

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 19181-2014

Date of Decision: 29.10.2022

Sham Lal

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJPresent: Mr. Nonish Kumar, Advocate,
for the petitioner.

Mr. Vivek Chauhan, Addl. A.G., Haryana.

Mr. Anshuman Chopra, Senior Standing Counsel,
for respondents no. 4 and 6.

VINOD S. BHARDWAJ, J. (Oral)

The present petition writ petition had been filed under Article 226/227 of the Constitution of India for seeking issuance of directions in the nature of '*mamdamus*' to the respondents to decide the legal notice dated 28.08.2013 (Annexure P-4) and 02.06.2014 (Annexure P-5) and also that an amount of Rs. 1,56,000/- of the petitioner lying deposited with respondent no. 3 be released to him along with interest.

Briefly summarized the facts of the present case are that the petitioner had taken vacant land on lease at Bus Stand, Karnal, for parking of cycle/scooters during the period of 04.10.2011 to 31.03.2012, as also for the financial year 2012-2013. The petitioner was directed to deposit an amount of Rs. 1,56,000/- as refundable security along with the rental as agreed. The petitioner claims to have regularly deposited the due

rent/charges leviable in terms of the Tender for the vacant land. The petitioner was served with a notice by the respondent Department that service tax amount is required to be deposited by the petitioner to which a response was filed to the effect that in terms of Section 65 (105) (zzzz) of the Finance Act, 1994, the service was not leviable upon the petitioner for the said parking services.

After completion of the period of contract, the petitioner approached the respondents for seeking release of the security amount, however, no heed was paid to the same. The present petition was thereafter filed as the respondents fail to refund the security deposit withheld for no valid reason.

A response on behalf of respondents no. 2 and 3, i.e. the Director General-cum-Transport, Commissioner, Haryana Roadways and the General Manager, Haryana Roadways, Karnal, respectively, was filed wherein the factual aspect has not been disputed. It has however been pointed out that as per Clause 11 of the agreement signed between the parties, the petitioner was liable to pay all applicable taxes and that the petitioner was requested by respondent no. 3 to deposit the service tax which was not done. Resultantly, the amount in question was rightly withheld. The relevant extract of the response as adopted in the preliminary submissions is extracted as under:-

3. "That the lease of the Cycle Stand ended on 31-03-2013. However, the petitioner neither deposited the amount of Service Tax due in the office of Respondent No.3 for further depositing with the Central Excise and Service Tax Department nor deposited the

service tax due with the department concerned. The petitioner was requested many times to deposit service tax. However, the petitioner did not deposit the service tax. A copy of such letter dated 07-03-2012 is annexed as ANNEXURE 'R-1' and its true English translated copy is annexed as ANNEXURE 'R-1/T'. Similar letters were written to the petitioner on 20-03-2012, 06-04-2012, 26-06-2012 and so on till last letter dated 23-12-2014. In this regard, a letter dated 14-11-2011 was written by the then General Manager, Haryana Roadways, Karnal to Respondent No.6 (Superintendent, Central Excise and Service Tax Department, Karnal) seeking information regarding levy of service tax on Cycle Stand parking service. A copy of letter dated 14-11-2011 is annexed as ANNEXURE R-2' and its true English translated copy is annexed as ANNEXURE 'R-2/T'. The respondent No.6 replied vide letter dated 22-11-2011 that the amount received in respect of renting of immovable propriety which is used for furtherance of business or commerce is liable to taxed. A copy of the letter dated 22-11-2011 is annexed as ANNEXURE 'R-3' Thereafter, another letter dated 03-10-2013 was written by the then General Manager, Haryana Roadways, Karnal to respondent No.6 with the request to inform the relevant date from which the service tax on Cycle Stand parking was payable. A copy of the letter dated 03-10-2013 is annexed as ANNEXURE R-4' and its true English translated copy is annexed as ANNEXURE 'R-4/T". Respondent No.6 vide letter No.10-10-2013 replied that the Service Tax is payable w.e.f. 01-06-2007. Relevant part of the letter is reproduced for kind perusal of this Hon'ble Court as under:

"It is once again re-iterated that "Renting of Immovable Property" in furtherance of business or commerce, which includes Renting of Immovable Property for Cycle stand parking is liable to Service Tax with effect from 01-06-2007 & falls under Section 65(105) (zzzz) of Finance Act, 1994.

As is apparent, the above referred immovable property is being used in furtherance of commercial activity, i.e., Cycle Stand Parking, the rent received from such property is liable to Service Tax."

A copy of the letter dated 10-10-2013 is annexed as ANNEXURE 'R-5. Therefore, the petitioner is liable not only to pay service tax at the rate applicable at relevant time, but also to pay interest and penalty as payable under the Service Tax law because the petitioner has not paid the Service Tax right from 04-10-2011 (Date of start of lease till date) on one or another pretext. Hence, present civil writ petition is liable to be dismissed at the outset.

4. That the petitioner has concealed true and material facts from this Hon'ble Court. The petitioner has prayed to issue a writ in the nature of mandamus directing the respondents to decide legal notice dated 28-08-2013 (Annexure P-4) and dated 02-06-2014 (Annexure P-5) as the same are allegedly not decided/replied by the respondent. It is submitted that legal notice dated 28-08-2013 was considered and replied. A copy of the reply dated 17-09-2013 sent by the then General Manager, Haryana Roadways, Karnal to the counsel of the petitioner is annexed as ANNEXURE 'R-6' and its true English translated copy is annexed as ANNEXURE R-6/T". Therefore, the legal notice dated 28-08-2013 Annexure P-4) has been properly considered and replied. However, no action has been taken nor it was required to take any action

on notice dated 02-06-2014 (Annexure P-5) being similar to the previous notice that has been duly replied.

