IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 15TH DAY OF JULY, 2025

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

**WRIT PETITION NO.1779 OF 2025 (T-RES)**

**BETWEEN:**

1 . M/S. ALSTOM TRANSPORT INDIA LIMITED
3RD FLOOR, 66/2, EMBASSY PRIME
C.V. RAMAN NAGAR
BAGMANE TECH PARK, BENGALURU
KARNATAKA -560093
REPRESENTED BY,
VISHWANATH HUCHCHAPARANNAVAR
AGE 45 YEARS
TAX MANAGER - GST
INCORPRATED UNDER THE COMPANIES ACT, 1956
...PETITIONER

(BY SRI. RAVI RAGHAVAN, SMT. MEGHNA LAL AND
SMT. VANI DWEVEDI, ADVOCATES)

**AND:**

1 . COMMISSIONER OF COMMERCIAL TAXES
VANIJYA THERIGE KARYALAYA
GANDHINAGAR
BANGALORE - 560 009.

2 . ADDITIONAL COMMISSIONER OF
COMMERCIAL TAXES
(ENFORCEMENT), SOUTH ZONE
ROOM NO. 401, 4TH FLOOR

V T K-2 BUILDING, RAJENDRANAGARA
KORMANGALA
BENGALURU-560047.

3 . DEPUTY COMMISSIONER OF
COMMERCIAL TAXES
(ENFORCEMENT)-08, SOUTH ZONE
ROOM NO. 401, 4TH FLOOR
V.T.K.-2 BUILDING, RAJENDRANAGARA
KORMANGALA, BENGALURU-560047.

4 . ASSISTANT COMISSIONER
OF COMMERCIAL TAXES
ENFORCEMENT-20, SOUTH ZONE
ROOM NO. 401, 4TH FLOOR
V.T.K.-2 BUILDING, RAJENDRANAGARA
KORMANGALA, BENGALURU - 560 047.

...RESPONDENTS

(BY SMT. JYOTI M. MARADI, HCGP)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ORDERS BEARING NO.ZD291024038057J DATED 16.10.2024 VIDE ANNEXURE-A, ZD2910240380671 DATED 16.10.2024 VIDE ANNEXURE- A1, ZD291024038078F DATED 16.10.2024 VIDE ANNEXURE-A2, ZD291024038087G DATED 16.10.2024 VIDE ANNEXURE-A3, ZD291024038090T DATED 16.10.2024 VIDE ANNEXURE-A4 AND ZD291024038094L DATED 16.10.2024 VIDE ANNEXURE-A5 PASSED BY RESPONDENT NO.4 FOR THE TAX PERIOD JULY 2017 TO MARCH 2023 WHICH CONFIRMED THE DEMAND OF IGST OF RS.57,94,94,146/- ALONG WITH INTEREST AND PENALTY AND ETC.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 08.07.2025, THIS DAY ORDER WAS PRONOUNCED THEREIN, AS UNDER:

CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

**CAV ORDER**

In the captioned petition, petitioner is assailing the orders dated 16.10.2024 vide Annexures-A to A5 passed by respondent No.4 and a further declaration is sought that the taxable value of the supply, if any, made by the overseas entities/expats to the petitioner is 'Nil' in terms of Section 15(4) of the Central Goods and Service Tax Act, 2017 (for short 'the CGST Act, 2017') read with Rule 28 of the CGST Rules, 2017. A further declaration is sought for payment of salary made to the expats by the petitioner does not attract IGST on the ground that it does not amount to manpower and recruitment supply of services from the overseas group entities to the petitioner/company.

2. The facts leading to the case are as under:

The petitioner is engaged in the business of designing, manufacturing, supplying, installing, and commissioning goods pertaining to railway and metro infrastructure projects. In addition, the petitioner provides design and engineering services, including software upgradation and modification in metro projects. During the disputed period from July 2017 to March 2023, the petitioner avers that employees of its overseas group companies were seconded to work in India for a fixed tenure. The petitioner asserts that it executed employment agreements with each of these expatriate employees, detailing their appointments, salaries, and allowances. It is further submitted that during the term of their secondment, these expatriates were placed on the payroll of the petitioner in India, and their salaries were paid directly by the petitioner after deducting applicable Tax Deducted at Source (TDS) in accordance with the provisions of the Income Tax Act, 1961.

