21st SURANA & SURANA NATIONAL CORPORATE LAW MOOT COURT COMPETITION & NATIONAL JUDGEMENT WRITING COMPETITION 2022-2024
MARCH 2024

BEFORE

THE HON'BLE HIGH COURT OF KARNATAKA
AT BENGALURU

WP No. 50000 of 2024 & WP No. 50001 of 2024

SOUTHERN OPERATING SYSTEMS INDIA PVT. LTD.
BENGALURU ……. PETITIONER

V.

ADDITIONAL COMMISSIONER OF GST AND OTHERS……RESPONDENT

MOST REVERENTLY SUBMITTED TO THE LEARNED JUDGES OF THE HON"BLE HIGH COURT OF KARNATAKA, BENGALURU

MEMORIAL on behalf of the **RESPONDENT**

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STATEMENT OF JURISDICTION

The petitioner, Southern Operating Systems India Pvt. Ltd Bengaluru, has approached the Hon'ble High Court of Karnataka under Article 226[1] of the Constitution of India against the demand orders of the GST department to pay taxes by relying on the definition of 'services' and Schedule I read with Section 7 to the GST Act, 2017

THE PRESENT MEMORANDUM SETS FORTH THE FACTS, CONTENTIONS AND ARGUMENTS ON BEHALF OF THE RESPONDENT IN THE INSTANT CASE

The Respondent reaffirms that they shall accept any judgement of this Hon'ble Court as finaland binding upon itself and shall execute it in its entirety and in good faith.

[1] Article 226 (1) clearly states that every High Court shall have the powers throughout the territories in relation to which it exercised jurisdiction to issue writ or orders to any person or authority.

STATEMENT OF FACTS

BACKDROP

Southern Operating Systems India Pvt Ltd (SOS India), established in 2010 as a subsidiary of Southern Operating Systems Inc. (SOS US), aimed to tap into the software development market in Asia. To achieve this, SOS US sent highly skilled personnel to India, with salaries initially borne by SOS US and later reimbursed by SOS India.

EVENTS LEADING TO PETITION BEFORE THE COURT

However, the reimbursement led to a dispute with the tax authorities regarding service tax liabilities for importing services (expat employees) under the reverse charge mechanism.

Despite arguments from SOS India that the reimbursement was on a cost-to-cost basis and did not involve any profit markup, the Karnataka High Court ruled that SOS India was liable to pay service tax. In 2022, the Supreme court in the similar case held the Indian company liable.This decision prompted SOS India to reconsider its secondment strategy, particularly with the introduction of the Goods and Services Tax Act in 2017.

In response to the new tax regime, SOS India devised a tax planning strategy involving the termination of expat services from SOS US and their direct hiring by SOS India. This move was intended to mitigate GST implications, as services rendered by Indian employees to an Indian company were not subject to GST. However, the GST department issued show cause notices questioning this arrangement and demanding payment of GST for the entire period.

THE PROCEEDINGS

SOS India vehemently contested the notices, arguing that the expats were effectively Indian employees, especially since they had been physically present in India for over a decade. Despite these arguments, the GST department confirmed the demands, leading SOS India to file writ petitions before the High Court of Karnataka to challenge the GST liability.

STATEMENT OF ISSUES

1. WHETHER THE WRIT PETITION IS MAINTAINABLE.

2. WHETHER THE DEPARTMENT HAS JURISDICTION TO ISSUE THE SCNS IF THE SERVICES WERE NOT LIABLE TO GST PER SE?

3. WHETHER THE SECONDMENT ARRANGEMENT IN GENERAL LIABLE TO GST.

4. WHETHER BASED ON THE EXPERIENCE LETTERS ISSUED FOR THE PERIOD FROM 2010 TO 2022, IT CAN BE SAID THAT THERE WILL BE NO GST IMPLICATION FOR THIS PERIOD.

