

CGST/UPGST: In Central Goods and Services Tax Act/Uttar Pradesh Goods and Service Tax Act there is a provision of recovery of GST and said recovery can be made as arrears of land revenue by Collector of District on requisition by 'Proper officer' of Taxing Department

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HIGH COURT OF ALLAHABAD

Mohd. Yunush

v.

State of U.P.*

AMRESHWAR PRATAP SAHI AND SHASHI KANT, JJ.

WRIT-C NO. 6392 OF 2018

APRIL 13, 2018

Section [79](#) of the Central Goods and Services Tax Act, 2017 read with rule [143](#) of the Central Goods and Services Tax Rules, 2017/Section [79](#) of the Uttar Pradesh Goods and Services Tax Act, 2017 read with rule [143](#) of the Uttar Pradesh Goods and Services Tax Rules, 2017 - Demands and recovery - Modes of recovery - Whether in Central Goods and Services Tax Act/Uttar Pradesh Goods and Services Tax Act there is a provision of recovery of GST - Held, yes - Whether said recovery of GST can be made as arrears of land revenue by Collector of District on requisition by 'Proper Officer' of Taxing Department - Held, yes - Assessee had entered into a contract with Nagar Nigam, Saharanpur for realisation of ground rent from a Fair commencing from 31-8-2017 for a month - Competent Authority, in terms of provisions of Uttar Pradesh Goods and Services Tax Act, issued on assessee a recovery certificate for deposit of Goods and Services Tax - Whether initiation of recovery proceedings against assessee was in accordance with GST statutes - Held, yes [Para 20] [Partly in favour of assessee]

FACTS

- The assessee had entered into a contract with the Nagar Nigam, Saharanpur (U.P.) for realisation of ground rent from a Fair commencing from 31-8-2017 for a month.
- The Competent Authority, in terms of the provisions of the Uttar Pradesh Goods and Services Tax Act (U.P. GST Act), issued on the assessee a recovery certificate for deposit of Goods and Services Tax (GST) amounting to Rs. 10.74 lakhs.
- The assessee filed a writ petition stating that it was not his liability and rather it was the Nagar Nigam, Saharanpur that had benefited from the contract and, therefore, it was the Nagar Nigam which was liable to pay the GST. Therefore, the same could not be realised from him as arrears of land revenue.
- The Nagar Nigam, on the other hand, submitted that there was a clear agreement between the assessee and the Nagar Nigam that any such liability of tax including the GST would be recoverable from the contractor. It also pointed out that as on date after making adjustment from the amount already due to the assessee, it was only the GST to the tune of Rs. 3.24 lakhs which was to be realized from the assessee.

HELD

- The U.P. GST Act defines the word 'local authority' under section 2(69) which includes Municipal Corporations constituted in terms of article 243 (P) of the Constitution of India. The Nagar Nigam is an authority so constituted. Section 2(91) defines 'Proper Officer' who is the Commissioner of the Taxing Department or an officer nominated by him to discharge such functions. Section 7(1a) and section 7(2b) define the scope of supply under Chapter III of Levy and Collection of Taxes. There is no dispute that the transaction between the assessee and the Nagar Nigam falls within the scope of such 'supply'. [Para 12]
- The only dispute is to the mode and manner of recovery of GST for which the Nagar Nigam has drawn the attention of the Court to section 79. In particular it has drawn the attention of the Court to section 79 (a), (b) and (e) to contend that liability of tax can be recovered from the person concerned, payable by him in terms of the aforesaid provisions and in default 'Proper Officer' can prepare the certificate and send it to the Collector of the District for realisation thereof as arrears of land revenue. It is, therefore, clear from a perusal of these provisions that recovery of GST can be made as arrears of land revenue by the Collector of the District on a requisition by the 'Proper Officer'. [Para 13]
- Section 79(2) further clarifies that where there are terms of agreement under any instrument for recovery of the tax under section 79(1), the same may, without prejudice to any other mode of recovery, be recovered in accordance with the provisions of that sub-section. [Para 14]
- It is, therefore, undisputed that there is a provision of recovery, provided there is an agreement between the parties. In the instant case also there is no dispute that such an agreement exists. [Para 15]
- The Nagar Nigam has then invited attention of the Court to rule 143 of the U.P. Goods and Services Tax Rules, which indicates the manner in which the deductions by the 'Specified Officer' have to be made and according to said definition it would include the Officer of a 'Local Authority'. The aforesaid rule, therefore, obligates the Specified Officer of the Nagar Nigam to make such deductions. [Para 16]
- The aforesaid scheme obligates the Specified Officer to make deductions and in the event of default the Proper Officer of the Taxing Department can proceed to issue certificate on the strength whereof the Collector can issue a recovery citation for realisation of the tax due as arrears of land revenue. [Para 17]
- In the instant case, it is undisputed that the procedure for deducting the amount has not been followed by the Nagar Nigam in terms of rule 143. In such circumstances, proceedings for recovery had to be undertaken inasmuch as the Nagar Nigam as well as the assessee both have defaulted simultaneously, the former by not making deductions and the latter by not paying the GST which is a liability on him under the terms of the agreement. [Para 18]
- The Nagar Nigam has realised its consideration amount by making adjustments from the security deposit of the assessee without making deductions of the tax amount. However, the certificate of recovery has been sent for the entire amount of consideration as well as GST due. This composite recovery, therefore, now stands reduced according to the stand of the Nagar Nigam itself inasmuch as the entire amount mentioned in the impugned citation now cannot be recovered from the

