2024-VIL-1307-TEL

HIGH COURT FOR THE STATE OF TELANGANA

WRIT PETITION NOs.6271 AND 6299 OF 2020

Date: 29.11.2024

M/s L AND T PES JV

Vs

ASSISTANT COMMISSIONER OF STATE TAX AND 5 OTHERS

Petitioner Advocate: KARTHIK RAMANA PUTTAMREDDY

Respondent Advocate:

CORAM

HONOURABLE SRI JUSTICE P.SAM KOSHY

HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY

GST - Place of Supply of Works contract spread over two States, Intra-State supply or Inter-State supply, Refund of TDS paid - Petitioner was awarded a contract by the State of Telangana for the construction of the Irrigation Barrage. The project was spread across the States of Telangana and Maharashtra - Authorities rejected the petitioner's refund application for excess tax deducted and remitted to Telangana, and instead imposed a demand for additional tax liability in Telangana - Whether the work executed by the petitioner JV falls under Section 12(2)(a) or 12(3) of the IGST Act, 2017 for the purpose of determining the place of supply - HELD - As per the explanation to Section 12(3) of the IGST Act, 2017, when an immovable property is located in more than one State, the place of supply of service shall be determined by the service supplied in each State in proportionate to value of services collected or determined in terms of contract - Section 12(2)(a) is applicable only to the services which does not fall under Sections 12(3) to 12(14) of IGST Act. Thus, Section 12(2) is a residuary provision and will apply only if the nature of the activity done by the petitioner does not fall under Section 12(3) of the IGST Act - The contention of the Revenue that the applicable provision is Section 12(2)(a) of the IGST Act in view of the nature of works undertaken by the petitioner and not Section 12(3) is incorrect and untenable - The construction of barrage is spread out in two States and the value for services was borne wholly by the State of Telangana. In view of the admitted fact that construction is carried out in two States, the place of supply of service shall be treated as made in each State equivalent to the proportion of work executed in that State, in accordance with the terms of the Agreement - place of supply of service in both the States can be assessed only on the basis of actual works executed in both Telangana and Maharashtra States and also as per the terms of the agreement as specified in the explanation to Section 12(3) of IGST Act - the nature of supply is intra-state supply in proportion to the works carried out in each State. When the nature of supply is intra-state, the tax liability shall be discharged individually in each State to the extent of proportion of the works executed therein - in view of absence of any material on record with regard to the proportion of work executed in each State by each partner of JV, the issue and

applicability of tax liability cannot be answered - the petitioner is granted liberty to approach the adjudicating authority for refund of the TDS amount relating to Maharashtra - The petition is disposed of

Issue 2: Whether the nature of supply is intra-state or inter-state - HELD - Since the place of supply is determined based on the proportion of work executed in each state, the nature of supply shall be intra-state in proportion to the work carried out in the respective states by the contractors registered in those States, as per Sections 7 and 8 of the IGST Act.

Issue 3: Whether the refund application submitted by the petitioner is maintainable - HELD - the deduction made by respondent No.4 with respect to the invoices raised by the petitioner for the works executed in the State of Maharashtra is improper as respondent No.4 is not registered as a deducting authority in the State of Maharashtra under Section 24(vi). Therefore, in the light of above legal position, the respondent No.4 can only deduct GST for the invoices raised by the supplier located in Telangana for the works executed in Telangana and ought not to have deducted GST in respect of the bills raised for the works executed in Maharashtra - the entire TDS amount deducted from the invoices for work executed in Maharashtra was remitted to Telangana and is lying in the electronic cash ledger of the petitioner. The reasons given by the authorities for rejecting the refund claim are improper and unsustainable. The petitioner shall be at liberty to approach the adjudicating authority with relevant material to substantiate the discharge of tax liability in Maharashtra, and the authority shall consider the same and pass appropriate orders for refund of the TDS amount relating to Maharashtra

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COMMON ORDER: *(per Hon'ble Sri Justice Laxmi Narayana Alishetty)*

Writ Petition Nos.6271 and 6299 of 2020 are filed by the petitioner-M/s. L&T PES JV to set aside the impugned orders of the 1st respondent-Assistant Commissioner, dated 13.03.2020 in Form GST DRC-07 for the tax period from September, 2017 to March, 2019 and from April, 2019 to July, 2019, respectively, for short payment of taxes.

2. Since, the issues arise out of the construction of a barrage (works contract) at Medigadda, Telangana, undertaken by the petitioner in both the writ petitions, the writ petitions are heard together and are disposed of by this common order.