5. WHETHER BASED ON THE ARRANGEMENT FROM 01.06.2022, IT CAN BE SAID THAT THERE WILL BE NO GST IMPLICATION.

6. WHETHER THERE IS ANY IMPORT OF SERVICES UNDER GST AND WHETHER THE INDIAN COMPANY IS LIABLE TO PAY GST UNDER REVERSE CHARGE MECHANISM.

SUMMARY OF ARGUMENTS

1. WHETHER THE WRIT PETITION IS MAINTAINABLE.

The writ petition filed under Article 226 of the Indian Constitution challenges show cause notices issued by the GST department is not maintainable. The validity of the show cause notices is not appreciable as it is valid and the department has the jurisdiction to issue the show cause notice, making the High Court the appropriate forum.

2. WHETHER THE DEPARTMENT HAS JURISDICTION TO ISSUE THE SCNS IF THE SERVICES WERE NOT LIABLE TO GST PER SE?

The counsel submits that GST Department has the jurisdiction to issue SCNS as the secondment of employees from the SOS US to SOS India amounts to import of services. The issuance of show cause notices is governed by Sections 73 and 74 of the Central Goods and Services Tax Act, 2017. The GST department has the authority to issue show cause notices based on its assessment of potential non-compliance with GST provisions. The mere absence of GST liability does not automatically preclude the department from initiating enforcement actions. The jurisdiction to issue notices extends to cases where there are doubts or discrepancies related to tax compliance. While the petitioner emphasizes the lack of inherent liability, the respondent contends that the department's role includes investigating and addressing any potential irregularities.

3. WHETHER THE SECONDMENT ARRANGEMENT IN GENERAL LIABLE TO GST.

The counsel humbly submits that the secondment arrangement in general liable to GST. During the secondment, the terms of employment of the seconded employees remained in accordance with the policy of the overseas employer and upon the completion of the secondment, those employees returned to their original employers, i.e., the overseas employer. The overseas employer had only 'loaned their services on a temporary basis'.

4. WHETHER BASED ON THE EXPERIENCE LETTERS ISSUED FOR THE PERIOD FROM 2010 TO 2022, IT CAN BE SAID THAT THERE WILL BE NO GST IMPLICATION FOR THIS PERIOD.

The issuance of retrospective experience letters by the Indian company does not alter the continuous provision of services by expats seconded from the US company. Despite changes in

employment documentation, the nature of services rendered and their utilization by the Indian company remain consistent throughout the period in question.

5. WHETHER BASED ON THE ARRANGEMENT FROM 01.06.2022, IT CAN BE SAID THAT THERE WILL BE NO GST IMPLICATION.

In essence, the substance of the transaction remains unchanged despite the alteration in contractual terms. The expatriate employees continue to provide valuable services to the Indian company, and the historical arrangement of secondment embodies a tangible service transaction between the US and Indian companies. The GST Act aims to tax the supply of goods and services made in the course or furtherance of business activities. Despite the change in the contractual arrangement, the essence of the services provided by the expatriate employees remains unchanged. Therefore, the transaction may still fall within the ambit of taxable supply under GST, warranting GST implications.

6. WHETHER THERE IS ANY IMPORT OF SERVICES UNDER GST AND WHETHER THE INDIAN COMPANY IS LIABLE TO PAY GST UNDER REVERSE CHARGE MECHANISM.

There is import of services under GST. Consequently, the reverse charge mechanism, typically triggered in cases of imported services, does apply. Consequently, the transaction qualifies as an import of services under GST law, necessitating the Indian company's liability to pay GST under the reverse charge mechanism.

ARGUMENTS ADVANCED

I. WHETHER THE WRIT PETITION IS MAINTAINABLE.

The respondent humbly submits that the writ petition filed by the petitioner is not maintainable under the Article 226 of the Constitution of India. In most of the cases, high court have no authority to interfere in issue of show cause notice.