The petitioner contends that while the expatriate employees were on its payroll, the overseas group entities continued to provide social security and related benefits available in their home countries. From November 2020 onwards, the petitioner has been discharging Integrated Goods and Services Tax (IGST) on a reverse charge basis, periodically, on the amounts specified in debit notes raised by the overseas group entities, as reflected in its GSTR-3B returns. It is submitted that the IGST so paid was availed as Input Tax Credit (ITC), and no objections were raised by the authorities in this regard.

The petitioner's grievance arises from the issuance of a show cause notice bearing No.ADCOM/ENF/SZ/Summons-480/2023-24 dated 26.09.2023 by respondent No.3, proposing to demand IGST amounting to Rs.59,57,19,228/-, along with interest and penalty, for the period July 2017 to March 2023. The demand is premised on the allegation that the petitioner was liable to pay IGST

on the import of 'Manpower Supply Service' from its overseas affiliates. In response, the petitioner has relied on Circular No.210/4/2024-GST dated 26.06.2024 issued by the Central Board of Indirect Taxes and Customs (CBIC), which clarifies that in cases involving related party transactions where full input tax credit is available to the recipient, the value declared in the invoice may be deemed as the open market value under the second proviso to Rule 28 of the CGST Rules, 2017. The petitioner asserts that since no invoices were raised, the open market value must be deemed to be 'Nil'.

Despite furnishing requisite documents and replying in Part B of Form DRC-01A, explaining that IGST had already been discharged under the reverse charge mechanism on the reimbursed amounts, and asserting that the seconded expatriates were on the petitioner's payroll, respondent No.3 proceeded to issue a formal show cause notice on 26.09.2023. This was despite the petitioner having clearly

submitted that the transaction is not a "supply" within the meaning of Entry 1 of Schedule III to the CGST Act, 2017. Prior to this, on 27.07.2023, Part A of Form DRC-01A was issued indicating a proposed liability of Rs.62,69,13,875/-, which was responded to by the petitioner with detailed submissions and supplementary documents.

Aggrieved, the petitioner approached this Court by filing W.P.No.23915/2023 challenging the show cause notice dated 26.09.2023. This Court, while disposing of the writ petition, relegated the petitioner to submit a detailed reply before the authorities, taking note of the then-recently issued CBIC Circular dated 26.06.2024, which clarified that in the absence of an invoice, the taxable value is deemed to be 'Nil'. Despite submission of additional documents and explanations in line with this clarification, the respondent No.4 proceeded to pass the impugned order confirming the IGST demand on alleged import of manpower recruitment and supply services.

3. Learned counsel appearing for the petitioner, reiterating the grounds urged, placed reliance on the decision of the Delhi High Court in ***Metal One Corporation India Pvt. Ltd. vs. Union of India & Ors.***[1], wherein similar show cause notices were quashed in cases where no invoices were raised for alleged manpower supply. Relying on the said decision and the CBIC Circular dated 26.06.2024, learned counsel argued that salaries paid to expatriates cannot be treated as open market value under Rule 28 of the CGST Rules, 2017. He submitted that these payments, being in the nature of salaries, do not constitute consideration for supply of manpower services and hence do not attract IGST under reverse charge.

4. Without prejudice to the above, learned counsel submitted that the petitioner has, as a matter of abundant caution, already discharged IGST on the reimbursed amounts from November 2020 onwards, even though no

[1] 2024 DHC 8298 DB

invoices were raised for the entire disputed period. He contended that the transaction, in essence, represents a service between employer and employee, which falls squarely within the ambit of Entry 1 of Schedule III to the CGST Act, 2017 and hence does not amount to a taxable supply.

