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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.236 OF 2025

M/s. HM Leisure,
Through its authorised representative
Mr Amit Ramesh Prasade ...PETITIONER

Versus

Assistant Commissioner of CGST,
Div. – 1 & 2 Ors. ...RESPONDENTS

Mr V. Raghuraman, Senior Advocate with Mr Bhanu Murthy and
Mr S. Savoikar, Advocates for the Petitioner.
Ms Asha Desai, Senior Standing Counsel for the Respondents.

**CORAM : BHARATI DANGRE &
NIVEDITA P. MEHTA, JJ.**

DATE : 28th JULY 2025

ORDER : (Per Nivedita P. Mehta, J.)

1. The petitioner is a partnership firm engaged in providing services in the nature of sporting facilities (bowling) and video games. The petitioner firm's head office is located in Bangalore, Karnataka and the Branch office is in Goa. The petitioner firm is registered under the provisions of GST vide GSTN number 30AACFH0418B1ZG in the State of Goa. The petitioner falls under the State Jurisdiction for all administrative purposes of GST.

2. In the year 2019, search was conducted in the business premises of the petitioner firm by Anti Evasion Wing of CGST, Goa Commissionerate and certain documents were seized. Statements of the Manager and Assistant General Manager of the petitioner firm (Bangalore head office) were recorded and accordingly summons were issued to Shri H.J. Siwani, partner of the petitioner firm to appear before the Authorities. However, on the said date, Shri Shivananda Reddy appeared before the Authorities and his statement was recorded.

3. On 10.02.2020, the petitioner furnished a copy of the GST registration certificate, annual returns for FY 2017-18, GSTR 9C for FY 2017-18, audited financials for 2017-18 and 2018-19 and Form 26AS.

4. Vide letter dated 11.05.2020, the petitioner was requested to submit the profit & loss account, sales ledger bifurcating the turnover of different units of H.M. Leisure and the Goa unit alone. The petitioner firm on 14.08.2020 submitted a monthly break-up of sales from July 2017 to Dec 2019 and with respect to the profit and loss account, it was stated that no separate profit & loss account statement would be prepared for the Goa branch alone, as all their accounts are maintained on a consolidated basis.

5. On 10.11.2021, the Additional Assistant Director, DGGI, Mumbai issued summons to M/s. H.M. Leisure, Mumbai asking to furnish details of the exemption claimed in respect of bowling games

for all registrations across India. Similarly, various summons were issued vide letter dated 15.02.2023, 04.09.2023, 12.12.2023, 02.01.2024.

6. Demand and Recovery Case (DRC) - 01A Form was issued informing that the petitioner is liable to pay GST of Rs.1,18,44,414/- (it was corrected by corrigendum as Rs.1,18,59,374/-) for the period 2017-18 to 2019-20 (Oct. 2019) on the allegation that the services of gaming facilities like video gaming through virtual gaming machines and bowling gaming facility are liable to 28% GST.

7. The petitioner filed a reply to Form DRC-01A stating that the GST rate of 28% is applicable only for admission to casinos, betting and gambling. Further, relying on the CBIC Circular dated 06.10.2021, it was stated that services provided by the petitioner firm are classifiable under entry 34(iii), which is chargeable to GST @18%.

8. On 18.04.2022, a show cause notice was issued by Deputy Commissioner, CGST, Goa, proposing a tax demand of Rs.67,50,522/- on video gaming and bowling services @ 18%. Further, interest and penalty were also proposed to be imposed.

9. On 16.05.2022, the petitioner filed their reply to the aforesaid show cause notice contending that the taxes have been rightly discharged by them at the following rates:

- a. the video game services are chargeable to GST @ 18%
- b. bowling services are exempted and
- c. shoe usage charges are chargeable to GST @ 5%.

10. Respondent no.3, the Joint Director, DGGI, Mumbai Zonal unit issued a show cause notice dated 03.08.2024, alleging that the bowling services and the shoe charges are chargeable to GST @ 18% on which the petitioner company has claimed exemption. Therefore, differential GST was demanded across all the branches, including the Goa branch.