In Union of India V. Vicco Laboratories[2]

HELD - Normally the writ should not interfere at the stage of issuance of show cause notice by the authorities. In such a case the parties get ample opportunity to put forth their contentions before the authorities concerned and to satisfy the authorities concerned about the absence if case for proceeding against the person against whom the show cause notice has been issued. Abstinence from interference at the stage of issuance of show cause notice in order to relegate the parties to the proceedings before the authorities concerned is the normal rule. However, the said rule is not without any exceptions. Where a show cause notice is issued either without jurisdiction or an abuse of process of law, certainly in that case, the writ court would not hesitate to interfere even at the stage of show cause notice. The interference at the show cause notice stage should be rare and not in a routine manner. Mere ascertain by the petitioner that notice was without jurisdiction and/or abuse of process of law would not suffice. It should prima facie be established. Where factual adjudication would be necessary interference is ruled out.

II. WHETHER THE DEPARTMENT HAS JURISDICTION TO ISSUE THE SCNS IF THE SERVICES WERE NOT LIABLE TO GST PER SE?

The counsel submits that GST Department has the jurisdiction to issue SCNS as the secondment of employees from the SOS US to SOS India amounts to import of services. The issuance of show cause notices is governed by Sections 73 and 74 of the Central Goods and Services Tax Act, 2017.

2.1 Jurisdiction Of GST Department

The GST department has the authority to issue show cause notices based on its assessment of potential non-compliance with GST provisions. The mere absence of GST liability does not automatically preclude the department from initiating enforcement actions. The jurisdiction to issue notices extends to cases where there are doubts or discrepancies related to tax compliance. While the petitioner emphasizes the lack of inherent liability, the respondent contends that the department's

[2]2007 (11) TMI 21 (Supreme Court)

role includes investigating and addressing any potential irregularities. The respondent acknowledges the need for clarity and fairness but emphasizes that the law empowers the department to take necessary actions. The respondent argues that the issuance of show cause notices is within the department's jurisdiction, even when services are not inherently liable to GST. The final determination will depend on legal interpretation and specific circumstances.

2.2 Grounds for Challenging Show Cause Notices:

A Show Cause Notice (SCN) is issued when a government official is held prima facie responsible for misconduct. The delinquent is informed of the alleged misconduct and given an opportunity to respond. The SCN can be challenged by filing a writ petition before the High Court under Article 226.

In the case of Kirloskar Computer Service Ltd. Vs. Union of India[3] "15. On the basis of the decisions cited it appears that the court in exercise of its jurisdiction under Art. 226 of the Constitution will interfere with a show cause notice in the following circumstances : When the show cause notice ex facie or on the basis of admitted facts does not disclose the offence alleged to be committed; When the show cause notice is otherwise without jurisdiction; When the show cause notice suffers from an incurable infirmity; When the show cause notice is contrary to judicial decisions or decisions of the Tribunal;"

III. WHETHER SECONDMENT ARRANGEMENT IN GENERAL LIABLE TO GST.

The counsel humbly submits that the secondment arrangement in general liable to GST. During the secondment, the terms of employment of the seconded employees remained in accordance with the policy of the overseas employer and upon the completion of the secondment, those employees returned to their original employers, i.e., the overseas employer. The overseas employer had only 'loaned their services on a temporary basis'.

Once it is established that there was a provision of services and payment is made to an overseas entity towards such provision only, the fact that no markup is charged over the cost does not change the nature of services and does not affect taxability. The said principle was upheld in the decision of ***Centrica India Offshore (P) Ltd. In Centrica India Offshore***[4], an earlier ruling on the issue of secondment of employees, the Delhi High Court placed more importance on the legal relationship between the foreign entity and the secondees than the economic relationship between the secondees and the Indian entity. In Centrica, the court held that there was an absence of any

[3] [1998 (98) E.L.T 355 (Kar.),

[4] Centrica India Offshore Pvt Ltd v. CIT & Ors. [TS-237-HC-2014(DEL)]

employment relationship between the Indian entity and the secondees because direct costs of the secondees were borne by the overseas entities and the secondees could not sue the Indian entity for default in payment of salaries.

A recent ruling by the Supreme Court of India in the case of Northern Operating Systems reignited the tax debate on cross-border secondment of employees. The Court observed that the managerial and technical expertise provided by a secondee to the Indian entity qualifies as a provision of service by the foreign entity to the Indian entity. The Court thereby held that reimbursements made by the Indian entity represent the consideration paid for the services rendered by the foreign entity and were subject to service tax in India.

