**HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE**

**DIVISION BENCH : HON'BLE SHRI JUSTICE S.C. SHARMA**
**HON'BLE SHRI JUSTICE VIRENDER SINGH**

Writ Petition No.17999/2018

M/s. Vasu Clothing Private Limited

**Versus**

The Union of India and Others

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Shri Vikram Nankani, learned Senior Counsel with Shri Raktim Gogoi, Shri Alok Barthwal, Shri Kartikeya Singh and Shri Varun Saluja, learned counsel for the petitioner.

Shri Prasanna Prasad, learned counsel for the respondents.

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**O R D E R**

(Delivered on this **17th of December, 2018**)

The petitioner before this Court is a Private Limited Company incorporated under the Companies Act, 1956 having its registered office at 75, Readymade Complex, Industrial Area, Pardeshipura, Indore has filed this present petition seeking indulgence of this Court for grant of relief from payment of goods and service tax by way of exemption and on the goods and service supply to the Duty Free Shops (DFSs) at the international Airports in India.

02- The petitioner's contention is that after enactment of Central Goods and Service Tax Act, 2017 and the Rules framed thereunder, the petitioner is entitled to supply goods and services to Duty Free Shops without payment of taxes and similar supplies from

all over the world except India are permitted without payment of taxes.

03- The petitioner has stated that petitioner is a manufacturer and exporter of garments in India and he intends to supply goods to Duty Free Operator (DFO), who in turn is selling the goods from Duty Free Shops (DFSs). It has been further contended that Duty Free Operator operating in India imports goods like liquor, tobacco products, souvenirs, eyewear, watches, fashion, chocolates, perfumes, etc. by filing import general manifest and Bill of Entry for warehousing with the customs department without payment of import duty on the first importation subject to certain conditions. The bill of entry clearly indicates the Duty Free Operator as an “importer”. The imported goods are warehoused at a bonded warehouse (customs warehouse) and the bill of entry also discloses that the goods imported are for “sale only for Duty Free Shop / Export”.

04- It has been further stated that the Duty Free Operator also takes on rent a private bonded warehouse located near the airport as well as certain shops called “Duty Free Shops” at the arrival and departure terminals of international airports in India. The goods are sold to international passengers without payment of duties and taxes. It has been further contended that the Duty Free Operator is granted special warehouse license under Section 58-A

of the Customs Act, 1962 for depositing notified class of goods and such warehouse are kept locked by the proper officer and no entry of any person or removal of goods therefrom are allowed without the permission of the proper officer.

05- It has been further stated that Duty Free Operators transfers the goods from customs warehouse to the private bonded warehouse / special warehouse without payment of duty whenever required by executing a warehousing bond under Section 59 of the Act for a period as prescribed under Section 61 of the Act and under the permission of the Customs Officer as prescribed under Section 60 of the Act. The goods so warehoused are then brought to the Duty Free Shop without payment of duty under escort of the bond officer and then the goods are sold at the Duty Free Shops at the arrival and departure terminals. The overall all supervision and control is of the Customs Officer.

06- The petitioner has further stated that the entire movement of goods from special warehouse to Duty Free Shops for the purpose of sale at arrival and departure takes place strictly in consonance with the warehousing provisions under Chapter IX of the Act and under the custom supervision and control. It has been further stated that as per Section 71 of the Act, the goods so deposited can either be cleared from the warehouse for home consumption (under Section 68) or for export (under Section 69) or

for removal to another warehouse or otherwise provided under the Act.

07- The petitioner's contention is that the goods are sold to international passengers at the departure terminal Duty Free Shops and the operator has cleared the goods only for export under Section 69 of the Act. It has been further contended that duty free purchases made from Duty Free Shops at international airports in India are generally paid for in approved currency including foreign currency and this uniqueness brings in valuable foreign currency reserves into the country and there is a significant growth in such sale.