5. In opposition, the Revenue contends that the petitioner's arrangement with its overseas group entities amounts to a taxable supply of service under the Goods and Services Tax (GST) regime. According to the Department, the secondment of employees by the foreign parent or affiliated entities to the petitioner constitutes a provision of "manpower supply service". The Department asserts that this arrangement falls squarely within the ambit of taxable inter-state supply, wherein the foreign entity is the supplier and the petitioner is the recipient of such service. Accordingly, the Department seeks to invoke the provisions of the Reverse Charge Mechanism (RCM) under Section

5(3) of the Integrated Goods and Services Tax Act, 2017 (IGST Act), which mandates that the liability to pay tax on specified categories of supply of services rests with the recipient, rather than the supplier.

6. To substantiate its position, the Department places reliance on Notification No.10/2017 – Integrated Tax (Rate) dated 28.06.2017, issued under the said section, which specifically enumerates "services supplied by a person located in a non-taxable territory by way of supply of manpower for any purpose" as taxable in the hands of the recipient located in the taxable territory, i.e., India. The Revenue, therefore, contends that by virtue of this notification, the petitioner was legally obligated to discharge IGST under RCM on the entire value of services alleged to have been provided by the foreign group entities through seconded personnel. On this basis, the Department seeks to levy IGST along with applicable interest and penalties on

the total value of salaries and reimbursements made in respect of such seconded employees.

7. Heard learned counsel appearing for the petitioner and learned HCGP for the State. Perused the records.

8. The petitioner company asserts that, under a typical secondment arrangement, expatriate employees are deputed by a foreign parent or affiliate company to work for its Indian subsidiary for a specified period. Such arrangements are governed by a dual-contractual framework comprising (i) a Secondment Agreement executed between the foreign and Indian entities, and (ii) an Employment Agreement entered into directly between the seconded employee (secondee) and the Indian entity. The Secondment Agreement sets out the overarching terms of deputation, including the duration of the secondment, the general roles and responsibilities of the secondees, and

the mechanism for reimbursement of costs, such as salaries and benefits paid by the foreign entity on behalf of the Indian company. In parallel, the Employment Agreement entered into with the Indian entity governs the specific terms of the secondee's full-time engagement in India during the secondment period. This agreement contains stipulations regarding the tenure of employment, location of work, compensation structure, employment duties, benefits, termination and resignation clauses, and dispute resolution mechanisms.

9. The company further claims that , during the course of secondment, the secondees remain subject to the operational supervision, control, and administrative authority of the Indian company. They are required to comply with all internal rules and policies of the Indian entity, including office hours, code of conduct, and statutory obligations under Indian tax laws, particularly the deduction of tax at source (TDS) from their salaries. While the Indian

company disburses the salary directly to the secondees, certain components such as social security contributions or benefits mandated under the laws of the home country may be paid by the foreign entity, which are later reimbursed by the Indian subsidiary. Functionally and contractually, the secondees are fully integrated into the Indian company's workforce and operate exclusively under its control during the term of their deputation.

10. Prior to the advent of the Goods and Services Tax (GST) regime, services rendered by an employer to its employee were expressly excluded from the ambit of taxation under Section 65(B)(44) of the Finance Act, 1994, which governed the Service Tax framework. In this legal context, various appellate tribunals consistently held that seconded employees were to be treated as employees of the Indian entity for all practical and legal purposes, and that no taxable manpower supply service was involved. These rulings were premised on the fact that the Indian

company exercised complete control and supervision over the secondees during their period of deputation; that there was no payment of consideration to the foreign parent company in the form of service fees; and that the relationship between the foreign and Indian entities was neither that of a service provider-client nor principal-agent. Consequently, secondment arrangements were generally not brought within the purview of taxable services under the Service Tax regime until the Supreme Court's landmark decision in ***CC, CE & ST, Bangalore (Adj) etc. vs. Northern Operating Systems Pvt. Ltd.***[2], which marked a significant shift in the legal interpretation of such arrangements.

