



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF JANUARY, 2024

BEFORE

THE HON'BLE MR JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION NO. 2301 OF 2023 (T-RES)

BETWEEN:

M/S. YONEX INDIA PRIVATE LIMITED
A COMPANY INCORPORATED UNDER THE
COMPANIES ACT, 2013
HAVING REGISTERED OFFICE AT NO. 3
KIADB INDUSTRIAL AREA,
1ST PHASE, MYSORE ROAD,
KUMBALAGODU ,
BANGALORE 560 074

REPRESENTED HEREIN BY ITS AUTHORIZED
SIGNATORY MR. RYOICHI HANAWA

...PETITIONER

(BY SRI. ARUN KUMAR, SENIOR ADVOCATE FOR

SRI. M.V.SUNDARA RAMAN AND MS. BHAVANA
MENON, ADVOCATES)



AND:

1. UNION OF INDIA
THROUGH THE SECRETARY,
MINISTRY OF FINANCE,
DEPARTMENT OF REVENUE,
ROOM NO. 48C, NORTH BLOCK,
NEW DELHI 110 001



2. STATE OF KARNATAKA
THROUGH ITS PRINCIPAL SECRETARY,
FINANCE DEPARTMENT
VIDHANA SOUDHA
BANGALORE 560 001
3. COMMISSIONER OF COMMERCIAL TAXES
VANIJYA THERIGE KARYALAYA
GANDHINAGAR
BANGALORE 560 009
4. ASSISTANT COMMISSIONER OF COMMERCIAL TAXES
(AUDIT 2.8)
DG AND STO-2, RAJARAJESHWARI NAGAR
BANGALORE 560 098

...RESPONDENTS

(BY SRI. NARENDRA A, CGC FOR R1;
SRI. SHAMANTH NAIK, HCGP FOR R2 TO R4;
SRI. JEEVAN J. NEERALGI, ADVOCATE FOR R5 & R6)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO STRIKE DOWN THE IMPUGNED NOTIFICATIONS ISSUED BY R-1 AND 2 I.E., NOTIFICATION DTD 28.06.2017 BEARING NO.11/2017-CENTRAL TAX (RATE) VIDE ANNEX-A AT ENTRY NO.SAC 997171, AND NOTIFICATION DTD 28.06.2017 BEARING NO.08/2017-INTEGRATED TAX (RATE) VIDE ANNEX-B, AT ENTRY NO.SAC 997171, TO THE EXTENT THAT THEY PROVIDE FOR THE MACHINERY TO TAX HOLDING EQUITY OF SUBSIDIARY COMPANIES, AS BEING ULTRA VIRES THE CENTRAL GOODS AND SERVICES ACT, 2017, KARNATAKA GOOD AND SERVICES TAX ACT, 2017 AND INTEGRATED GOODS AND SERVICES TAX ACT, 2017 AND ETC.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:



ORDER

In this petition, the petitioner seeks for the following reliefs:

- a) *ISSUE an appropriate writ, direction or order to STRIKE DOWN the Impugned Notifications issued by Respondent Nos. 1 and 2 ie. Notification dated 28.06.2017 bearing No. 11/2017-Central Tax (Rate) (Annexure-A) at Entry No. SAC 997171, and Notification dated 28.06.2017 bearing No 08/2017-Integrated Tax (Rate) (Annexure-B), at Entry No. SAC 997171, to the extent that they provide for the machinery to tax holding equity of subsidiary companies, as being ultra vires the Central Goods and Services Act, 2017, Karnataka Good and Services Tax Act, 2017 and Integrated Goods and Services Tax Act, 2017;*

- b) *CONSEQUENTLY ISSUE an appropriate writ, direction or order to STRIKE DOWN the Explanatory Notes to the Scheme of Classification of Services (Annexure-C) at Entry No. 997171, to the extent that it provides for the machinery to tax the holding securities of (or other equity interests in) companies and enterprises for the purpose*



of owning a controlling interest, as being ultra vires the Central Goods and Services Act, 2017, Karnataka Good and Services Tax Act, 2017 and Integrated Goods and Services Tax Act, 2017;

- c) *ISSUE a Writ in the nature of CERTIORARI or any such / other writ, direction or order to QUASH the Impugned Order issued by Respondent No. 4 dated 02.11.2022 bearing No. ACCT/(A)-2.8/GST/DRC-7/1/T. No. 508/2022-23 (Annexure-D.)”*

2. Heard Sri. K. Arun Kumar, the learned Senior counsel for the petitioner, Sri. Narendra A., the learned CGC for the respondent No.1, Sri. Shamanth Naik, the learned HCGP for the respondent Nos.2 to 4 and Sri. Jeevan J. Neeralgi, the learned standing counsel for the respondent Nos.5 and 6. Perused the material on record.

3. In addition to reiterating the various contentions urged in the petition and referring to the material on record, the learned Senior counsel for the petitioner invited my attention to the Circulars dated 17.07.2023 and 21.07.2023 issued by the Central



Government and the State Government clarifying that *the activity of holding of shares of subsidiary company by holding company per se cannot be treated as a supply of services by a holding company to the said subsidiary company and cannot be taxed under the GST.*

4. In this context, it is pointed out that the petitioner is a subsidiary company of M/s. Yonex, Japan [*a holding company*] and mere holding of shares in a subsidiary company by the holding company cannot be construed or treated as “*supply of service*” in the light of the Circulars issued by the Central Government and the State Government. It is therefore submitted that in the light of the Circulars referred to *supra*, the impugned order dated 02.11.2022 is without jurisdiction or authority of law, and the same deserves to be quashed. Under these circumstances, the learned Senior counsel submits that the petitioner would not press Prayer Nos. A and B sought for in the petition.