3. The brief facts leading to filing of the Writ Petitions as contended by the petitioner are that the petitioner is an unincorporated Joint Venture (JV), comprising of two partners viz., Larsen & Toubro Ltd (L&T) and PES Private Limited. The petitioner has received a contract from respondent No.5 - State of Telangana, for construction of Medigadda Irrigation Barrage at Kaleshwaram, State of Telangana. The petitioner has been chosen to execute the project based on the technical qualification criteria of the partners. The project is sponsored by the State of Telangana, but the execution of contract is spread between the States of Telangana and also Maharashtra. That there was a specific Inter-Board Agreement dated 23.08.2016 signed by both Telangana and Maharashtra States. For this purpose a special utility vehicle called as Kaleshwaram Irrigation Project Corporation Limited (hereinafter referred to as KIPCL) i.e., respondent No.4 was formed.

3.1. It is averred that the work executed by the petitioner is a works contract as defined in Section 2(119) (https://www.vilgst.com/showiframe?V1Zaa1VsQlJQVDA9=TWc9PQ==&datatable=cgst) of the Central Goods and Service Tax Act, 2017 (CGST Act) as well as State Goods and Service Tax Act, 2017 (SGST Act). Petitioner being a separate legal entity has obtained GST registration under both the Acts in the State of Maharashtra and the State of Telangana. Since the project is spread across two States, the tax liability has to be discharged to the

extent of work executed in both the States u/S.12(3) (https://www.vilgst.com/showiframe?V1Zaa1VsQlJQVDA9=TVRJPQ==&datatable=igst) of IGST. It is averred that petitioner is a pass-through entity and the actual execution of works contract is done by the partners viz., L&T Ltd. and PES Engineers Ltd., who are independent registered dealers both in the State of Telangana and in the State of Maharashtra. The petitioner takes input credit of the invoices raised by L&T and PES while discharging its output liability. Petitioner has been reporting the turnovers accordingly, in the respective States and filing GSTR 3B returns as per Rule 61 (https://www.vilgst.com/showiframe?V1Zaa1VsQlJQVDA9=TXpRMA==&datatable=cgst) of CGST Rules in both the States.

3.2. It is averred that the petitioner raised bills on respondent No.4 based on the works executed from time to time, TDS @ 2% on the total value of the bills were recovered by respondent No.4 for the value of works executed in the State of Telangana and Maharashtra. However, remittance of tax deducted, was made entirely to the State of Telangana. Consequently, the TDS deducted and remitted was lying in the electronic cash ledger of the petitioner in the GST portal in excess of the tax liability in the State of Telangana. The petitioner has discharged the tax liability in State of Maharashtra independently.

3.3. It is averred that huge amount of working capital has been blocked in electronic cash ledger of the petitioner in the State of Telangana, the petitioner made an application under Section 49(6) (https://www.vilgst.com/showiframe?V1Zaa1VsQlJQVDA9=TkRrPQ==&datatable=cgst) of the CGST Act for refund of Rs.27,06,44,178/- for the period of 01.07.2017 to 31.03.2019 and Rs.10,12,54,118/- for the period of 01.04.2019 to 31.07.2019. However, refund application was rejected by respondent No.1 by order dated 13.01.2020 while admitting that the work was being executed in both the States, and the taxable value reported by the petitioner was far less than the amount actually paid by the respondent No.4. The petitioner reported the value of the turnover as

applicable in the State of Telangana, GSTR-07A return which revealed higher value, since the TDS is deducted on the entire value of the bills raised by the petitioner from both the States. Therefore, respondent No.1 called for details from the respondent No.4 regarding total value of the bills, amount paid, TDS effected at source, copies of the GSTR-7A, and were reconciled, correlated with the returns submitted by the petitioner.

3.4. The respondent No.1 made the petitioner liable in the State of Telangana on the entire bills raised on respondent No.4 and accordingly, calculated the tax liability @ 12% and determined that the petitioner is liable to pay balance amount of tax of Rs.118,29,29,167/- for the period of 01.07.2017 to 31.03.2019 and Rs.14,28,54,110/- for the period of 01.04.2019 to 31.07.2019. Aggrieved by the order dated 13.01.2020, petitioner preferred appeal before respondent No.6 - Appellate Joint Commissioner (ST), Hyderabad on 03.02.2020 and the appeal has been heard by the respondent No.6 and orders are awaited.