11. On 17.08.2024, a personal hearing notice was served to the petitioner to appear before respondent No. 1 in respect of show cause notice dated 18.04.2022. However, on 03.10.2024, the petitioner forwarded a letter informing that DGGI, Mumbai, has initiated the investigation on all India basis, which includes the Goa Branch, and therefore, requested to transfer the subject proceedings to the Chennai Commissionerate, adjudicating officer for notices issued by DGGI, Mumbai.

12. The petitioner on 19.09.2024, preferred a Writ Petition before the High Court of Karnataka challenging the show cause notice dated 03.08.2024, which included a demand against the Goa Branch as well.

13. The High Court vide its order dated 24.09.2024 granted the interim order of stay of show cause notice dated 03.08.2024. Again, the petitioner received a notice of personal hearing in respect of the show cause notice dated 18.04.2022.

14. The petitioner vide letter dated 15.10.2024, requested Respondent No. 1 to keep the subject show cause notice proceedings in

abeyance or transfer the file to Chennai Commissionerate, who would adjudicate show cause notice issued by DGGI, Mumbai. However, on 30.01.2025, Respondent No.1 passed the impugned order confirming the demand of Rs.67,50,522/- along with interest and penalty under Section 74 of the CGST Act, 2017.

15. The learned Senior Counsel for the petitioner submitted that Section 6(1) of the CGST Act provides that, subject to conditions and limitations, the officers appointed under the CGST Act would be authorised to act as Proper Officers. The interpretation of the said provision by the respondent no.2 (CBIC) in the Impugned Instructions, in the manner that, in the absence of any such conditions, the power of cross-empowerment under Section 6(1) of the CGST Act is absolute and not conditional, is erroneous as such an interpretation would render the said part of the provision, which requires imposition of conditions, otiose.

16. The learned Senior Counsel further submitted that conferring such jurisdiction on a plurality of officers on the same subject matter would result in chaos, harassment, contrary and conflicting decisions and therefore such untrammelled power would indeed be arbitrary and violative of Article 14 of the Constitution. It is settled law that if a plurality of officers is invested with the powers of assessing the same dealer, it will result in great hardship and inconvenience to the dealers in travelling to the offices of different officers. Even producing accounts before different officers will greatly handicap the dealers in making their

representations and it will also lead to conflicting and contradictory orders of assessment. Conferment of concurrent jurisdiction on several officers in respect of the same area would result in discriminatory consequences, resulting in violation of Article 14.

17. The learned Senior Counsel for the petitioner has placed reliance on *Kusum Ingots & Alloys Ltd. V/s. Union of India*¹ in support of his contentions.

18. Ms Asha Desai, the learned Senior Standing Counsel for the respondents, contended that the stay granted by the High Court of Karnataka vide order dated 24.09.2024, staying the show cause notice dated 03.08.2024 was only in respect of the proceedings initiated by the DGGI, Mumbai (respondent no.3) and not on the further proceedings of the show cause notice dated 18.04.2022 pertaining to CGST Goa. The show cause notice dated 18.04.2022 encompassed several demand issues beyond the “bowling game and shoe usage”, which were addressed in the show cause notice issued by the respondent no.3 - DGGI, Mumbai.

19. She further submitted that additionally, the show cause notice dated 18.04.2022 issued by the Anti-evasion, Goa, raised concerns regarding the excess availed of Input Tax Credit (ITC) and the differential tax liability related to the amusement facility provided to customers at the Goa; registered GSTN. The show cause notice issued

¹ (2004) 6 SCC 254

on 24.09.2024 by the DGGI, Mumbai, did not incorporate the other issues that were highlighted in the show cause notice dated 18.04.2022, specifically the 'excess availed of ITC' and 'differential tax liability in respect of the amusement facility'. Accordingly, the impugned order dated 30.01.2025 is a well-reasoned Order passed after due compliance with the principles of natural justice and is based on a proper appreciation of the facts and the records and suffers no duplicity of matter on the part of respondent no.1 and therefore, no interference is warranted by this Court.

20. We have heard the learned Senior Counsel for the petitioner and the learned Senior Standing Counsel representing the respondents. We have also gone through the records.

21. If multiple show cause notices are issued and conferring jurisdiction on a plurality of officers on the same subject matter, it would result in chaos, harassment, contrary and conflicting decisions. The show cause notice dated 03.08.2024 issued by DGGI for the same period and on same subject matter pending before the High Court of Karnataka (which includes turnover of Goa Branch), no adjudication should have been carried out by respondent no.1 as it would result in duplication of proceedings or multiplicity of proceedings on same issue for same period. In other words, the subject proceedings should have been transferred to the DGGI for further adjudication as the notice issued by DGGI is on all India basis (including Goa Branch).

