IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 6021 of 2022

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M/S OSWAL INDUSTRIES LTD.
Versus
COMMISSIONER, THE CENTRAL GOODS AND SERVICE TAX AND CENTRAL EXCISE

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Appearance:
MR. TUSHAR HEMANI, SR. ADVOCATE with MR. JAIMIN R DAVE(7022) for the Petitioner(s) No. 1
MR NIKUNT K RAVAL(5558) for the Respondent(s) No. 1
NOTICE SERVED BY DS for the Respondent(s) No. 3,4,5
MS SHRUTI DHRUVE, AGP (N) for the Respondent(s) No. 2

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CORAM:**HONOURABLE MR. JUSTICE N.V.ANJARIA**
and
HONOURABLE MR. JUSTICE DEVAN M. DESAI

Date : 17/04/2023

ORAL ORDER
(PER : HONOURABLE MR. JUSTICE N.V.ANJARIA)

Heard learned senior advocate Mr.Tushar Hemani assisted by learned advocate Mr.Jaimin Dave and learned advocate Mr.Hirak Shah for the respondent Department.

2. The petitioner which claims to be largest naturopathy centres in India, by filing this petition, seeks to call in question the order dated 17.2.2022 passed by the Advanced Ruling Authority as well as order dated 9.7.2020 passed by the appellate authority for the advance ruling, confirming the order dated 17.2.2022.

2.1 The petitioner further claims exemption under Entry 74 of the Exemption Notification No.12 of 2017- Central Tax (Rate) dated 28.6.2017.

3. The born of contention is that the petitioner claims that it offers Ministry of AYUSH approved treatments of naturopathy, ayurveda, yoga including meditation, physiotherapy and special therapy, which are recognized system of medicines in India falling within the definition of ‘Health Care Services’. On the other hand the Department has treated the petitioner in the category under sub-heading No.996311 under ‘Room or Unit Accommodation Services provided by hotels, in guest house, club and like.’

3.1 The case of the Department is that since the tariff based and tariff differentiated room servicse are offered alongwith the above health care services in the field of naturopathy, the petitioner becomes a hotel etc. to be liable to pay the goods and services tax accordingly.

4. Learned advocate for the Department raised preliminary objection to submit that since the decision of the appellate authority for advance ruling does not decide right as such of the parties by very nature that it is an advance ruling, such decision is not enable to be amenable to challenged in the writ jurisdiction of this court.

4.1 This submission readily stands negated in view of the decision of the Supreme Court in **Columbia Sportswear Company Vs. Director of Income Tax, Bangalore [(2012) 11 SCC 224]** in which it is held *inter alia* that the authority for advance ruling is tribunal within the meaning of Article 227 of the Constitution and since it is a body acting in judicial capacity, the High Court under Article 226 and 227 of the Constitution could entertain the challenge to the advance ruling. Not only that, it was observed by the Apex Court that the challenge should be heard directly by the Division Bench and decide it as expeditiously as possible.

4.2 The proposition that the challenge is maintainable stands furthered by decision of the Division Bench of this court in **GSPL India Transco Ltd. V/s. Union of India [(2012) 25 taxmann.com86 (Guj.)].** Therefore, the preliminary objection about the maintainability raised by the Department stands devoid of merit and cannot be accepted.

4.3 Learned Assistant Government Pleader Ms.Shruti Dhruve on the other hand would submit that in any view the judgments of the authorities under the advance ruling scheme are judgments in realm, more particularly when issue like one on hand is decided. The submission travels in the realm of merit. All the contentions are open for all the parties concerned to be raised in accordance with law to be decided at the time of final hearing of the petition.

5. *Prima facie*, a strong case is made out. Therefore, Rule, returnable on 8.6.2023.

(N.V.ANJARIA, J)

(D. M. DESAI,J)

Manshi