After examining the facts of the secondment arrangement, it is observed that the secondees remained employees of the foreign entity because:

i. the secondees were under the operational control of the Indian entity in terms of their daily work only during the secondment period, and even during that period, the secondees legally remained employees of the overseas group company;

ii. the foreign entity deputed the secondees to their posts and paid their salaries;

iii. the Indian entity had the right to ask the secondees to return home (if they failed to perform their duties satisfactorily); however, even then the secondees remained employees of the foreign entities; and

iv. the secondees' terms of employment during the secondment period were in accordance with the policies of the overseas group entities.

The Supreme Court has examined the agreements in detail and applied the principle of 'substance over form' to determine the relationship between the parties and nature of the services provided.

3.1 WHETHER IT IS A CONTRACT FOR SERVICE OR CONTRACT OF SERVICE?

The counsel states that by the aforesaid facts it is evident that the service provided by the seconded employee to SOS India will be considered as contract for service. A contract for service occurs when an individual provides services as an independent contractor, not as an employee. The contractor operates independently and is not under the direct control of the recipient.

Mere test of control is not adequate to discern if an employer-employee relationship exists. Relying upon the ***Sushilaben Indravadan Gandhi v. New India Assurance Co. Ltd***[5]**.** case, the Court observed that one single test may not be adequate to discern the nature of the contract.

During the secondment, the terms of employment of the seconded employees remained in accordance with the policy of the overseas employer and upon the completion of the secondment,

[5] AIR 2020 SUPREME COURT 1977, AIRONLINE 2020 SC 467

those employees returned to their original employers, i.e., the overseas employer. The overseas employer had only 'loaned their services on a temporary basis'.

A "conglomerate of all applicable tests taken on the totality of the fact situation" has to be applied in order to arrive at an answer. To determine whether the arrangement between the assessee and the seconded employees is a contract of service or contract for service, the Court applied the 'substance over form' test which requires a close examination of the terms of a contract.

In Sundaram Finance Ltd. Versus The State of Kerala And Another[6] the Supreme Court has held that the true effect of transaction must be determined from the terms of the agreement considered in the light of surrounding circumstance. In each case, the court can, unless prohibited by statute, go behind the documents and determine the nature of transaction whatever may be form of documents.

In Moped India Limited versus Assistant Collector of c. Ex., Nellore And others,[7]the Supreme Court held that while interpreting the terms of an agreement, court must look to the substance rather than the form and observed as follows:

"Now it is true that this amount allowed to the dealers has been referred to in the agreement as commission but the label given by the parties cannot be determinative because it is, for the court to decide whether the amount is trade discount or not, whatever be the name given to it."

3.2 EMPLOYER – EMPLOYEE RELATIONSHIP

One of the pioneer judgements, in which taxability of secondment arrangement was discussed is ***Morgan Stanley Mutual Fund vs Kartick Das***[8] [2007] 162 Taxman 165 (SC). In the said ruling, Supreme Court of India had ruled that the employee of foreign company would not become an employee of Indian company in following scenario:

i. foreign company retains control over the secon employees' terms and employment;

ii. foreign company continues to be responsible for the work of seconded employees; and

iii. Seconded employees continue to be on the payroll of the foreign company or seconded employees continue to have lien on their jobs with the foreign company

Thus, the counsel humbly submit that the secondment arrangement between SOS India and US Company does not fall within the purview of the Goods and Services Tax (GST) Act, 2017.

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[6] 1965 (11) TMI 123 - SUPREME COURT,

[7] 1985 SCR, SUPL. (1) 954 1986 SCC (1) 125, AIRONLINE 1985 SC 12, 2011 (15) SCC 229, 1986 (1) SCC 125, (1986) 23 ELT 8, (2013) 2 SCALE 40, 2014 (13) SCC 703

[8] [2007] 162 Taxman 165 (SC).