3.5. In the meanwhile, respondent No.1 issued show-cause notice under Section 73 (https://www.vilgst.com/showiframe?V1Zaa1VsQlJQVDA9=TnpNPQ==&datatable=cgst) dated 31.01.2020 calling upon the petitioner to furnish a reply with supporting documents as to why an amount of Rs.118.29 crores for the period from July, 2017 to March, 2019 and Rs.14.28 crores for the period from April 2019 to July 2019 should not be recovered towards CGST & SGST. In response to the show cause notice, petitioner submitted reply on 27.02.2020 contending *inter alia* that the demand proposed is not sustainable since the TDS deducted by respondent No.4 has to be bifurcated among two States based on the actual value of work executed in two States and mere erroneous remittance of TDS by respondent No. 4 cannot make the petitioner liable to pay tax on the value of the work executed in the State of Maharashtra as if it represents the turnover in the State of Telangana.

3.6. It is averred that respondent No.1 confirmed the liability vide impugned proceedings dated 13.03.2020 in Form GST DRC-07 with an observation that question of bifurcating the expenditure incurred for the works between the States of Maharashtra and Telangana does not arise since the entire expenditure for construction of the barrage is borne by the State of Telangana. It was further observed that the difference in turnovers arrived as per the TDS made by the respondent No.4 and the turnover reported in GSTR-3B returns of the petitioner is liable to tax in the State of Telangana.

3.7. Petitioner filed W.P.No.6271 of 2020 questioning the orders dated 13.03.2020 in respect of the tax period from September, 2017 to March, 2019 and W.P.No.6299 of 2020 is filed questioning the tax period from April, 2019 to July, 2019. This Court *vide* order dated 20.03.2020 granted stay of operation of order dated 13.03.2020.

4. The respondent No.1 filed counter and contended that petitioner had an effective remedy provided u/S.107 (https://www.vilgst.com/showiframe?V1Zaa1VsQlJQVDA9=TVRBMw==&datatable=cgst) of SGST Act by way of appeal before Appellate Authority i.e., respondent No.6. It was contended that the refund was rejected by the respondent No.1 as there was a demand to pay the balance tax amount; that writ petition was filed by M/s. L&T PES JV, represented by its Project Manager Mr. M.V. Ramakrishna Raju, who is purportedly an unauthorized person representing the petitioner JV. The said M.V. Ramakrishna Raju has not filed any authorization to prove that he was authorized to represent the unincorporated JV; that it is settled law that entity which is not properly authorized cannot maintain a writ under Article 226 of the Constitution of India and on that ground alone, the writ petition is not maintainable for want of proper authorization.

4.1. The respondent further contended that when the work was awarded by respondent No.4 to the petitioner JV, GST had not come into force. That the petitioner had taken registration under TVAT Act only and TDS under TVAT was deducted for whole of the payments by the respondent No.4. That the petitioner had accepted the deduction of the same without any demur and that there is nothing on record to show that petitioner had taken any registration under Maharashtra VAT like the GST registration.

4.2. It is contended that even though the JV was awarded the work, the work was executed by two independent incorporated companies (L&T and PES), which had formed the JV. That one of the partners of the JV i.e., PES has taken registration under GST in the State of Telangana only, but has no registration in the State of Maharashtra and whereas, L&T has taken registration under GST in both the States. That the petitioner had not revealed as to what extent of work was contributed by JV partners, i.e., PES and L&T in Telangana on one hand and the contribution of L&T as the registered entity in Maharashtra. That being so, it is very difficult to understand as to how the petitioner is quantifying that specific percentage of work done Maharashtra and the remaining work done in Telangana. That assuming that some part of work done executed in Maharashtra by unregistered partner PES as inter-state supply, petitioner should have raised IGST invoices, since the recipient, the respondent No.4 is registered only in Telangana.

4.3. In view of the letter dated 31.12.2018 of respondent No.4, respondent No.1 clarified that the total payment for the work done by the petitioner was borne by Government of Telangana. It was further clarified that there was no separate payment for the work done in Maharashtra territory and hence, the question of bifurcation of expenditure incurred on Medigadda Barrage between Telangana and Maharashtra State would not arise and entire expenditure for construction of Medigadda barrage is borne by the State of Telangana.

4.4. If the petitioner wants to consider the supply between the JV and the respondent no.4 as *inter-state* supply, petitioner ought to have raised invoices under IGST and thus remit the same to the Central Government, but the petitioner had raised bills under intra-state supply and 3B returns reflect the same; that even though the petitioner JV was registered in both the States, the recipient of such supply was in the State of Telangana only.

