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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 18.09.2023*

+ W.P.(C) 6793/2023

DELHI METRO RAIL CORPORATION LTD. .... Petitioner

Through: Mr Adarsh Tripathi, Mr Vikram  
Singh Baid and Mr Ajitesh Garg,  
Advocates.

versus

THE ADDITIONAL COMMISSIONER,  
CENTRAL GOODS AND SERVICES TAX  
APPEALS II & ORS.

..... Respondents

Through: Mr Atul Tripathi, SSC with Mr V.K.  
Attri, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**HON'BLE MS. JUSTICE TARA VITASTA GANJU**

**VIBHU BAKHRU, J.**

1. The petitioner (hereafter 'DMRC') has filed the present petition impugning an order (Order-in-Appeal No.241/2022-2023) dated 24.02.2023 passed by respondent no.1, whereby the DMRC's appeal against an order dated 04.07.2022 passed by respondent no.2 was rejected.

2. The DMRC is, essentially, aggrieved by denial of its claim for the refund of ₹2,90,520/- as deposited by it under a mistake. There is no dispute that the refund as claimed would be payable to the DMRC. However, its refund claim was rejected on the ground that the application for refund was filed beyond the period of two years as stipulated under Section 54(1) of the Central Goods and Services Tax Act, 2017 (hereafter '**the CGST Act**').

3. The DMRC was engaged by respondent no.3 (Surat Municipal



Corporation) for preparation of a project report for the purpose of development of Metro Rail Project for the City of Surat, Gujarat. In terms of its engagement, the DMRC rendered services for the preparation of Detailed Project Report for the aforementioned project. And on 11.08.2017, raised an invoice of an amount of ₹19,04,520/- for the services rendered. The invoiced amount included Goods and Services Tax (GST) of ₹2,90,520/- computed at the rate of 18%.

4. Respondent no.3 paid an amount of ₹16,14,000/- against the said invoice but did not pay the amount of GST as included in the said invoice. In order to ensure that there is no failure in complying with its statutory provisions, the DMRC deposited a sum of ₹2,90,520/- with the GST Authorities for the month of August, 2017 (under Form GSTR-3B).

5. Thereafter, the DMRC was informed by respondent no.3 that in terms of Notification no.12/2017 - Central Tax (Rate) dated 28.06.2017 issued by the Ministry of Finance, Government of India, the services billed under the invoice dated 11.08.2017, were not chargeable to GST.

6. Thereafter on 02.05.2022, the DMRC filed an application for refund (in Form GST RFD-01) before respondent no.2 for the period of August, 2017. However, the said application was rejected by an order dated 04.07.2022 on the ground that the application for refund was filed after expiry of two years from the relevant date.

7. It is the DMRC's case that retaining the amount paid under a mistake would amount to collection of tax without the authority of law and thus, violates Article 265 of the Constitution of India.



8. The DMRC relies upon the decision of the Supreme Court in *State of Madhya Pradesh & Anr. v. Bhailal Bhai: AIR 1964 SC 1006*, in support of its contention that payment made under a mistake of law is required to be refunded. It is also contended on behalf of the DMRC that in similar facts, in *M/s Cosmol Energy Private Limited v. State of Gujarat: R/Special Civil Application No. 11905/2020, decided on 22.12.2020*, the Gujarat High Court accepted the aforesaid view, and directed refund of the GST paid under a mistake notwithstanding that the application for refund was made after expiry of a period of two years.

9. A plain reading of the decision of the Gujarat High Court in *M/s Cosmol Energy Private Limited v. State of Gujarat (supra)* indicates that the issue decided in the said case is similar to the one involved in the present case. The court had held that “*Section 54 of the CGST Act is applicable only for claiming refund of any tax paid under the provisions of the CGST Act and/or the CGST Act. The amount collected by the Revenue without authority of law is not considered as tax collected by them and, therefore, Section 54 is not applicable*”

10. This Court had called upon the respondents to ascertain whether the Department had accepted the aforesaid view or had appealed the decision of the Gujarat High Court in *M/s Cosmol Energy Private Limited v. State of Gujarat (supra)*.

11. Mr. Tripathi, learned counsel appearing for the respondents, fairly states that the Department has not filed any appeal against the decision of the Gujarat High Court in *M/s Cosmol Energy Private Limited v. State of Gujarat (supra)*.



12. Article 265 of the Constitution of India proscribes any levy or collection of tax except by authority of law. Concededly, GST is not payable by the DMRC in respect of the service of preparation of Detailed Project Report for respondent no.3. Thus, the amount of ₹2,90,520/- deposited by the DMRC on an erroneous belief that payment for services rendered by it were chargeable to tax, cannot be retained by the respondents.

13. It is well settled that GST is an indirect tax. The burden of such tax is inevitably borne by the final recipient. In the present case, respondent no.3 would be liable to reimburse the GST chargeable on services availed by it. But since GST is not payable in respect of such services, respondent no.3 has not paid the said amount.

14. The period of limitation for applying for a refund as prescribed under Section 54 of the CGST Act, would not apply where GST is not chargeable and it is established an amount has been deposited under a mistake of law.

15. In view of the above, we set aside the impugned order dated 24.02.2023 as well as the refund rejection order dated 04.07.2022 and direct the respondents to process the DMRC's claim for refund of ₹2,90,520/-.

16. The petition is allowed in the aforesaid terms.

**VIBHU BAKHRU, J**

**TARA VITASTA GANJU, J**

**SEPTEMBER 18, 2023**

**RK**

