within the territorial jurisdiction of this Hon'ble Court. Thus, the part of the cause of action arose within the territorial jurisdiction of this Hon'ble Court.

22. The Hon'ble Supreme Court in the case of *Om Prakash Srivastava* (supra) held that the High Court can exercise power to issue direction, order or writs if the cause of action arises in part within its jurisdiction. In paragraph 8 of the said reported judgment, the Hon'ble Supreme Court held thus-

> *"8. Two clauses of Article 226 of the Constitution on plain reading give clear indication that the High Court can exercise power to issue direction, order or writs for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of action wholly or in part had arisen within the territories in relation to which it exercises jurisdiction notwithstanding that the seat of the Government or authority or the residence of the person against whom the*

direction, order or writ is issued is not within the said territories."

23. Therefore, since the part of cause of action arose within the jurisdiction of this Hon'ble Court, this court has no hesitation to hold that this Hon'ble Court has jurisdiction to try and entertain the instant writ petition.

24. After answering the first issue in the affirmative, this Court shall now proceed to decide the second issue whether the interest component of EMI of loan advanced by the Bank is exempted under notification dated June 28, 2017.

25. From the terms and conditions of the offer of loan dated February 21, 2019 and February 28, 2019 it appears that the said offer was valid only for customers holding a Citi Bank Credit Card issued in India and who avail of a loan on their card digitally. It was further mentioned therein that the final loan amount will be subject to eligibility as per citi credit processing criteria. The loan amount was above the credit limit of the Citi Credit Card. It was further mentioned therein that the EMI amount shall be included as a part of the minimum amount due appearing in the card number's monthly credit card statement. If the amount paid towards dues on the credit card is less than the total amount due finance charges shall be levied on such outstanding (including but not limited to the transaction fee and EMI as above) as per the applicable interest

rates. The applicable interest rate shall be mentioned in the monthly statement.

26. It is evident from the offer of loan that the same was not an offer to all intending borrowers but was restricted to a particular category of persons holding the Citi Bank Credit Card. The criteria for processing the loan, the manner in which the EMI of loan is reflected in the Credit Card statements and the charging of interest in case there is a shortfall in the payment of the amount due as well as the mode of payment all goes to prove that the service rendered by the Bank in extending the loan in question is nothing but a service pertaining to the said credit card.

27. Petitioner has accepted the offer made by the bank contained in the aforesaid communications dated February 21, 2019 and February 28, 2019. Thus, the terms and conditions mentioned in the said communications are also accepted by the petitioner. In view thereof this Court is unable to accept the contention of the learned advocate of the petitioner that the services by way of extending loans by the bank in the instant case does not amount to credit card services.

28. It further appears from the further communications dated February 21, 2019 and February 28, 2019 that Goods And Services Tax as notified by the Government of India is applicable on the initial interest amount, interest component of EMI, all fees and

other charges and is subject to change as per relevant regulations of the Government of India.

29. The learned advocate for the petitioner contended that the Central Government has exempted the interstate supply of services by way of extending loans in so far as the consideration is represented by way of interest from the levy of IGST as per the notification dated June 28, 2017. Thus, according to the petitioner the interest component of EMI of the loan advanced by the bank is exempted under the said notification.

30. The expression "other than interest involved in credit card services" appearing under Serial No. 28 of the said notification carves out an exception by excluding the interest on credit card services from the purview of the said exemption notification.

31. Since this Court has already held that the services rendered by the bank by way of extending loans to the petitioner in the instant case amounts to credit card services, the interest component of EMI of the said loan is nothing but interest involved in credit card services which is not exempted by notification no. 9/2017-Integrated Tax (Rate) dated June 28, 2017.

32. For the reasons as aforesaid this Court holds that the interest component of EMI of loan advanced by the bank is not exempted under the said notification dated June 28, 2017. Thus, the second issue is answered in the negative and against the petitioner.

33. There is however, no quarrel to the proposition laid down by the Hon'ble Supreme Court in *Himalayan Co-operative Milk* (supra) that the purpose of the notification providing for exemption should not be defeated nor those who may be entitled to it are to be deprived by interpreting the notification which may give it some meaning other than what is clearly and plainly flowing from it.

34. Upon a plain reading of the notification dated June 28, 2017 it is evident that the interest involved in credit card services is not exempted. Thus, the said decision is of no assistance to the petitioner in the instant case.

35. The writ petition accordingly fails and the same is dismissed without, however, any order as to costs.

36. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis.

(Hiranmay Bhattacharyya, J.)

(P.A.-Sanchita)