4.5. With respect to the contention of the petitioner that respondent No.4 should have remitted the TDS as given for the part of the work done in Maharashtra to the Maharashtra Government, is contrary to law; that Section 51 (https://www.vilgst.com/showiframe?V1Zaa1VsQlJQVDA9=TlRFPQ==&datatable=cgst) CGST mandates that Government departments contemplated in Section 51(1) would deduct from the supplier of taxable goods or services when the total value of supply exceeds certain amount; that if the location of the supplier is different from the State in which the recipient is registered, then no deduction shall be made. In the above stated circumstances, the respondent No.1 prayed to dismiss the writ petition.

5. The petitioner filed order dated 12.10.2020 passed by the respondent No.6 in the appeal filed by the petitioner *vide* I.A.No.4 of 2020. The respondent No.6 found fault with the respondent No.1 in ignoring the provisions of IGST Act and rejecting the claim for refund, as if the entire liability arises only in the State of Telangana. The respondent No.6 held in favour of the petitioner in view of the independent liability of petitioner in both the States as per Section 8(2) (https://www.vilgst.com/showiframe?V1Zaa1VsQlJQVDA9=T0E9PQ==&datatable=igst) r/w. Section 12(3) of the IGST Act and Section 2(71) of CGST Act.

6. Heard Sri S. Dwarakanath learned senior counsel for the petitioner and Sri Swaroop Oorilla, learned Special Government Pleader for Commercial Taxes appearing for the respondent Nos.1 & 6.

7. Learned senior counsel for petitioner submitted that the petitioner has undertaken irrigation project work sponsored by the State of Telangana. The contract works are spread between the States of Maharashtra and Telangana. The petitioner is a pass-through entity and got executed the project work through the partners, M/s. Larsen & Toubro Limited (L&T) and M/s. PES Private Limited, who are independent registered dealers in both the States of Maharashtra and Telangana. Petitioner takes the input tax credit based on the invoices issued by the partners and reduces the same against its output liability while raising bills before the respondent No.4. The petitioner raised separate bills for the works done in State of Maharashtra and State of Telangana with its corresponding GSTIN. Petitioner reported the turnovers in both the States for filing the GSTR-3B returns as per Rule 61 of the CGST Rules which lays down the form and manner for furnishing the returns, in both the States i.e., State of Telangana and State of Maharashtra separately. The project executed by the petitioner is works contract as defined in Section 2(119) of the CGST Act as well as SGST Act.

7.1. Learned senior counsel for petitioner further submitted that petitioner has taken separate GST registration in the State of Maharashtra and in the State of Telangana. The petitioner raised invoices separately for the works undertaken in the State of Maharashtra and State of Telangana respectively and charged applicable tax in both the States applying Section 12(3) of the IGST Act. However, respondent No.4 deducted TDS @ 2% on the total value of the bills raised by the petitioner pertaining to both the States, and remitted the entire tax to the State of Telangana instead of remitting the TDS for both the States separately. Consequently, TDS deducted and remitted was lying in electronic cash ledger of the petitioner in the GST portal pertaining to State of Telangana. Learned counsel also

submitted that petitioner discharged the tax liability in the State of Maharashtra independently and there was no separate TDS credit available to the extent of TDS deducted for the work done in Maharashtra in the electronic cash ledger of the petitioner in Maharashtra. Therefore, the respondent No.4 committed error in deducting and remitting the tax for both the States in electronic cash ledger of the petitioner in GST portal of Telangana.

7.2. With regard to applicability of Section 12(2)(a) and Section 12(3) of the IGST Act, learned senior counsel for petitioner submitted that Section 12(2) is a residuary provision and will apply only if the nature of the activity done by the petitioner does not fall under Section 12(3) of the IGST Act. The works executed by the petitioner is a clear works contract service in terms of Section 2(119) of the CGST Act and consequently, there is independent liability in both the States and therefore, Section 12(3) squarely applies to the nature of the work undertaken by the petitioner. Further, the Appellate Authority vide order dated 12.10.2020, held that liability of the petitioner arises as per Section 12(3) of IGST Act and same has to be discharged in both the States. The said conclusion of the appellate authority has not been challenged by the respondents and therefore, the same has become final insofar as the application of Section 12(3) of the IGST Act is concerned.

7.3. Learned senior counsel for petitioner further submitted that as there was excess amount of credit available in electronic cash ledger, petitioner made an application under Section 49(6) read with Section 54 (https://www.vilgst.com/showiframe?V1Zaa1VsQlJQVDA9=TlRRPQ==&datatable=cgst) of the CGST Act for refund of Rs.27,06,44,178/- for the period 01.07.2017 to 31.03.2019 and Rs.10,12,54,118/- for the period 01.04.2019 to 31.07.2019 with the respondent No.1. However, respondent No.1 rejected the application by an order dated 13.01.2020.

