

GIB/DL/SKILL LOTTO SOULUTIONS/03.12.2020/SC-26

Supreme Court Category : LEVY OF TAX

State : Delhi

Order No.: GIB/DL/SKILL LOTTO SOULUTIONS/03.12.2020/SC-26

Name of Entry :
SKILL LOTTO SOULUTIONS PVT.

Date : 03-12-2020

Breif Issue :

FACT AND ISSUE OF THE CASE:

The petitioner, an authorized agent, for sale and distribution of lotteries organized by State of Punjab has filed this writ petition impugning the definition of goods under Section 2(52) of Central Goods and Services Tax Act, 2017 and consequential notifications to the extent it levies tax on lotteries. The petitioner seeks declaration that the levy of tax on lottery is discriminatory and violative of Articles 14, 19(1)(g), 301 and 304 of the Constitution of India.

Decision of Advance Ruling Authority :

DECISION:

Whether the writ petition is not maintainable under Article 32 of the Constitution of India since the writ petition relates to lottery and the petitioner cannot claim protection under Article 19(1)(g)?

The writ petition alleging the violation of Article 14 especially with respect to a parliamentary Act can very well be entertained under Article 32. Also, with regard to the matter of lottery itself, this Court had entertained a writ petition earlier under Article 32. Reference is made to judgment of this Court in H. Anraj and Ors. Vs. State of Maharashtra, where the writ petitioner, who were agents for the sale of tickets for the lottery filed a writ petition questioning the ban imposed on the sale of lottery tickets within the State of Maharashtra. Even judgment of this Court in H. Anraj Vs. Government of Tamil Nadu, was also a writ petition, which was heard alongwith a civil appeal questioning the leviability of the sales tax by the State Legislature on the sale of lottery tickets - thus, the grounds, which have been raised in the writ petition, the writ petition cannot be said to be not maintainable under Article 32 and the preliminary objection made by the learned ASG that the writ petition cannot be entertained under Article 32 and is overruled.

Whether the inclusion of actionable claim in the definition of goods as given in

Section 2(52) of Central Goods and Services Tax Act, 2017 is contrary to the legal meaning of goods and unconstitutional? - Whether the Constitution Bench judgment of this Court in Sunrise Associates (supra) in paragraphs 33, 40, 43 and 48 of the judgment has laid down as the proposition of law that lottery is an actionable claim or the observations made in the judgment were only an obiter dicta and not declaration of law?

The definition of goods under Section 2(52) of the Act, 2017 does not violate any constitutional provision nor it is in conflict with the definition of goods given under Article 366(12). Article 366 clause (12) as observed contains an inclusive definition and the definition given in Section 2(52) of Act, 2017 is not in conflict with definition given in Article 366(12). As noted above the Parliament by the Constitution (One Hundred and First Amendment) Act, 2016 inserted Article 246A. a special provision with respect to goods and services tax. The Parliament was fully empowered to make laws with respect to goods and services tax. Article 246A begins with non obstante clause.

Thus, the inclusion of actionable claim in definition “goods” as given in Section 2(52) of Central Goods and Services Tax Act, 2017 is not contrary to the legal meaning of goods and is neither illegal nor unconstitutional - also, lottery is an actionable claim as proposition of law.

Whether exclusion of lottery, betting and gambling from Item No.6 Schedule III of Central Goods and Services Tax Act, 2017 is hostile discrimination and violative of Article 14 of the Constitution of India?

The Constitution Bench in State of Bombay Vs. R.M.D. Chamarbaugwala and Anr. has clearly stated that Constitution makers who set up an ideal welfare State have never intended to elevate betting and gambling on the level of country's trade or business or commerce. In this country, the aforesaid were never accorded recognition of trade, business or commerce and were always regulated and taxing the lottery, gambling and betting was with the objective as noted by the Constitution Bench in the case of State of Bombay Vs. R.M.D. Chamarbaugwala and Anr. , we, thus, do not accept the submission of the petitioner that there is any hostile discrimination in taxing the lottery, betting and gambling and not taxing other actionable claims. The rationale to tax the aforesaid is easily comprehensible as noted above. Hence, we do not find any violation of Article 14 in Item No. 6 of Schedule III of the Act, 2017.

Whether while determining the face value of the lottery tickets for levy of GST, prize money is to be excluded for purposes of levy of GST?

The value of taxable supply is a matter of statutory regulation and when the value is to be transaction value which is to be determined as per Section 15 it is not permissible to compute the value of taxable supply by excluding prize which has been contemplated in the statutory scheme. When prize paid by the distributor/agent is not contemplated to be excluded from the value of taxable supply, we are not persuaded to accept the submission of the petitioner

that prize money should be excluded for computing the taxable value of supply the prize money should be excluded. We, thus, conclude that while determining the taxable value of supply the prize money is not to be excluded for the purpose of levy of GST - the petitioner is not entitled to reliefs as claimed in the writ petition.

The petitioner has prayed for grant of liberty of challenging the notifications dated 21.02.2020/02.03.2020 by which rate of GST for lottery run by the State and lottery organized by the State have been made the same, which notification has not been challenged in the writ petition since the notifications were issued during the pendency of writ petition. Petitioner has prayed that the said issue be left open, the notification having not been challenged in the writ petition liberty be given to the petitioner to challenge the same in appropriate proceedings - petition dismissed.