1. The services provided by seconded employees are not considered goods or supplies under the GST framework. Therefore, the liability for GST does not apply to such arrangements.
2. The Respondent relies on the Supreme Court judgment in ***C.C., C.E. & S.T., Bangalore (Adjudication) Vs Northern Operating Systems Pvt. Ltd***[9]., wherein it was held that secondment of employees is not manpower supply service liable for GST.
3. The Respondent further contends that the practical approach aligns with this understanding, and secondment arrangements are exempt from GST.
4. The Respondent prays for the honorable court's consideration of the legal principles and the specific facts of this case while adjudicating the matter.
5. The Respondent seeks a favorable order declaring that the secondment arrangement in question is not subject to GST liability.

IV. WHETHER BASED ON THE EXPERIENCE LETTERS ISSUED FOR THE PERIOD FROM 2010 TO 2022, IT CAN BE SAID THAT THERE WILL BE NO GST IMPLICATION FOR THIS PERIOD.

The counsel humbly submits that there will be GST implications based on the experience letters issued for the period from 2010 to 2022 thorough following submissions,

4.1. CONTINUOUS EMPLOYMENT

The issuance of retrospective experience letters by the Indian company does not alter the continuous provision of services by expats seconded from the US company. Despite changes in employment documentation, the nature of services rendered and their utilization by the Indian company remain consistent throughout the period in question.

7. Scope of supply. —

(1) For the purposes of this Act, the expression “supply” includes—

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

(b) import of services for a consideration whether in the course or furtherance of business; 1 [and]

(c) the activities specified in Schedule I, made or agreed to be made without a consideration

The expansive definition of "supply" under GST law encompasses all forms of transactions involving goods or services for consideration in the course or furtherance of business. This establishes that the provision of services by expats, whether under secondment or direct

[9] 2022-TIOL-48-SC-ST-LB

employment, falls within the ambit of taxable supplies under the GST Act. The continuous provision of services by expats to the Indian company, irrespective of changes in employment documentation, constitutes a supply under GST law, thereby establishing the basis for tax liability.

4.2. GST IMPLICATIONS AND TAX LIABILITY:

The services provided by expats, whether under secondment or direct employment, fall within the purview of the GST Act as they are offered in the course or furtherance of business. The restructuring of employment arrangements does not absolve the Indian company of its tax liability, especially considering its prior acknowledgment and acceptance of similar tax obligations under the service tax regime.

The doctrine of economic reality emphasizes the substance of transactions over their legal form. In the context of the services provided by expats, this doctrine underscores the importance of considering the true nature of the arrangement, regardless of the restructuring of employment. Despite the retrospective issuance of experience letters and changes in employment status, the economic substance of the services rendered by expats remains unchanged, warranting the application of GST liabilities based on the actual provision of services.

The actions taken by the Indian company, including the retrospective issuance of experience letters and restructuring of employment, appear to be aimed at evading tax liabilities rather than genuine business considerations. Upholding the demand orders and imposing penalties is crucial to prevent tax evasion and maintain consistency in the interpretation and application of tax laws, thereby safeguarding tax revenues and the integrity of the tax system.

The doctrine of beneficial interpretation suggests that GST laws should be construed in a manner that benefits revenue collection, particularly in cases involving tax evasion or avoidance. In the present case, the doctrines of supply and economic reality, when interpreted in a manner that favors revenue collection, support the imposition of GST liabilities on the services provided by expats to the Indian company, regardless of the restructuring of employment arrangements.

4.3. TAX EVASION BY THE COMPANY

The attempt to retroactively change the employment status of the expatriates from 2010 could be viewed as a deliberate restructuring to avoid GST, which may not be permissible. Retroactive changes to employment arrangements may raise questions about the bona fides of the arrangement and could be subject to scrutiny by the tax authorities. If there is evidence of deliberate tax evasion, the tax authorities could invoke the extended period of limitation under Section 74(1) of the CGST Act.