7.4. Learned senior counsel for petitioner principally contended that impugned orders dated 13.03.2020 were passed ignoring the provisions of Section 12(3) of the IGST Act and merely because the project is funded by the State of Telangana, it does not mean that petitioner has no liability to file returns and pay the taxes in the State of Maharashtra. Further, remittance of TDS by Respondent No.4 to the State of Telangana on the entire value of the bills raised by the petitioner for both the States does not entitle the respondent No.1 to assume that the value of works executed in Maharashtra is assessable in Telangana. When the recovery of TDS itself is erroneous, the question of calculating the turnover based on the erroneous deduction and determining the tax liability is without jurisdiction and contrary to law. The respondent No.4 ought to have remitted TDS @ 2% independently based on the bills submitted by the petitioner for the works done in both the States and credited to the electronic cash ledger of the petitioner of the respective States.

7.5. Learned senior counsel for petitioner further submitted that as per Section 24(vi) (https://www.vilgst.com/showiframe?V1Zaa1VsQlJQVDA9=TWpRPQ==&datatable=cgst) of the CGST and SGST Act, respondent No.4 was required to mandatorily register as TDS Deducting Authority in the State of Maharashtra. Since the respondent No.4 did not register in the State of Maharashtra, respondent No. 4 was unable to remit CGST and SGST in Maharashtra in respect of value of services provided by the petitioner in the State of Maharashtra. He further stated that for failure of respondent No.4 to remit the TDS properly to the States of Telangana and Maharashtra based on the value of the work executed, petitioner cannot be denied the refund of the excess tax deducted and it also cannot be burdened with tax liability on the turnover of Maharashtra by treating it as a turnover of State of Telangana.

7.6. Learned senior counsel for the petitioner further submitted that petitioner has taken separate GST registration in Maharashtra and Telangana and issued invoices separately and charged applicable tax in both the States applying Section 12(3) of the IGST Act. That the payment of entire project cost by the State of Telangana is not a ground to confirm the liability. Taxable event is not dependent on the place of payment or based on who incurred the cost of the project and the same is to be determined under the provisions of CGST/ IGST Act.

8. *Per contra,* the learned Special Government Pleader submitted that the project awarded to petitioner is construction of Medigadda Irrigation Project, which is in fact, immovable property, therefore, the project work entrusted to petitioner is "Work Contract" covered under Section 2(119) of CGST Act. Learned standing counsel for respondent also submitted that the applicable provision is Section 12(2)(a) of the IGST Act in view of the nature of works undertaken by the petitioner and not section 12(3) of the IGST Act. He further submitted that place of supply of services rendered by the petitioner is in Telangana as the respondent No.4 is registered in Telangana, therefore, the services provided by the petitioner fall under Section 12(2)(a) of the IGST Act.

8.1. The learned standing counsel for respondent Nos.1 and 6 submitted that respondent No.4 does not have registration in Maharashtra and hence, they could not remit CGST and SGST in the State of Maharashtra for the works executed in the State of Maharashtra. He further submitted that the question of deducting tax at source on the turnover relating to Maharashtra State does not arise as there is no registered contractee to deduct tax at source. He further contended that entire cost of construction of barrage is borne by the State of Telangana; therefore, respondent No. 1 is justified in imposing tax.

Consideration:

9. The issues that fall for consideration are as to:

(i) Whether the work executed by petitioner JV falls under Section 12(2)(a) or 12(3) of IGST Act; and also the place of supply in such case.

(ii) Whether the work carried out in respective States amounts to *inter-state* supply or *intra-state* supply and

(iii) Whether the refund application submitted by the petitioner is maintainable.

10. It is not disputed that petitioner's contract is in the form of Works Contract as defined u/s. 2(119) CGST & IGST Act. Section 12 of IGST Act determines the Place of supply of services where location of supplier and recipient is in India. The place of supply is the primary issue to be decided in order to proceed further with other issues.

Section 2 (119) of IGST Act defines works contract as under:

"Works contract means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property, wherein transfer of property in goods (whether as goods or in some other form), is involved in the execution of such contract."

Section 12(2)(a) of the IGST Act reads as under:

"**S.12. Place of supply of services where location of supplier and recipient is in India:**

(2). The place of supply of services, except the services specified in sub-sections (3) to (14); -

(a) made to a registered person shall be the location of such person."