assessee but so far as the amount of GST is concerned, as narrated above, has to be realised from the assessee and deposited with the Taxing Department. [Para 19]

- Since the assessee himself has given an undertaking for depositing the entire amount of GST, the recovery certificate stands modified to the aforesaid extent and it shall be enforced only to the extent of Rs. 3.24 lakhs subject to payment by the assessee as undertaken. [Para 20]

Achint Ranjan Singh and **Ramesh Singh** for the Petitioner. **C.K. Parekh** for the Respondent.

ORDER

1. Heard Sri Ramesh Singh, learned counsel for petitioner, Sri C.K. Parekh, learned counsel appearing for respondent no. 2-Nagar Nigam, Saharanpur and learned Standing Counsel for respondent nos. 1, 3 and 4.

2. The petitioner who has entered into a contract upon an auction for realisation of ground rent from a Fair commencing from 31st August, 2017 for a month, has assailed the recovery certificate issued to him for deposit of Goods and Service Tax (*hereinafter referred to as "G.S.T."*) from the petitioner in terms of U.P. Goods and Service Tax Act, 2017 (*hereinafter referred to as "the Act, 2017"*). Recovery is being made as arrears of land revenue through the Collector/District Magistrate, Saharanpur for which a citation has been issued by the fourth respondent-Tehsildar, Saharanpur. The amount sought to be recovered mentioned in the citation is Rs.10,74,000/- together with additional charges thereon. The recovery is being made as arrears of land revenue in terms of U.P. Revenue Code, 2006 read with U.P. Revenue Code Rules, 2016.

3. Challenge raised is that it is not the liability of the petitioner and rather it is the Nagar Nigam that has benefited from the contract and therefore it is the Nagar Nigam which is liable to pay the G.S.T. realisable under the Act, 2017.

4. It is therefore, submitted that the same cannot be realised from the contractor namely the petitioner as arrears of land revenue.

5. Sri C.K. Parekh, learned counsel for Nagar Nigam submits that there is a clear agreement between the petitioner and the Nagar Nigam, that any such liability of tax including the G.S.T. would be recoverable from the contractor and he has referred to the standard form of agreement also mentioned in the advertisement where clause 4 thereof recites the liability of the contractor to make the payment under the Act, 2017. He therefore, submits that the tax payable is over and above the amount of consideration under the contract and hence, recovery has been rightly issued against the petitioner.

6. The contention therefore is that even assuming that the Nagar Nigam ought to have deducted the said amount, but the fact in this case is that the entire security amount which has been deposited by the petitioner in terms of the contract has been adjusted towards the amount of consideration under the contract as a result whereof payment of G.S.T. remains over due.

7. Sri Parekh has also informed the Court that as on date after making adjustment from the amount already due to the petitioner, it is only the G.S.T. to the tune of Rs.3,24,000/- which is now to be realised from the petitioner. In essence, his contention is that the entire amount shown in the citation is not recoverable now, except to the amount of G.S.T. His contention therefore, is that liability of the petitioner as disclosed in the citation was of the entire amount including the consideration amount under the contract, which after having been adjusted from the security deposit of the petitioner, now, remains to be realised only to the extent of G.S.T.

8. Thus, these being undisputed facts, recovery citation for the entire amount therefore cannot be pressed

into service against the petitioner.

