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

\+ **W.P.(C) 5563/2025**

THALES INDIA PRIVATE LIMITED .....Petitioner

Through: Mr. Sunil Dalal, Sr. Adv. with Mr. Jitin Singhal, Mr. Pravesh Bahuguna and Mr. Jatin Gaur, Advs. (M:9999919168)

versus

ASSISTANT COMMISSIONER OF CGST, DELHI .....Respondent

Through: Ms. Samiksha Godiyal, SSC, CBIC with Mr. B. D. Rao Kundan & Mr. Tenzing Bhutia, Advs.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

O R D E R

% 27.05.2025

1. This hearing has been done through hybrid mode.

2. The present petition has been filed by the Petitioner- Thales India Private Limited under Article 226 of the Constitution of India, *inter alia*, assailing the Order-in-Original bearing no. 91/2024-25 dated 7th April, 2025 passed by the Respondent-Assistant Commissioner of CGST, Delhi *(hereinafter, 'impugned order')*.

3. This petition has been filed by the Petitioner seeking refund of the sum of Rs. 8,99,61,147/- in terms of the order dated 7th January, 2025 passed in ***W.P.(C) 16611/2024*** titled ***'Thales India Private Limited v. Additional Commissioner of CGST, Audit-II, Delhi & Anr.'*** The relevant portion of the said judgment is extracted below:

> *"10. As is manifest from a reading of the above, in circumstances where no invoice is raised in respect of*

services rendered by its foreign affiliate, the value of such services will be ""deemed" to have been declared as 'nil' and it is this 'nil' value which shall be treated as the market value of the services in question, in terms of the second Proviso to Rule 28 of the CGST Rules.

11. Undisputedly and as is manifest from a reading of the record, no invoices appear to have been raised by the petitioner in connection with services provided by the foreign entity.

12. However and as was noticed in the decision of ***Metal Corporation Pvt. Ltd. v. Union of India****' dealing with an identical controversy and which has been copiously reproduced by us on the previous occasion, while the tenability of the Circular may be disputed on the ground of the same being contrary to the intent of Rule 28 or allowing the value ascribed to goods and services to be determinable based on seemingly random decisions made by parties to either generate or refrain from generating invoices for the said services, the Court is not obliged to question the tenability of the CBIC in issuing the Circular in question. This particularly so because the Circular is binding upon the respondents and is unchallenged by the latter in the present proceedings.*

13. The relevant portions of the decision in Metal One Corporation and which dealt with an identical controversy is accordingly reproduced hereinbelow:-

"10. The question thus stands restricted to the value to be ascribed to the supply of goods and services and which is regulated by Rule 28 of the Central Goods and Services Tax Rules, 2017. That rule is reproduced hereinbelow:

"Rule 28 - Value of supply of goods or services or both between distinct or related persons, other than through an agent

The value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall-

(a) be the open market value of such supply;

(b) if the open market value is not available, be the value

of supply of goods or services of like kind and quality;
(c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order:
PROVIDED that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:
PROVIDED FURTHER that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services."
11. However, and as was noticed by us in our order of 03 October 2024, it is Circular No. 210/4/2024-GST of the CBIC which seeks to place all disputes beyond contestation. We had in our previous order taken note of the clarification rendered in Para 3.7 and which stands extracted hereinabove. As per Para 3.7 of that Circular, the CBIC clarifies that where no invoice is raised by the related domestic entity in respect of services rendered by its foreign affiliate, the value of such services would be "deemed" to have been declared as 'Nil' and that 'Nil' value liable to be treated as the market value for the purposes of the Second Proviso to Rule 28.
12. Undisputedly, although payments, as asserted in the counter affidavit, were made, no invoices came to be raised by the writ petitioners entities in connection with the services provided by their related foreign entities. It is in the aforesaid backdrop that learned counsels had drawn our attention to the prescriptions contained in Para 3.7 of the Circular. It would perhaps be impossible for any of the respondents to assert that once the value of such services were to be treated or accepted to be 'Nil', any further tax implication under
the Act would arise.
13. While the correctness of the position as advocated in terms of that Circular and whether it would be consistent with the statutory provisions or may be viewed as being

contentious or contrary to the intent of the Second Proviso to Rule 28 itself, we are today constrained to proceed further on the basis thereof We so observe since it may possibly be asserted that the Circular is founded on the tenuous thread of parties choosing to either generate an invoice or simply avoiding to do so. However, in the present matters, it is not for this Court to be boggled by or question the wisdom of the CBIC as the Circular in any case binds the respondents.

14. In the facts of the present writ petitions, it is conceded that no invoices were generated. In view of the above and in light of the explicit terms of the Circular, the value of the service rendered would have to be treated as 'Nil'. This would lead one to the inescapable conclusion of no perceivable or plausible tax liability possibly being created. Consequently, we are of the considered opinion that the proceedings initiated in terms of the impugned SCNs' and their continuance would he futile and impractical. The impugned SCNs are essentially rendered impotent and would serve no practical purpose.