Section 12(3) of the Integrated Goods and Service Tax Act (IGST Act) reads as under:

"**S.12. Place of supply of services where location of supplier and recipient are in India:**

(1) and (2) xxx

(3) The place of supply of services:

(a) Directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any services provided by way of grant of rights to use immovable property or for carrying out or coordination of construction work; or

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Explanation.--Where the immovable property or boat or vessel is located in more than one State or Union territory, the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

As per the explanation to Section 12(3), when an immovable property is located in more than one State, then the place of supply of service shall be determined by the service supplied in each State in proportionate to value of services collected or determined in terms of contract.

11. It is relevant to note that the respondent No.6 in the proceedings dated 12.10.2020 held that Section 12(3) of the IGST Act shall apply to the subject project and the same has not been challenged. On the other hand, a plain reading of Section 12(2)(a) which states that place of supply of services shall be the location of registered person to whom services are supplied except the services specified in Sections 12(3) to 12(14) of IGST Act. Therefore, Section 12(2)(a) is applicable only to the services, which does not fall under Sections 12(3) to 12(14) of IGST Act. Learned senior counsel for petitioner rightly submitted that Section 12(2) is a residuary provision and will apply only if the nature of the activity done by the petitioner does not fall under Section 12(3) of the IGST Act. Therefore, contention of the counsel of respondent that the applicable provision is Section 12(2)(a) of the IGST Act in view of the nature of works undertaken by the petitioner and not section 12(3) is incorrect and untenable.

12. The construction of barrage is spread out in two States and the value for services was paid/borne wholly by the State of Telangana. In view of the admitted fact that construction is carried out in two States, the place of supply of service shall be treated as made in each State equivalent to the proportion of work executed in that State, in accordance with the terms of the Agreement. Therefore, place of supply of service in both the States can be assessed/determined only on the basis of actual works executed in both Telangana and Maharashtra States and also as per the terms of the agreement as specified in the explanation to Section 12(3) of IGST Act.

13. The counsel for the respondent referred to Section 7(3) (https://www.vilgst.com/showiframe?V1Zaa1VsQlJQVDA9=Tnc9PQ==&datatable=igst) of the IGST Act to determine the supply of service as inter-state supply which reads as follows:

> **Section 7: Inter-State supply:**
>
> xxxxxxx
>
> (3) Subject to the provisions of section 12, supply of services, where the location of the supplier and the place of supply are in--
>
> (a) two different States;
>
> (b) two different Union territories; or
>
> (c) a State and a Union territory,
>
> shall be treated as a supply of services in the course of inter-State trade or commerce.

As per Section 7(3) it can be observed that subject to Section 12 of the IGST Act, the supply of service shall be an inter-state supply when location of supplier and place of supply are in two different States.

14. The learned senior counsel for the petitioner referred to Section 8(2) of the IGST Act which reads as under:

> **Section 8: Intra-State supply:**
>
> xxxxxxx
>
> 2) Subject to the provisions of section 12, supply of services where the location of the supplier and the place of supply of services are in the same State or same Union territory shall be treated as intra-State supply.

As per Section 8(2) it can be observed that subject to Section 12 of the IGST Act, the supply of service shall be an intra-state supply when location of supplier and place of supply are in the same State. The issue whether the nature of supply is *intra-state* or *inter-state* under Sections 7 and 8 of the IGST Act, is dependant on the location of supplier and place of supply. Since the place of supply is determined depending on the proportion of work executed by L&T & PES and location of supplier in both the States, it falls under the category of *intra-state* supply under Section 8 of the IGST Act with respect to the proportion of works executed in respective States by the contractors registered in the respective States. Now it is clear that the nature of supply is *intra-state* supply in proportion to the works carried out in each State. When the nature of supply is *intra-state*, the tax liability shall be discharged individually in each State to the extent of proportion of the works executed therein.

15. Since the nature of supply is of the *intra-state*, proportionate to the services rendered in respective States, the tax liability shall be discharged individually in each State for the proportion of work executed therein, as such tax liability should be discharged according to GST in each State. It is contended by the petitioner that tax liability has been discharged independently for the works executed in the State of Maharashtra. However, the petitioner has not placed on record any material evidencing discharge of tax liability in the State of Maharashtra.

