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

\+ W.P.(C) 5061/2024, CM APPL. 20767/2024- STAY

JAI MATA DEE INVESTMENT COMPANY PRIVATE LIMITED
..... Petitioner

Through: Mr. Avadhbiharikaushik, Ms. Saloni Mahajan, Mr. Prateek Goyal and Mr. Rishabh Kumar, Advs.

versus

NORTHERN RAILWAY & ORS. ..... Respondents

Through: Mr. Vikrant N Goyal, Adv. alongwith Mr. Jaswant Rai Aggarwal and Ms. Sarwika Goyal, Advs.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

O R D E R

% **08.04.2024**

CM APPL. 20766/2024(Exemption from filing fair typed copy)

Allowed, subject to all just exceptions.

The application stands disposed of.

W.P.(C) 5061/2024&CM APPL. 20767/2024 (Stay)

1. The present petition has been filed by the petitioner assailing a "Final Notice" dated 26.03.2024 issued by the respondent no.1/Northern Railway.

2. The background of the matter is that the Commercial Department of Northern Railway (Delhi Division) published a tender bearing Tender No.7/PUB/Deluxe Pay & Use Toilet/2016 in the beginning of 2018, thereby inviting bidders to participate in bidding for "Deluxe Pay & Use Toilets under Built, Operate and Transfer (BOT) basis" at different locations on different Railway Stations in the Delhi Division of Northern Railway.

3. The petitioner is stated to have participated in the said bidding process and was declared H-1 for five (05) locations in Delhi Division and consequently, offer letters were issued to the petitioner by the respondents in the month of August, 2018.

4. Attention is drawn to the fact that the offer letter that was initially issued to the petitioner on 03.08.2018, specifically, mentions as under:-

> *"(iii) In terms of Para (c) of Chapter G of the Special Terms and Condition of the Tender document, you are required to deposit half yearly quoted license fees i.e. Rs 23,33,333 (Rupees Twenty three lakh, thirty three thousand, three hundred and thirty three only) and GST @18% or as applicable, in advance, in form of bank draft in favour of Sr Divisional Finance Manager, Northern Railway, New Delhi."*

5. Thereafter, the petitioner addressed a letter dated 07.08.2018 to the concerned Sr. Divisional Commercial Manager/Coaching, Northern Railway, clearly stating that :-

> *"As regards GST, it is informed that "the services by way of public conveniences such as provision of facilities of bathroom, washroom, lavatories, urinal or-toilets" are exempted in GST as per the decision of the GST Council under SAC Code 9994. The relevant document in support of this is enclosed for your ready reference.*
>
> *As per the contact, Advance half yearly license fee will be effective from the date of completion of construction, on submission of a certificate issued by Station Director /Station Superintendent of the station and by Commercial Inspector of the area in case of a toilet situated at places other than a railwaystation certificate that the toilet block is ready to use from all aspects.*
>
> *In view of above, it is requested to kindly intervene in the matter and arrange to exempt GST on the license fee as per the decision of the GST Council.*
>
> *It is ensured that the detailed design of toilet complex will be submitted for the approval of DCM before starting any construction as per the scope of the work within the stipulated time."*

6. Subsequently, the allotment letter that came to be issued to the

petitioner specifically noted as under :-

> *"(iv) In requested in your letter dated 7.8.2018, in terms of SAC code 9994, "Services by way of public conveniences such as provision of facilities of bathroom, wash room , laboratories, urinal or toilets" are excepted from payment of GST. Hence the same shall not be applicable in this case. However, it may be noted, that in future, if the same is made applicable by due notification of the government, you shall liable to pay GST as applicable."*

7. The above stipulation in the allotment letter was on account of the fact that the Central Government, on the recommendation of the GST Council, issued a Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, whereby, the list of exempted Goods and Services were notified and entry at Serial no.76 captioned "Heading 9994' stipulates that "services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets" shall be exempted from GST. The said list qua Heading 9994 has never been varied, modified, withdrawn or amended.

8. Despite the aforesaid position, since September 2023, the respondents are insisting on the petitioner paying GST on the license fee as a pre-condition for accepting the same.

9. The petitioner is stated to have addressed various communications to the concerned officers of the Northern Railway pointing out that the transaction in question is not exigible to GST itself, as is evident from the allotment letter issued by the Northern Railway. It is submitted that this position clearly emanates from Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.

10. Without paying heed to these letters, impugned final notice dated 26.03.2024 was issued by the Northern Railway, wherein, it has been stated as under :-

"NORTHERN RAILWAY

DRM Office
New Delhi 110055

No-7PUB/Dx.Pay & Use/KKDE BOT(JMD)/2015

Dated:26.03.2024

M/s Jai Mata Di Investment Pvt. Ltd.
Jai Maa Durga Hotel, Vijay Nagar,
Kankarbagh, Patna-26

Final Notice

Sub: - License Fee along with GST for Deluxe Pay & Use Toilets, DLI Division.

Ref:- 1. Your Office Letter No. NIL, dated 20112/2023.

2. Your Office Letter No. JMDICPL/DLX pay &Use/Toilet/2024 dated 08/03/2024.

3. This Office Letters dated 27/09/23, 04/10/23, 09/10/23,04/12/23, 05/01/24 and 23/02/24.

4. Clause No. 11,14 and 19 of Contract agreement.

In the reference to above it is informed that your request as referred above has been examined by the finance department and as per order of competent authority Deluxe Pay and Use Toilets to be deposited along it has been advised that license fees of all long with GST, till clarification is received from HQ.

Therefore you are required to deposit following License Fees along with GST as applicable, latest by 03/04/2024, otherwise action will be initiated in terms of Para 11 and 14 of Contract agreement. Further penalty regarding late deposition of License Fees will be informed you shortly, on the basis of realization of pending License Fees:-

S. No.	*Station*	*Period*	*Amount*
1	*Sonipat Railway Station*	*01-02-2024 to 31.07.2024*	*Rs. 1,38,085.14/-*
2	*Kurukshetra Railway Station*	*01-10-2023 to 14-08-2024*	*Rs. 1,44,8811-*
3	*Delhi Railway Station*	*01-10-2023 to 27-04-2024*	*Rs. 8,61,557/-*
4	*New Delhi Railway Station*	*01-10-2023 to 08-08-2024*	*Rs. 54,68,053/-*
5	*Ghaziabad Railway Station*	*01-10-2023 to 01-072024*	*Rs. 6,57,193.52/-*

You are also required to deposit License Fees along with applicable GST, as per agreement Clause 19.
This may be treated as most urgent.

-Sd/
Assistant Commercial Manager/SS

DRM Office, New Delhi"

11. Issue notice.

12. Learned counsel, as aforesaid, accepts notice on behalf of the respondents. Learned counsel for the respondents seeks some time to take instructions.

13. Considering the aforesaid aspects pointed out by the learned counsel for the petitioner, it is directed that till the next date of hearing, there shall be a stay of Final Notice dated 26.03.2024 issued by the respondent/Northern Railway to the petitioner.

14. Let reply be filed within a period of four weeks from today. Rejoinder thereto, if any, be filed within a period of two weeks thereafter.

15. List on 16.07.2024.

SACHIN DATTA, J

APRIL 8, 2024/r