The petitioner has also mentioned wrong facts in the civil writ petition. It has been prayed by the petitioner that the respondent be directed to release Rs.1,56,000/- lying in the account of Respondent No.3 to the petitioner along with interest, whereas, the amount of Rs.1,56,000/- is deposited in the bank in the shape of fixed deposit in the name of the petitioner himself and the F.D. has been only pledged to Respondent No.3. Therefore, no amount is lying in the account of respondent No.3 as alleged by the petitioner and the interest, if any, is also being credited in the name of the petitioner itself. The petitioner has also mentioned wrongly in para no.5 of the civil writ petition that he had also taken Cycle Stand at Bus Stand, Pipli (Kurukshetra) on lease. However, no service tax has been paid by him at Kurukshetra. It is submitted that in this regard a letter was written to the General Manager, Haryana Roadways, Kurukshetra seeking clarification on the issue. The General Manager, Haryana Roadways, Kurukshetra vide his letter dated 23-06-2015 has informed that Sh.Sham Lal (Petitioner) has taken contract of Cycle Stand, Pipli (Kurukshetra) in the year 2008-09 and complete service tax has been collected from him. A copy of the letter dated 23-06-2015 is annexed as ANNEXURE 'R-7' and its true English translated copy is annexed as ANNEXURE R-7/T'. Hence, present civil writ petition is an abuse of process of law. The petitioner has not entitled for any relief and the civil writ petition is liable to be dismissed with exemplary costs.

Counsel appearing on behalf of respondents no. 5 and 6, i.e. the Central Excise as it was then, has handed over a communication dated 01.11.2018 sent by the Assistant Commissioner of the Central Excise to the office of the Advocate General pointing out that the service tax was not applicable to the cycle parking stand in the given facts of the case. The relevant extract of the aforesaid communication bearing C.No. GST-20/Rev & Legal/KNL/41/208-19/3514, dated 30.10.2018, is extracted as under:-

Thus, on the issue of applicability of service tax on the vacant land used for parking of cycle, this office is of the view that the service tax was not applicable during the relevant period as per the definition of "Renting of Immovable Property Services" as contained under clause (zzzz) of Sub-Section (105) of Section 65 of the Finance Act, 1994.

Further, it is also brought to your goodself knowledge that during the period of dispute involved in the CWP No.19181 of 2014 i.e. 04.10.2011 to 31.03.2012 and 2012-13, when Sh. Shyam Lal was contractor of land for parking of Cycle/Scooter, no show cause notice had ever been issued to M/s. Haryana Roadways, Karnal since M/s. Haryana Roadways had started payment of service tax by self-assessing their service tax liabilities having themselves registered vide registration number AAABH0247CSD001 and had started filing ST-3 Returns w.e.f. Apr 2011. It is prerogative of an assessee to compute/assess its service tax liability as per the provisions of law by keeping in mind the exempted as well as taxable services and to file correct & true ST-3

Returns. In such ST-3 Returns, as prescribed under the Finance Act, 1994 read with Service tax Rules, 1994, no bifurcation of the value of the taxable services or exempted services had been provided by M/s. Haryana Roadways, Karnal. Thus, this office is not in a position to ascertain that whether the service tax on the amount of rent received against Renting of Immovable Property Services includes the amount in respect of land for parking of Cycle / Scooter. Hence, on the issue of charging of service tax from Sh. Shyam Lal by M/s. Haryana Roadways, Karnal & deposit thereof to the Govt. Account; no comments can be offered by this office. The copy of ST-3 Returns for the period of dispute is enclosed herewith for kind perusal.

It is also worthwhile to mention here that earlier, two show cause notices dated 10.07.2009 & 21.04.2010 (copies enclosed) for amounting to Rs.6,18,680/- & Rs 2,19,202/ covering the period 01.05.2006 to 31.01.2009 & 01.02.2009 to 31.12.2009 respectively were issued to M/s. Haryana Roadways, Karnal under Renting of Immovable Property Services. The amount involved in the said SCNs did not include the amount in respect of land for parking of Cycle/Scooter. In this regard, the letters C. No.1992 dated 24.02.2009 & 9267 dated 06.09.2010 (copies enclosed) of M/s. Haryana Roadways, Karnal showing the rent received in respect of Shops, Juice Bar, STD Booths only are enclosed herewith since on the basis of such letters the above said SCNs were issued.

Therefore, it is submitted that this office had never demanded service tax from M/s. Haryana Roadways, Karnal in lieu of land for parking of Cycle/ Scooter.”

The respondent department for service tax has thus supported the claim of the petitioner.

It is evident from a perusal of the aforesaid response filed by the respective authorities that the stand of respondents no. 2 and 3 was to the effect that they had withheld the amount solely for the reason that service tax liability had not been cleared by the petitioner whereas the Department of Central Excise (as it was then), now the Assistant Commissioner Central GST clearly states that in the present case service tax was not applicable and that no demand of service tax has ever been raised by the concerned department.

Consequently, the retention of the aforesaid security money deposited by the petitioner is *per se* not justified. The same is accordingly directed to be refunded expeditiously and preferably within a period of four weeks of the receipt of the certified copy of this order. It has also been pointed out by the petitioner that the aforesaid amount has been kept in a Fixed Deposit by respondents no. 2 and 3. The interest so accrued on the aforesaid deposit shall also be released in favour of the petitioner.

The petition is accordingly allowed.

October 29, 2022
nitin

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No