11. In its judgment dated 19.05.2022, the Hon'ble Supreme Court in ***CC, CE & ST v. Northern Operating Systems Pvt. Ltd.*** (supra), adopted a substance-over-form approach, holding that despite the appearance of an

[2] Civil Appeal Nos.2289-2293 of 2021

employer-employee relationship, secondment arrangements in substance constituted a taxable supply of manpower services. The Court's key findings included that the foreign entity remained the economic employer, retaining control over the secondees' terms of employment, who continued on the foreign payroll with salaries fixed in foreign currency and additional allowances such as hardship pay. The secondees were assigned to the Indian entity only for specific tasks and durations, after which they reverted to the foreign company. Importantly, the foreign entity levied a mark-up on salary reimbursements to the Indian company to cover administrative costs, reinforcing the conclusion that the arrangement was in the nature of a service transaction liable to tax.

12. Based on the specific facts before it, the Hon'ble Supreme Court in ***Northern Operating Systems Pvt. Ltd.*** (supra) held that the secondment arrangement amounted to a supply of manpower services by the foreign

entity to its Indian subsidiary and was therefore liable to Service Tax under the Reverse Charge Mechanism (RCM). Crucially, the Hon'ble Apex Court clarified that its ruling was fact-specific and should not be treated as a blanket precedent for all secondment arrangements. Given the conceptual alignment between the Service Tax and GST frameworks, the *NOS* decision prompted heightened scrutiny of secondment structures under GST. The central question remains whether a secondment constitutes a taxable supply of manpower services or a non-taxable employer-employee relationship exempt under Schedule III of the CGST Act.

13. Following the ruling, tax authorities particularly the Directorate General of GST Intelligence (DGGI) initiated widespread investigations, issuing numerous show cause notices. Taxpayers responded in varied ways: some paid GST under protest and claimed Input Tax Credit (ITC), maintaining revenue neutrality; others contested the

demand on merits, asserting that the secondees were full-time employees of the Indian entity. A few opted to pay tax with interest under Section 73(5) of the CGST Act to avoid coercive proceedings. However, authorities escalated matters by issuing notices under Section 74, alleging fraud or suppression, and in certain cases sought to deny ITC either on the basis of Section 17(5)(i), where tax is paid under Section 74, or by invoking time limitations under Section 16(4).

14. In light of these developments, businesses must now assess secondment arrangements on a case-by-case basis. Key factors include: who bears the economic burden and controls long-term employment; whether the posting is task-specific or open-ended; how salary is paid directly by the Indian entity or via the foreign company; and whether the secondee is absorbed into the Indian organization or reverts to the foreign entity post-assignment.

15. The wave of litigation and inconsistent assessments following the ***Northern Operating Systems*** ruling prompted intervention by both the Central Board of Indirect Taxes and Customs (CBIC) and the GST Council. In its Instruction dated 13.12.2023, the CBIC directed tax authorities to assess secondment cases individually and to refrain from invoking Section 74 of the CGST Act unless there was clear evidence of fraud or wilful suppression. However, implementation at the field level has remained uneven. Subsequently, in its 53rd meeting held on 22.06.2024, the GST Council made several key recommendations. First, it proposed a conditional waiver of interest and penalties for GST demands related to FY 2017–18 to 2019–20, provided the principal tax is paid by 31 March 2025, this relief is to be implemented through the insertion of Section 128A in the CGST Act. Second, with respect to valuation under Rule 28, the Council clarified that in related party transactions where the Indian recipient is

eligible for full Input Tax Credit (ITC), the declared value may be accepted as the open market value, and where no invoice is raised, the value may be deemed 'NIL' a clarification particularly relevant to secondment arrangements. Third, it was clarified that ITC may be claimed in the financial year in which the invoice is raised, rather than when tax is paid, thus addressing concerns over denial of ITC due to timing mismatches. These recommendations were formally implemented by way of a CBIC circular dated 26.06.2024.