9. At this juncture, learned counsel for the petitioner submits that the petitioner undertakes to deposit the entire amount of G.S.T. to the tune of Rs.3,24,000/-, within one month from today.

10. In view of this admitted position what emerges, has to be viewed as to whether recovery could have proceeded against the petitioner or not.

11. With the able assistance of Sri C.K. Parekh, learned counsel for the respondent-Nagar Nigam, we may refer to the provisions that are applicable to the controversy under the Act, 2017 for recovery of tax. Such taxes are now chargeable in relation to the service rendered in view of the Constitutional mandate under Article 366 of the Constitution of India read with sub Article 12A read with Article 26A.

12. The Act, 2017 defines the word "local authority" under Section 2(69) of Act, 2017 which includes Municipal Corporations constituted in terms of Article 243 (P) of the Constitution of India. The respondent Nagar Nigam is an authority so constituted. Section 2(91) defines 'Proper Officer' who is the Commissioner of the Taxing Department or an officer nominated by him to discharge such functions. Section 7(1a) and Section 7(2b) of Act, 2017 defines the scope of supply under Chapter III of Levy and Collection of Taxes. There is no dispute that the transaction between the petitioner and the respondent Nagar Nigam falls within the scope of such 'supply'.

13. The only dispute is to the mode and manner of recovery of G.S.T. for which Sri Parekh has drawn the attention of the Court to Section 79 of the Act, 2017. In particular he has drawn the attention of the Court to Section 79(a), (b) and (e), to contend that liability of tax can be recovered from the person concerned, payable by him in terms of the aforesaid provisions and in default "Proper Officer" as defined under Section 2(9) can prepare the certificate and send it to the Collector of the District for realisation thereof as arrears of land revenue. It is therefore, clear from a perusal of these provisions that recovery of GST can be made as arrears of land revenue by the Collector of the District on a requisition by the "Proper Officer".

14. Section 79(2) of Act, 2017 further clarifies that where there are terms of agreement under any instrument for recovery of the tax under Section 79(1) of the Act, 2017, the same may, without prejudice to any other mode of recovery, be recovered in accordance with the provisions of that sub-section.

15. It is therefore, undisputed that there is a provision of recovery, provided there is an agreement between the parties. In the present case also there is no dispute that such an agreement exists.

16. Sri Parekh has then invited attention of the Court to Rule 143 of Chapter 18 of U.P. Goods and Services Tax Rules, 2017 (*hereinafter referred to as "the Rules, 2017"*) which indicates the manner in which the deductions by the "Specified Officer" have to be made and according to said definition it would include the Officer of a "Local Authority". The aforesaid Rules therefore obligates the Specified Officer of the Nagar Nigam to make such deductions.

17. The aforesaid scheme as indicated above thus, obligates the Specified Officer to make deductions and in the event of default the Proper Officer of the Taxing Department can proceed to issue certificate on the strength whereof the Collector can issue a recovery citation for realisation of the tax due as arrears of land revenue.

18. In the present case it is undisputed that the procedure for deducting the amount has not been followed by the Nagar Nigam in terms of Rule 143 of Rules, 2017. In such circumstances, proceedings for recovery had to be undertaken inasmuch as the Nagar Nigam as well as the petitioner both have defaulted simultaneously, the former by not making deductions and the latter by not paying the GST which is a liability on him under the terms of the agreement.

19. The Nagar Nigam has realised its consideration amount by making adjustments from the security deposit of the petitioner without making deductions of the tax amount. However, the certificate of recovery has been sent for the entire amount of consideration as well as G.S.T., due. This composite recovery therefore, now stands reduced according to the stand of the Nagar Nigam itself inasmuch as the entire amount mentioned in the impugned citation, now cannot be recovered from the petitioner, but so far as the amount of G.S.T. is concerned, as narrated above, has to be realised from the petitioner and deposited with the Taxing Department.

20. Since the petitioner himself has given an undertaking for depositing the entire amount of G.S.T., the recovery certificate stands modified to the aforesaid extent and it shall be enforced only to the extent of Rs.3,24,000/- subject to payment by the petitioner as undertaken before us. In the event the petitioner defaults in complying with the undertaking given before this Court, it shall be open to the Taxing Department through the Proper Officer to proceed to recover the amount in question either from the petitioner or the Nagar Nigam, in accordance with the Act and Rules, 2017, referred to herein above.

The writ petition is accordingly disposed of with the aforesaid directions.

s.k. jain

*Partly in favour of assessee.