HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION NO. 2848 OF 2024 (T-RES)

BETWEEN:

M/S HUAWEI TECHNOLOGIES INDIA PRIVATE LIMITED
SY NO 37, 46, 45/3, 45/4,
KUNDALAHALLI VILLAGE
BANGALORE – 560 037
REPRESENTED BY DUNMING WANG,
CHIEF FINANCIAL OFFICER,
INCORPORATED UNDER THE COMPANIES ACT, 1956

...PETITIONER

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

AND:

1. STATE OF KARNATAKA
THROUGH ITS PRINCIPAL SECRETARY,
FINANCE DEPARTMENT,
VIDHANA SOUDHA
BANGALORE – 560001

2. ADDITIONAL COMMISSIONER OF COMMERCIAL TAXES,
(ENFORCEMENT) SOUTH ZONE, ROOM NO 208,
V.T.K.-2 BUILDING, RAJENDRANAGARA
KORAMANGALA,
BENGALURU – 560 047

3. DEPUTY COMMISSIONER OF COMMERCIAL TAXES
(ENFORCEMENT) 01, SOUTH ZONE,
VTK-2 BUILDING, KORAMANGALA
BENGALURU - 560 047

...RESPONDENTS

(BY SMT. JYOTI M. MARADI, HCGP)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECTION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA QUASHING THE IMPUGNED SHOW CAUSE NOTICE DATED 23/12/2023 BEARING NO. ADCOM(ENF)/SZ/DCCT-01/GST/ADJN-28/2023-24 ISSUED BY THE RESPONDENT NO.3 IN FORM GST DRC-01 ENCLOSED AT ANNEXURE-A DEMANDING IGST OF RS. 85,51,00,620/- ALONG WITH INTEREST AND PENALTY AND ETC.,

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

ORAL ORDER

In this petition, petitioner seeks for the following reliefs:-

"a) Issue a writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate Writ or order or direction under Article 226 of the Constitution of India quashing the impugned show cause notice dated 23.12.2023 bearing No.ADCOM (ENF)/SC/DCCT-01/GST/ADJN-28/2023-24 issued by the Respondent No.3 in FORM GST DRC-01 enclosed at Annexure – A demanding IGST of Rs.85,51,00,620/- along with interest and penalty;

b) Hold that the payment of salary made to the foreign national employees by the Petitioner does not attract IGST as the transaction is covered under Entry I of Schedule III of the CGST Act, 2017 and the *transaction does not amount to import of manpower and recruitment supply of services from the foreign nationals to the Petitioner;*

c) *Pass such further order(s) and other reliefs as the nature and circumstances of the case may require."*

2. The issue that arises for consideration in the present petition relates to levy of Integrated Goods and Services Tax('IGST') for the periods between 2018-2019 to 2022-2023 on the salaries paid by the Petitioner to the foreign nationals, who are employed exclusively with the Petitioner for a fixed period, on the ground that the same is consideration for the import of service of 'Manpower Recruitment and Supply Service' by the Petitioner from the foreign nationals/employees, who are supplying the said services in the capacity of non-resident taxable person.

3. The Petitioner is a part of the Huawei Group of Companies headquartered in China and have group companies across various parts of the world and is *interalia* engaged in providing Software Development Services and Information Technology Enabled Services to its related company in India and outside India. It is contended that when a vacancy presents itself for a position in any of the said companies, including that of the

Petitioner, the same is offered to employees of the Huawei Group of Companies in order to maintain the cultural ethos of the organization and to preserve the niche sectoral expertise of the employees at a global level. On a need basis, the Petitioner defines a comprehensive job description for the required role and follows different modus for hiring the employees, some of whom might be foreign nationals. Upon receiving the applications, evaluations are done and on such basis, the selected candidates are provided with an offer letter. Thereafter, upon acceptance of the job offer, a contract of employment is entered into between the Petitioner and the Selected candidate. This is applicable to foreign nationals as well, which lays down the details of their appointment, period of employment, salaries and benefits, etc. The specified period of employment may be extended, basis the business requirements of the Petitioner and the Visa renewal of the foreign national. Further, the foreign national may also seek employment in any other Huawei group entity situated abroad.