16. In the present case, the petitioner contends that the expatriate employees were seconded by the foreign parent solely to render services to the petitioner in India. Throughout the period of secondment, these employees were under the exclusive administrative and functional control of the petitioner, were integrated into its organizational framework, and adhered to its internal policies, code of conduct, and disciplinary rules. Their

salaries were paid directly by the petitioner and subjected to Indian income tax, including deduction of TDS, and they were extended statutory employment benefits under Indian labour laws. Collectively, these facts establish the existence of a genuine employer-employee relationship between the petitioner and the seconded personnel, falling squarely within the exclusion under Schedule III of the CGST Act and thereby not constituting a taxable supply.

17. This Court deems it fit to cull out para 3.7 of the Circular dated 26.06.2024, which reads as under:

> *"3.7 In view of the above, it is clarified that in cases where the foreign affiliate is providing certain services to the related domestic entity, and where full input tax credit is available to the said related domestic entity, the value of such supply of services declared in the invoice by the said related domestic entity may be deemed as open market value in terms of second proviso to Rule 28(1) of CGST Rules. Further, in cases where full input tax credit is available to the recipient, if the invoice is not issued by the*

*related domestic entity with respect to any service provided by the foreign affiliate to it, the value of such services may be deemed to be declared as Nil, and may be deemed as open market value in terms of second proviso to Rule 28(1) of CGST Rules."*

18. This Court finds it appropriate to emphasise paragraph 3.7 of Circular No. 210/4/2024-GST dated 26.06.2024, which clarifies the legal position regarding cross-border intra-group services where full input tax credit is available to the recipient. The Circular unequivocally states that if the related domestic entity does not raise an invoice in respect of services received from its foreign affiliate, the value of such services may be deemed to be 'Nil' and such 'Nil' value shall be treated as the open market value in terms of the second proviso to Rule 28(1) of the CGST Rules. The Delhi High Court, in ***Metal One Corporation India Pvt. Ltd. v. Union of India & Ors.,*** (supra) has also endorsed this clarification, observing that

once the value is treated as 'Nil' under Para 3.7, there can be no further tax implications arising under the Act.

19. In the present case, it is not in dispute that no invoices were raised by the petitioner in respect of the services allegedly rendered by the foreign affiliate through seconded employees. Following the clarification in Para 3.7, the value of such services must be deemed to be 'Nil' and treated as the open market value. Even if arguendo such secondment arrangement is assumed to be a supply, the deeming fiction under the Circular neutralises any scope for further tax liability. This Court is in agreement with the view of the Delhi High Court that the Circular, being binding on the authorities, leaves little room for the Revenue to allege a taxable value in the absence of an invoice. Further, the second proviso to Rule 28 cannot be invoked to displace the legal effect of a 'Nil' value where the legislative framework itself permits such a deeming fiction, especially when full input tax credit is available.

20. Accordingly, in light of the statutory exclusion under Schedule III and the clarificatory Circular issued by the CBIC, this Court holds that the secondment arrangement does not give rise to any tax liability, and the impugned demand raised by the Revenue is liable to be set aside.

21. For the foregoing reasons, this Court proceeds to pass the following:

ORDER

(i) In terms of para 3.7 of the circular dated 26.06.2024 , this Court holds that the secondment of employees in the present case does not amount to a taxable supply of manpower services under the GST regime and is therefore not amenable to IGST under the reverse charge mechanism. Consequently, the writ petition is ***allowed;***

(ii) Accordingly, the impugned orders bearing No.ZD291024038057J dated 16.10.2024 (Annexure-A), ZD2910240380671 dated

16.10.2024 (Annexure-A1), ZD291024038078F dated 16.10.2024 (Annexure-A2), ZD291024038087G dated 16.10.2024 (Annexure-A3), ZD291024038090T dated 16.10.2024 (Annexure-A4), and ZD291024038094L dated 16.10.2024 (Annexure-A5), passed by Respondent No.4, confirming the demand of Integrated Goods and Services Tax (IGST) to the tune of Rs.57,94,94,146/- along with interest, penalty, and other consequential proceedings for the tax period from July 2017 to March 2023, are hereby quashed and set aside.

**Sd/-**
**(SACHIN SHANKAR MAGADUM)**
**JUDGE**

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