15. In view of the above, we allow the instant -writ petitions and quash the impugned SCNs dated 29 September 2023 [W.P.(C) 14945/2023], 28 September 2023 [W.P.(C) 2039/2024], 27 September 2023 [W.P.(C) 4834/2024], 28 September 2023 [W.P.(C) 4979/2024] and 31 May 2024 [W.P.(C) 9801/2024] to the extent as clarified in Para 19 below.

16. We further quash the consequential impugned Orders-in-Original dated 29 December 2023 in W.P.(C) 4834/2024 and 30 December 2023 in W.P.(C) 4979/2024.

17. Insofar as W.P.(C) 4834/2024, we note that a final Order-in-Original came to be passed on 29 December 2023. The petitioner, Sony India Private Limited, had of its own violation and undisputedly, discharged the tax liability proceeding on the basis of Rule 28 and a perceived obligation to pay tax under the Act. The Order-in-Original however imposes a liability of interest and penalty upon that writ petitioner by invoking Section 15 along with Section 73 of the Act, read with Section 73(9). It is also undisputed before us that Sony India Private

Limited had not only paid the tax but had also taken credit on a reverse charge basis.

18. In our considered opinion, once the position to govern all assessees pan-India came to be clarified by the CBIC, the continuation of penalty proceedings or for that matter the imposition of interest would not sustain. In light of the stand taken by the CBIC, the petitioner, Sony India Private Limited, would have stood absolved of all tax liabilities and implications flowing from the Act.

19. All the writ petitions thus stand disposed of on the aforesaid terms. Though needless to state, we hereby clarify that the present order shall be confined to the issue of seconded employees alone. All other issues which are raised in the impugned SCNs' shall be open to be adjudicated by the respondents. We clarify that we have not expressed any opinion insofar as the other issues which form part of the impugned SCNs' are concerned. All rights and contentions of respective parties in that respect are kept open"

14. We had, on the previous occasion, not only restrained the respondents from taking further steps pursuant to the impugned SCN but had also accorded liberty to Mr. Ramachandran to obtain instructions in light of the decision rendered in Metal One Corporation, which, we opined, squarely covers the dispute in the present case.

15. However and as conceded before us today, learned counsels for parties are ad idem that the present petition is liable to be disposed of bearing in mind the decision rendered in Metal One Corporation and that the petitioner would be entitled to identical reliefs.

16. Accordingly and for all the aforesaid reasons, we allow the instant writ petition and quash the SCN dated 31 May 2024 issued by the respondent."

4. As can be seen from the above decision, the Coordinate Bench has followed the earlier judgment in ***W.P.(C) 14945/2023*** titled '***Metal One Corporation Pvt. Ltd. v. Union of India***', which dealt with an identical controversy and had quashed the Show Cause Notice therein dated 31st May,

2024.

5. The Petitioners then filed the refund application, which has been rejected by the impugned order dated 7th April, 2025. In the impugned order, Assistant Commissioner, Mr. Ram Gopal Sagar has made an observation to the following effect.

> *"9. Further, I find that the decision of the Hon'ble Court in the matter of the noticee is based on the judgement pronounced in the case of M/s Metal One Corporation India Pvt Ltd and* ***the same has not been accepted by the competent authority till date****. In view of the above, I find that the Overseas Group Entity is the actual employer of the seconded employees. As the effective employer of the seconded employees is Overseas Group Entity, there does not appear to be a real employer-employee relationship between the Noticee and the seconded employees, especially when after the completion of the assigned task, the seconded employees return to their parent employer from where they may again be deployed or loaned to other locations of the Overseas Group Company. This establishes that the services provided in respect of seconded employees fall under the definition of supply under Section 7 of the CGST Act, 2017 and subsequently under the definition of 'import of service' under Section 5(3) of the IGST Act, 20 17.*
> *10. In view of above facts, I am of considerate view that party is not eligible for refund of Rs.8 ,99,61,147/-on the grounds of "Any other (specify)."*

6. On the last date of hearing, *i.e.*, 29th April, 2025 the Court observed the following:

> *"7. It is concerning to note that the Department is refusing to follow the decision of this Court by observing that it does not accept the decision in* ***Metal One Corporation (supra)****. Even if the Department wishes to challenge the judgment in* ***Metal One Corporation (supra)*** *or the*

judgement in the Petitioners' case, so long as there is no challenge and no stay, the refund could not have been held up. It is relevant to point out that the judgement in the Petitioners' case is dated 7th January, 2025 and the judgment in ***Metal One Corporation (supra)*** *is dated 22nd October, 2024.*

8. Under such circumstances, the impugned order is, prima facie, unsustainable.

9. Mr. Harpreet Singh, ld. SSC for the Department wishes to seek instructions in the matter."

7. Today, learned Counsel appearing for the Department submits that there is no challenge to the order dated 07th January, 2025 passed in ***W.P.(C)16611/2024***.

8. In view thereof, let the refund of the Petitioner be processed and be credited within two months.

9. The writ petition is disposed of in the aforesaid terms. Pending application(s), if any, is also disposed of.

PRATHIBA M. SINGH, J.

RAJNEESH KUMAR GUPTA, J.

MAY 27, 2025
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