5. Per contra, the counsels for the respondents, submit that there is no merit in the petition and the same is liable to be dismissed. However, they do not dispute issuance of the Circulars by the Central Government and the State Government.

6. As rightly contended by the learned Senior counsel for the petitioner, the Central Government has issued Circular dated 17.07.2023, which reads as under:

“Representations have been received from the trade and field formations seeking clarification on certain issues whether the holding of shares in a subsidiary company by the holding company will be treated as 'supply of service' under GST and will be taxed accordingly or whether such transaction is not a supply.

2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues as under:



<i>Issue</i>	<i>Clarification</i>
--------------	----------------------

Taxability of share capital held in subsidiary company by the parent company

1.	<p><i>Whether the activity of holding shares by a holding company of the subsidiary company will be treated as a supply of service or not and whether the same will attract GST or not</i></p>	<p><i>Securities are considered neither goods nor services in terms of definition of goods under clause (52) of section 2 of CGST Act and the definition of services under clause (102) of the said section. Further, securities include 'shares' as per definition of securities under clause (h) of section 2 of Securities Contracts (Regulation) Act, 1956.</i></p> <p><i>This implies that the securities held by the holding company in the subsidiary company are neither goods nor services. Further, purchase or sale of shares or securities, in itself is neither a supply of goods nor a supply of services. For a transaction/activity to be treated as supply of services, there must be a supply as defined under section 7 of CGST Act. It cannot be said that a service is being provided by the holding company to the subsidiary company, solely on the</i></p>
----	--	--



	<p><i>basis that there is a SAC entry '997171' in the scheme of classification of services mentioning; "the services provided by holding companies, i.e, holding securities of (or other equity interests in) companies and enterprises for the purpose of owning a controlling interest.", unless there is a supply of services by the holding company to the subsidiary company in accordance with section 7 of CGST Act.</i></p> <p><i>Therefore, the activity of holding of shares of subsidiary company by the holding company per se cannot be treated as a supply of services by a holding company to the said subsidiary company and cannot be taxed under GST.</i></p>
--	---

3. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

4. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board, Hindi version would follow.



Similarly, the State Government also issued Circular dated 21.07.2023 on the same lines, which reads as under:

Representations have been received from the trade and field formations seeking clarification on certain issues whether the holding of shares in a subsidiary company by the holding company will be treated as 'supply of service' under GST and will be taxed accordingly or whether such transaction is not a supply.

2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Karnataka Goods and Services Tax Act, 2017 (hereinafter referred to as "KGST Act"), hereby clarifies the issues as under.

Sl. No.	Issue	Clarification
----------------	--------------	----------------------

Taxability of share capital held in subsidiary company by the parent company

1	<i>Whether the activity of holding shares by a holding company of the subsidiary</i>	<i>Securities are considered neither goods nor services in terms of definition of goods under clause (52) of section 2 of KGST Act and</i>
---	--	--



<p><i>company will be treated as a supply of service or not and whether the same will attract GST or not</i></p>	<p><i>the definition of services under clause (102) of the said section. Further, securities include "shares" as per definition of securities under clause (h) of section 2 of Securities Contracts (Regulation) Act, 1956.</i></p> <p><i>This implies that the securities held by the holding company in the subsidiary company are neither goods nor services. Further, purchase or sale of shares or securities, in itself is neither a supply of goods nor a supply of services. For a transaction/activity to be treated as supply of services, there must be a supply as defined under section 7 of KGST Act. It cannot be said that a service is being provided by the holding company to the subsidiary company, solely on the basis that there is a SAC entry '997171' in the scheme of classification of services mentioning: "the services provided by holding companies, ie, holding securities of (or other</i></p>
--	--



	<p><i>equity interests in) companies and enterprises for the purpose of owning a controlling interest.", unless there is a supply of services by the holding company to the subsidiary company in accordance with section 7 of KGST Act.</i></p> <p><i>Therefore, the activity of holding of shares of subsidiary company by the holding company per se cannot be treated as a supply of services by a holding company to the said subsidiary company and cannot be taxed under GST.</i></p>
--	--

3. Difficulties, if any, in implementation of this circular may be brought to the notice of this office.

As it is clear from the aforesaid Circulars issued by the Central Government and the State Government, mere holding of shares by the holding company in the subsidiary company cannot be classified, treated or construed as “supply of service” as clearly clarified and confirmed by the aforesaid Circulars by both the Central Government and the State Government.



7. Under these circumstances, I am of the view that in the light of the issuance of Circulars by the Central Government and the State Government during the pendency of the present petition, clarifying that holding of shares by M/s. Yonex Co., Japan [*the holding company*] in its subsidiary, the petitioner herein at Bengaluru cannot be treated or classified as “supply of service”. The impugned order dated 02.11.2022 passed by the respondent No.4 which proceeds on the basis that the said holding of shares amounts to “supply of service” is clearly illegal, arbitrary and without jurisdiction or authority of law, and the same deserves to be quashed.

8. In the result, the following:

ORDER

- i The petition is hereby allowed.
- ii The impugned order dated 02.11.2022 issued by the respondent No.4 is hereby quashed.



iii The submission made on behalf of the petitioner that Prayer Nos. a and b are not pressed, is placed on record.

**Sd/-
JUDGE**

RB