4. Respondent No. 3 initiated proceedings against the Petitioner seeking information on the amounts paid to the foreign nationals working for the Petitioner. The Petitioner furnished the

requisite information and attended the hearings scheduled by the Respondent No. 3 to appraise them of the transaction, wherein it was inter alia submitted that the foreign nationals are employees of the Petitioner during the relevant period. The Respondent No. 3 issued the intimation dated 07.12.2023 in Part A of the Form DRC-01A, whereby it was intimated that the Petitioner is liable to pay IGST under Reverse Charge Mechanism ('RCM') basis on the remuneration paid to the expat employees for the period 2018-19 to 2022-23 as the same tantamounts to 'Import of services'. The Petitioner filed detailed reply dated 19.12.2023 challenging the intimation on diverse grounds.

5. Thereafter, the respondents issued the impugned Show Cause Notice (SCN) dated 23.12.2023 proposing to demand IGST of Rs.85,51,00,620/- on the remuneration paid to foreign nationals/employees along with interest (Rs.42,28,98,388/-) and penalty (Rs.8,55,10,062/-) for the period April 2018 to March 2023, on the ground that the Petitioner has imported 'Manpower Recruitment and Supply Service' from the foreign nationals/employees, who are supplying the said services in the capacity of non-resident taxable persons. Aggrieved by the

impugned SCN, petitioner is before this Court by way of the present petition.

6. Heard learned counsel for the petitioner and learned counsel for the respondents and perused the material on record.

7. A perusal of the material on record will indicate that the present case is not one of secondment of employees from other entities in the group; in fact, there exists a direct employer-employee relationship between the Petitioner and the foreign nationals/ employees and accordingly, the entire transaction is outside the ambit of GST as the transaction is covered under Entry 1 of the Schedule III of the CGST Act, 2017 which states that services provided by an employee to the employer in the course of or in relation to his employment, is neither supply of goods or supply of services for the purpose of the CGST Act, 2017. The fact that there exists a valid employer– employee relationship between the Petitioner is borne out from the employment contract between the Petitioner and foreign nationals/ employees which stipulates fixed period of employment, reporting authority, working hours, cost to company and other terms and conditions of the employment; the employees are on the payroll of the Petitioner itself and such

payment of their salaries along with annual performance bonus, house rent allowance, provident fund, etc., are paid to the foreign nationals in their Indian bank accounts; applicable income tax is also being deducted by the Petitioner in conformity with the terms under Income Tax Act, 1961 and Income tax returns with regards to the disputed period are also filed by the foreign nationals being employees of the Petitioner based in India; foreign nationals are treated at par with the Indian employees of the Petitioner, in terms of salary, social security benefit, etc., and Respondent No. 3 cannot treat the foreign national employees differently.

8. The aforesaid facts and circumstances clearly indicate that demand for IGST cannot be imposed on 'salary' paid in lieu of employment of the foreign national with the Petitioner and consequently, the arrangement between the foreign national and the Petitioner is not in the nature of supply in terms of the CGST Act, 2017 and squarely covered under Entry 1 of the Schedule III of the CGST Act and as such, petitioner is not liable to pay IGST on the present transaction, which is not a taxable supply in terms of Entry 1 of Schedule III of the CGST Act and the impugned SCN deserves to be quashed.

9. As rightly contended by the learned counsel for the petitioner, foreign national employees are residents of India and thus cannot be considered as non-resident taxable persons and are not non-resident taxable persons in terms of Section 2(77) of the CGST Act as alleged in the impugned show cause notice; in this context, it is relevant to state that the first condition for a person to qualify as 'non-resident taxable person' is that they should be making occasional supplies of goods and services; the term/expression 'occasional' as defined in the Cambridge dictionary means *'not happening or done often or regularly'*; in other words, the definition only seeks to cover non-resident persons who only occasionally or sporadically undertake transactions in India; in the case on hand, the subject foreign nationals are not making any supplies to the Petitioner as any services provided by an employee to an employer during the period of employment is not considered as supply in terms of Entry 1 of Schedule III of the CGST Act.