16. Further, to discharge tax liability by independent contractors i.e., L&T and PES, in each State, it is necessary to determine the proportion of work undertaken by each partner of JV in each State. To answer this question, it is necessary to examine the joint venture agreement entered into by two independent contractors to understand the role and nature of each contractor in executing the works. Upon perusal of the Joint Venture Agreement, it is found that the agreement is silent with regard to the proportion of works that are to be carried out by the two independent contractors in both the States. At the same time it is also necessary to examine the contract agreement entered into by the State of Telangana and JV for determining the proportion of work executed in two States. It was contended by the respondent No. 1 that, L&T is registered in both the States, but one of the JV partner i.e., PES is registered only in Telangana and is not registered in Maharashtra. Therefore, in the absence of any material on record with regard to the proportion of work executed in each State by each partner of JV, the issue and applicability of tax liability cannot be answered. Further, the writ court under Article 226 of the Constitution of India cannot delve into disputed question of facts and cannot undertake detailed examination and scrutiny of documents.

17. It is observed that respondent No.6 had set aside the orders of respondent No.1 *vide* orders dated 12.10.2020 stating that respondent No.1 had ignored the provisions of IGST Act and erroneously rejected the claim for refund. Respondent No.6 also held that since JV

is registered in Maharashtra State, the construction that took place in Maharashtra State shall be treated as intra-state supply of services in Maharashtra State. It was also held that the extent of work that was executed in the State of Telangana with Telangana Registration, would be intra-state supply of services in Telangana State. Further the JV is eligible to claim credit for the taxes, whether SGCT/CGST or IGST, collected from them in the invoices raised by the two constituent entities i.e., L&T and PES. Respondent No.6 also held that petitioner JV is eligible for the refund of the TDS amount relating to the work executed in the State of Telangana only under Telangana registration. The TDS amount relating to Maharashtra registration should be claimed in that State.

18. With regard to the issue of deduction, the undisputed fact is that the petitioner had raised separate invoices for the works executed in both the States; however, GST has been deducted by respondent No.4 on entire value of invoices and the same has been remitted to Telangana State and the same is lying in the electronic cash ledger of the petitioner in the GST portal in excess of tax liability in the State of Telangana. In considered opinion of this Court, the reason recorded by the Appellate Authority i.e., respondent No.6 for rejection of claim of refund by the petitioner is improper and unsustainable as admittedly the entire TDS amount deducted from the invoices raised even in respect of services rendered in the Maharashtra State is remitted to State of Telangana and is lying with the electronic cash ledger account of the petitioner.

19. Respondent No.1 contended that respondent No.4 ought not to have deducted the GST from the invoices of the work executed in the State of Maharashtra since the respondent No.4-deducting contractee does not have registration in Maharashtra which is contrary to Section 24(vi) of the CGST Act which reads as under along with Section 51:

"Section 24. Compulsory registration in certain cases.

Notwithstanding anything contained in sub-section (1) of section 22, the following categories of persons shall be required to be registered under this Act, -

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(vi) persons who are required to deduct tax under section 51, whether or not separately registered under this Act;

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Section 51. Tax deduction at source.-

(1) Notwithstanding anything to the contrary contained in this Act, the Government may mandate, -

(a) a department or establishment of the Central Government or State Government or
(b) local authority; or
(c) Governmental agencies; or
(d) such persons or category of persons as may be notified by the Government or the recommendations of the Council, (hereafter in this section referred to as "the deductor"), to deduct tax at the rate of one per cent. from the payment made or credited to the supplier (hereafter in this section referred to as "the deductee") of taxable goods or services or both, where the total value of such supply, under a contract, exceeds two lakh and fifty thousand rupees:

Provided that no deduction shall be made if the location of the supplier and the place of supply is in a State or Union territory which is different from the State or as the case may be, Union territory of registration of the recipient.

Explanation.-For the purpose of deduction of tax specified above, the value of supply shall be taken as the amount excluding the central tax, State tax, Union territory tax, integrated tax and cess indicated in the invoice."

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20. As per Section 24(vi), every entity which is duty bound to deduct TDS under Section 51 has to be registered, however, respondent No.4 is not a registered deductor in the State of Maharashtra. Whereas, proviso to Section 51 states that if the location of supplier and location of recipient are in different States, then no deduction shall be made. Applying these legal principles to the facts at hand, it can be observed that the deduction made by respondent No.4 with respect to the invoices raised by the petitioner for the works executed in the State of Maharashtra is improper as respondent No.4 is not registered as a deducting authority in the State of Maharashtra under Section 24(vi). Therefore, in the light of above legal position, the respondent No.4 can only deduct GST for the invoices raised by the supplier located in Telangana for the works executed in Telangana and ought not to have deducted GST in respect of the bills raised for the works executed in Maharashtra. It is also pertinent to note that the petitioner also remained silent about the deductions and remittances made while the project was under execution and had raised the dispute only after completion of project work.