22. It was held in *Kusum Ingots & Alloys Ltd.* (supra) that an order passed on writ petition questioning the constitutionality of a Parliamentary Act, whether interim or final, will have effect throughout the territory of India subject to the applicability of the Act.

23. The Hon'ble Supreme Court in *Kusum Ingots & Alloys Ltd.* (supra) held at paragraphs 27,28 and 29 as under:

“27. When an order, however, is passed by a court or tribunal or an executive authority whether under provisions of a statute or otherwise, a part of cause of action arises at that place. Even in a given case, when the original authority is constituted at one place and the appellate authority is constituted at another, a writ petition would be maintainable at both the places. In other words, as order of the appellate authority constitutes a part of cause of action, a writ petition would be maintainable in the High Court within whose jurisdiction it is situate having regard to the fact that the order of the appellate authority is also required to be set aside and as the order of the original authority merges with that of the appellate authority.

28. Lt. Col. Khajoor Singh V/s. Union of India² whereupon the learned counsel appearing on behalf of the appellant placed strong reliance was rendered at a point of time when clause (2) of Article 226 had not been inserted. In that case the Court held that the jurisdiction of the High Court under Article 226 of the Constitution of India, properly construed, depends not on the residence or location of the person affected by the order but of the person or authority passing the order and the place where the order has effect. In the latter sense, namely, the office of the authority which is to implement the order would attract the territorial jurisdiction of the Court was considered having regard to

² AIR 1961 SC 532

Section 20(c) of the Code of Civil Procedure as Article 226 of the Constitution thence stood, stating: (AIR p. 540, para 16)

"The concept of cause of action cannot in our opinion be introduced in Article 226, for by doing so we shall be doing away with the express provision contained therein which requires that the person or authority to whom the writ is to be issued should be resident in or located within the territories over which the High Court has jurisdiction. It is true that this may result in some inconvenience to persons residing far away from New Delhi who are aggrieved by some order of the Government of India as such, and that may be a reason for making a suitable constitutional amendment in Article 226. But the argument of inconvenience, in our opinion, cannot affect the plain language of Article 226, nor can the concept of the place of cause of action be introduced into it for that would do away with the two limitations on the powers of the High Court contained in it."

29. In view of clause (2) of Article 226 of the Constitution of India, now if a part of cause of action arises outside the jurisdiction of the High Court, it would have jurisdiction to issue a writ. The decision in Khajoor Singh (supra) has, thus no application."

24. The decision in the case of *Kusum Ingots & Alloys Ltd.* (supra) would cover the issue of the present petitioner as the show cause notice dated 03.08.2024 was challenged before the High Court of Karnataka and the same has been stayed. The fact that the DGGI, Mumbai had issued notice on all India basis, which included the demand for Goa branch also and it was informed to the respondent no.1 to keep the

subject show cause notice proceedings in abeyance but the said request was ignored and the respondent no.1 proceeded to adjudicate the matter and passed the order dated 30.01.2025 confirming the demand of GST on the very same issue which we set aside in view of the judgment passed by the Hon'ble Supreme Court in *Kusum Ingots & Alloys Ltd.* (supra), we deem it appropriate to allow the petition.

25. Since our adjudication is limited to the narrow question of whether the Authorities can act upon the show cause notice dated 03.08.2024, notwithstanding the subsisting stay granted by the High Court of Karnataka, in light of the foregoing observations, we allow the petition in terms of prayer clause (a), which read thus:

“(a) That this Hon’ble Court be pleased to issue a Writ of Certiorari, or a Writ in the nature of Certiorari, or any other Writ or Order or Direction to quash the order-in-original bearing number GOA/DIV-1/ADJ/AC-DC/GST/26/2024-25 dated 30.01.2025 passed by Respondent No.1 and also quash Form DRC-07 (all three dated 30.01.2025), along with consequential relief.”

26. In the wake of the aforesaid, we do not deem it necessary to consider the other reliefs prayed in the petition.

NIVEDITA P. MEHTA, J.

BHARATI DANGRE, J.