Any attempt to evade GST liability through restructuring or retroactive changes to employment arrangements could be construed as deliberate evasion, warranting the application of the

extended period of limitation. This aligns with the principle of actus non facit nisi mens sit rea, which implies that an act does not constitute guilt unless the mind is guilty, indicating that deliberate intent to evade taxes should be penalized accordingly.

V. WHETHER BASED ON THE ARRANGEMENT FROM 01.06.2022, IT CAN BE SAID THAT THERE WILL BE NO GST IMPLICATION.

The counsel humbly submits that there will be GST implication based on the arrangement from 01.06.2024 through following submissions,

5.1. CONTINUITY OF EMPLOYMENT RELATIONSHIP:

The transition of expatriate employees from being seconded by the US company to being directly employed by the Indian company post-01.06.2022 does not disrupt the continuity of the employment relationship established prior to this date. Rather, it represents a restructuring of the pre-existing employment arrangement, wherein the expatriate employees continue to render their services to the Indian company.

Despite the alteration in contractual terms, the essence of the employment relationship remains unaltered. The expatriate employees, who were previously seconded by the US company, maintain their professional obligations and responsibilities towards the Indian company. Their expertise, skills, and contributions to the Indian company's operations persist seamlessly, underscoring the uninterrupted provision of services.

Furthermore, the direct employment by the Indian company can be perceived as a mere administrative adjustment rather than a substantive change in the nature of the employment relationship. The expatriate employees continue to function within the same capacity, fulfilling their duties and obligations towards the Indian company as they did under the secondment arrangement.

Therefore, despite the shift in contractual terms, the underlying employment relationship between the expatriate employees and the Indian company persists, signifying a continued provision of services by the expatriate employees to the Indian company. This continuity underscores the rationale for maintaining GST implications on the services provided by the expatriate employees, even post-01.06.2022.

5.2. DEEMED CONSIDERATION FOR SERVICES:

Despite the absence of direct reimbursement of salaries from the Indian company to the US company post-01.06.2022, the ongoing provision of services by expatriate employees to the Indian company can be viewed through the lens of the substance over form doctrine. This principle emphasizes the importance of considering the economic substance of a transaction over its legal form.

Under the substance over form doctrine, the arrangement of secondment, whereby expatriate employees were provided by the US company to the Indian company, can be interpreted as a service provided by the US company to the Indian company. Despite the change in the employees' direct employment status, the historical arrangement of secondment embodies a tangible service transaction between the two entities.

The salaries paid to these expatriate employees by the US company can be deemed as consideration for the services rendered to the Indian company. Even though the remuneration is not directly reimbursed by the Indian company, it serves as implicit consideration for the services provided by the expatriate employees to the Indian company, thereby triggering GST liability under the reverse charge mechanism.

In essence, the substance of the transaction remains unchanged despite the alteration in contractual terms. The expatriate employees continue to provide valuable services to the Indian company, and the historical arrangement of secondment embodies a tangible service transaction between the US and Indian companies.

The GST Act aims to tax the supply of goods and services made in the course or furtherance of business activities. Despite the change in the contractual arrangement, the essence of the services provided by the expatriate employees remains unchanged. Therefore, the transaction may still fall within the ambit of taxable supply under GST, warranting GST implications.

VI. WHETHER THERE IS ANY IMPORT OF SERVICES UNDER GST AND WHETHER THE INDIAN COMPANY IS LIABLE TO PAY GST UNDER REVERSE CHARGE MECHANISM.

The counsel humbly submits that there is import of services under GST thus, the Indian Company is liable to pay GST under reverse charge mechanism thorough following submissions,

6.1. CLEAR SUPPLY OF SERVICES:

The secondment agreement between the US company and the Indian company unequivocally represents a supply of services. This agreement facilitates the transfer of highly skilled employees from the US to India, establishing a clear transactional relationship wherein services are rendered by the US company to the Indian company.

The expertise, know-how, and contributions of these expatriate employees are indispensable to the operations and advancement of the Indian company, particularly within the niche software development sector. Their involvement extends far beyond mere personnel provision; instead, it encompasses a comprehensive range of services crucial to the Indian company's effective

functioning and sustained growth.