21. Insofar as the entries in GSTR 3B and 7A and the contention of respondent No.1 that the petitioner shall reveal full turnover in GSTR 3B returns is concerned, it is relevant to note that according to petitioner, it has raised separate bills for the works executed in

Telangana and Maharashtra. However, admittedly, while deducting GST, respondent No.4 deducted from both the bills and remitted the entire tax amount to Telangana. Therefore, there is a difference between the entries in GSTR 3B and GSTR 7A.

22. It is relevant to consider sub-sections in Section 52 (https://www.vilgst.com/showiframe?V1Zaa1VsQlJQVDA9=TlRJPQ==&datatable=cgst) of CGST Act which lays down the procedure for collection of tax at source, which reads as under:

> **"52. Collection of tax at source.**-
>
> (1) Notwithstanding anything to the contrary contained in this Act, every electronic commerce operator (hereafter in this section referred to as the "operator"), not being an agent, shall collect an amount calculated at such rate not exceeding one per cent., as may be notified by the Government on the recommendations of the Council, of the net value of taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the operator.
>
> *Explanation.*-For the purposes of this sub-section, the expression "net value of taxable supplies" shall mean the aggregate value of taxable supplies of goods or services or both, other than services notified under sub-section (5) of section 9 made during any month by all registered persons through the operator reduced by the aggregate value of taxable supplies returned to the suppliers during the said month.
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> xxxx

(4) Every operator who collects the amount specified in sub-section (1) shall furnish a statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under sub-section (1) during a month, in such form and manner as may be prescribed, within ten days after the end of such month.

Provided that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing the statement for such class of registered persons as may be specified therein:

Provided further that any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

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(8) The details of supplies furnished by every operator under sub-section (4) shall be matched with the corresponding details of outward supplies furnished by the concerned supplier registered under this Act in such manner and within such time as may be prescribed.

(9) Where the details of outward supplies furnished by the operator under sub-section (4) do not match with the corresponding details furnished by the supplier under [section 37 or section 39], the discrepancy shall be communicated to both persons in such manner and within such time as may be prescribed.

(10) The amount in respect of which any discrepancy is communicated under sub-section (9) and which is not rectified by the supplier in his valid return or the operator in his statement for the month in which discrepancy is communicated, shall be added to the output tax liability of the said supplier, where the value of outward supplies furnished by the operator is more than the value of outward supplies furnished by the supplier, in his return for the month succeeding the month in which the discrepancy is communicated in such manner as may be prescribed.

As per Section 52(4), respondent No. 4, being the operator, shall furnish all the details of supplies and the amount collected u/s. 52(1) during a month in GSTR 7A. As per Section 52(8), entries in GSTR 3B and in GSTR 7A shall be matched. In case the entries in GSTR 3B and GSTR 7A do not match, the discrepancy shall be communicated to both the petitioner being the supplier and respondent No.4, being the operator u/s. 52(9). If the discrepancy communicated is not rectified by both supplier and operator in their statements for the month in which discrepancy is communicated, the difference amount shall be added to the output tax liability of the supplier.

23. Though it is contended that petitioner has independently discharged tax liability in respect of works carried out in the State of Maharashtra with the concerned Tax Authorities, however, no material or proof has been placed on record in support of the said contention. Further, no material is placed on record as to the proportion of work executed by the respective J.V. Partners of the petitioner in the State of Maharashtra and admittedly one of the partners i.e., PES has not got registered in the State of Maharashtra.

24. In the absence of aforesaid material, information and documents to substantiate their contention, it would be difficult for this Bench in exercise of writ jurisdiction to grant any relief to the petitioner. Nonetheless it is an admitted fact that TDS has been deducted for the entire amount released and the said entire TDS amount stands deposited with the State of Telangana. If the State of Telangana has not transferred the tax liability to the extent of work executed in the State of Maharashtra to the Tax Authorities in the State of Maharashtra, we do not see any reason on the part of Joint Commissioner in not granting refund, upon the petitioner providing relevant material, proof evidencing discharge of tax liability in the State of Maharashtra**.**

Conclusion:

25. For the aforesaid reason itself, the grounds taken by the Joint Commissioner while rejecting the claim for refund does not seem to be proper and justified. However, the petitioner shall be at liberty to approach the adjudicating authority with relevant material and on such submission, the adjudicating authority shall consider the same and pass appropriate orders for refund of TDS amount in the event of petitioner furnishing appropriate, cogent documents in proof of discharge of liability in the State of Maharashtra after duly affording opportunity to both the parties.

26. With the above observations, Writ Petitions are disposed of. There shall be no order as to costs.

As a sequel, miscellaneous petitions pending if any in these writ petitions, shall stand closed.