10. It is also significant to note that the subject foreign nationals, being employees are not performing any transaction in the capacity of principal or agent; even though the definition is expansive and seeks to cover any person providing services in 'any

other capacity', the same cannot be extended to include services provided by an employee to an employer, as the same stand specifically excluded and therefore, the above condition as required by the definition has also not been met herein; so also, as per the definition, the person making occasional supplies should not have any fixed place of business or residence in India; in this regard, the material on record discloses that the foreign nationals employed with the Petitioner for a fixed tenure are paid remuneration and additionally, provided with fully furnished rent-free accommodation at the Huawei Campus with other included benefits and the foreign nationals are residing in India for majority of years during the disputed period and thus, qualify as 'residents' in terms of the Income-tax Act; further, the salaries received by them is accordingly subjected to the levy of income tax in terms of Section 15 of the Income-tax Act, 1961 which provides that any salary due from an employer to an employee shall be subjected to income tax.

11. Under these circumstances, it is clear that the foreign nationals employed by the Petitioner do not fulfill the criteria prescribed under Section 2(77) of the CGST Act and cannot be considered as 'Non-resident taxable persons', as alleged by the

Respondents, particularly when the location of supplier is in India and consequently, the conditions under Section 2(11) of the IGST Act also not being fulfilled, thereby meaning that the subject transaction is not that of import and thus no liability shall lie on the Petitioner and the impugned notices, orders, proceedings etc., deserve to be quashed on this ground also.

12. Learned counsel for the petitioner is also correct in his submission that the issue involved in the present petition is completely settled by virtue of the clarification rendered by the CBIC vide Circular No. 210/4/2024-GST dated 26.06.2024, which clarifies that in cases where supply is between related parties and the recipient is eligible for full input tax credit, as is the case in the present facts, then the taxable value shall be the open market value, which shall be the value as declared in the invoice; in case no invoice is raised, then the open market value is to be deemed to be 'Nil'; in the present case, since no invoice was raised by the Petitioner, the value of the supply for the said period shall be deemed to be 'Nil' and accordingly, no tax was liable to be paid by the petitioner.

13. In the case of ***Alstom Transport India Limited v Commissioner of Commercial Taxes, Gandhinagar-2025-VIL-756-KAR***, a co-ordinate Bench of this held that the assessee had a secondment arrangement with their foreign group company on the basis which certain expats were employed with the assessee in India. In the said case, the Indian group company paid the expats' salary directly to their bank account and deducted TDS on the same and the Indian group company also had administrative and executive control over the functioning of the employees during the secondment period, wherein the expats were bound by the codes of conduct and internal policies of the Indian company and it was held that in such a scenario, there is an established relationship of employer and employee between the Indian entity and the expats, which would be excluded from the ambit of GST in terms of Entry I of Schedule III of the CGST Act r/w Section 7(2)(a) of the CGST Act, 2017.

14. Further, in terms of the aforesaid Circular dated 26.06.2024, 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 and consequently, even if such secondment arrangement is assumed to be a supply, the deeming fiction under the Circular dated 26.06.2024 neutralises any scope for further tax liability. In the case of ***Metal One Corporation & Others v. Union of India & Others -2024-VIL-1161-DEL,*** the Delhi High Court held that when no Invoices were raised by the domestic assessee in connection with manpower supply services provided by the related overseas entity, the value of such service would be 'Nil' and no further tax implication under the GST Act would arise.

15. It is therefore clear that in light of Para 3.7 of the Circular dated 26.06.2024 and the judgements referred to *supra*, the present demand does not survive, as no invoice has been raised by the Petitioner and since the Petitioner is eligible for full input tax credit, the taxable value of the supply, if any, is 'Nil' and accordingly, the demand to levy tax on the present subject transaction deserves to be quashed. It is needless to state that since petitioner is not liable to pay IGST as demanded in the impugned SCN, petitioner is also not liable to pay interest or

penalty and as such, the impugned SCN and all proceedings pursuant thereto deserve to be quashed.

16. In the result, I pass the following:-

ORDER

(i) Petition is hereby allowed.

(ii) The impugned show cause notice at Annexure-A dated 23.12.2023 issued by the 3rd respondent is hereby quashed and all further proceedings pursuant thereto are hereby set aside.

Sd/-
(S.R.KRISHNA KUMAR)
JUDGE

BMC/SRL
List No.: 2 Sl No.: 45