These expatriate employees bring with them specialized skills, technical knowledge, and innovative insights that significantly enhance the Indian company's capabilities and competitiveness in the global software market. Their contributions go beyond the physical presence in India; they actively engage in strategic decision-making, project management, knowledge transfer, and collaborative efforts to drive innovation and excellence within the organization.

Moreover, the secondment agreement entails more than just the temporary assignment of personnel; it involves the transfer of intangible assets such as proprietary methodologies, industry best practices, and intellectual property rights, all of which are essential for the Indian company's continued success and market leadership.

Therefore, it is evident that the secondment agreement between the US company and the Indian company represents a substantive supply of services, encompassing a wide array of expertise, know-how, and contributions critical to the Indian company's operations and growth within the niche software development sector.

6.2. RECIPIENT'S LIABILITY UNDER REVERSE CHARGE MECHANISM:

According to Section 9(3) of the CGST Act, 2017, it is explicitly stipulated that when specified services are received by a registered person from a supplier located outside India, the recipient bears the liability for GST payment under the reverse charge mechanism.

9. Levy and collection. —

(3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

In the context of the present case, the Indian company emerges as the recipient of services provided by expatriate employees from the US company. As such, the Indian company assumes the obligation to discharge the GST liability as per the provisions delineated within the CGST Act, 2017.

The expatriate employees, acting as conduits for the provision of services from the US company to the Indian company, effectively represent the supply chain through which these services are furnished. Although physically situated within the premises of the Indian company, the services rendered by these expatriate employees originate from the US company, thereby necessitating adherence to GST regulations governing the import of services.

In light of this statutory provision, it becomes evident that the Indian company, as the recipient of services provided by expatriate employees from the US company, is unequivocally obligated to

fulfill the requisite GST liability under the reverse charge mechanism. Failure to adhere to this regulatory framework would contravene the provisions outlined within the CGST Act, 2017, and undermine the integrity of the GST regime.

6.3. IMPORT OF SERVICES UNDER GST FRAMEWORK:

The transaction between the US company and the Indian company unequivocally satisfies the criteria for import of services as delineated within the GST framework.

(11) ‘‘import of services” means the supply of any service, where—

(i) the supplier of service is located outside India;

(ii) the recipient of service is in India; and

(iii) the place of supply of service is in India;

Section 2(11) of the IGST Act, 2017 provides a definitive definition of import of services, characterizing it as the supply of any service where the supplier is located outside India, the recipient is in India, and the place of supply of the service is in India.

In the present scenario, the US company, being situated outside India, indeed supplies services to the Indian company, which is located within the territorial bounds of India. Additionally, the services provided by the expatriate employees, acting as intermediaries for the transmission of services from the US company to the Indian company, are actively utilized and consumed within the geographical confines of India.

Given these circumstances, the transaction indisputably fulfills all the stipulated criteria for the import of services under the GST law. The US company, functioning as the supplier of services, operates from a jurisdiction outside India, while the Indian company, as the recipient of these services, is situated within India. Furthermore, the place of supply of the services, i.e., where the services are ultimately utilized, resides within the territorial jurisdiction of India.

Consequently, the transaction qualifies as an import of services under GST law, necessitating the Indian company's liability to pay GST under the reverse charge mechanism.

PRAYER

WHEREFORE, IN THE LIGHT OF THE ISSUES RAISED, ARGUMENTS ADVANCED AND AUTHORITIES CITED, IT IS PRAYED THAT THIS HON'BLE HIGH COURT MAY BE PLEASED TO:

i) Dismiss the petition filed by the petitioners under Article 226 of the Indian Constitution

AND PASS ANY OTHER RELIEF THAT THIS HON'BLE COURT MAY DEEM FIT IN THE INTERESTS OF JUSTICE, FAIRNESS, EQUITY AND GOOD CONSCIENCE, ALL OF WHICH SHALL BE SUBMITTED.

Sd /-

COUNSEL FOR THE RESPONDENT