08- The petitioner has further stated that prior to implementation of GST legislation, the duty free operations in India were exempted from payment of Customs Duty, Countervailing Duty (CVD), Special Additional Customs Duty (SACD), Excise Duty, VAT / Sales Tax, OCTROI, etc. The petitioner's contention is that principle for exemption from payment of VAT / Sales Tax by an Indian Duty Free Shop was evolved pursuant to the judgment delivered by the Hon'ble Supreme Court in the case of **M/s. Hotel Ashoka (Indian Tourism Development Corporation Limited) Vs. Assistant Commissioner of Commercial Taxes and Another** (Civil Appeal No.2560/2010, decided on 03/02/2012).

09- The petitioner has further stated that the Duty Free

Shops at international airports were permitted to retail of attractive products of foreign origin including liquor, tobacco, confectionery, perfumes, cosmetics, souvenirs, eyewear, watches, fashion, chocolates, etc. It has been further contended that in respect of indigenous products manufactured in India, which were subjected to payment of Excise Duty and VAT and Government of India in the year 2013, based upon representations received from industry and in order to promote “Brand India” to the world, issued notifications so as to allow excise duty free sale of goods manufactured in India to international passengers or members of crew arriving from abroad at the Duty Free Shops located in the arrival halls of international airports and to passengers going out of India at the Duty Free Shops located in the departure halls of international airport in the country.

10- It has been further stated that Central Board of Excise and Customs issued a notification on 23/05/2013 granting exemption in respect of payment of taxes subject to certain terms and conditions in respect of certain goods. It has also been brought to the notice of this Court that earlier also notification dated 19/05/1989 has been issued and there were exemptions available to specified goods falling under Chapter 85, when removed for sale from Duty Free Shops at customs airports and since the notification by Government of India was to extend the benefit on all goods, the

Central Board of Excise and Customs issued a notification on 23/05/2013 and rescinded the earlier notification.

11- The petitioner has also referred to various other notifications issued from time to time by Central Board of Excise and Customs (CBEC). In notification No.07/2013-CE NT, dated 23/05/2013, the Government extended the facility of removal without payment of duty to all excisable goods intended for storage in a godown or retail outlet of a Duty Free Shop in the Departure Hall or the Arrival Hall, of international airport, appointed or licensed as “warehouse” under Section 57 or 58 of the Customs Act, and for sale therefrom, against foreign exchange to passengers going out of India or to the passengers or members of crew arriving from abroad, subject to limitations, conditions and safeguards as may be specified by the Central Board of Excise and Customs

12- By another notification No.08/2013-CE NT, dated 23/05/2013, CBEC appointed officers of Customs under whose jurisdiction the godowns and retail outlets of Duty Free Shops at the international airport are located, to be Central Excise Officers. In notification No.09/2013-CE NT, dated 23/05/2013, the CBEC stated that where a godown or retail outlet of a Duty Free Shop is appointed or licensed under the provisions of Sections 57 or 58 of the Customs Act, such godown or retail outlet shall be deemed to be registered as warehouse under Rule 9 of the Central Excise Rules,

2002. By the CBEC circular No.970/04/2013-CX, dated 23/05/2013 the procedure governing the movement of excisable indigenous goods to the Warehouses or retail outlets of Duty Free Shops was laid down.

13- The petitioner has further stated that in the year 2017 the Central Goods and Services Tax Act, 2017 (CGST) and the Integrated Goods and Services Tax Act, 2017 (IGST) were enacted. The petitioner in the month of June, 2018 keeping in view the notifications issued from time to time by the Central Board of Excise and Customs contacted one of the Duty Free Operators namely “Flemingo Travel Retail Limited”, which operates Duty Free Shops at Delhi and Mumbai International Airport and requested that the petitioner being one of the premier exporters of garments in India would like to retail its products at the Duty Free Shops operated by the Flemingo Travel Retail Limited and a meeting took place, however, the petitioner was informed that on account of enactment of GST Act and Rules, there is no clarity on the previous exemptions which were provided on the basis of various exemptions notification issued from time to time.

14- The petitioner has further stated that he was told to pay GST and in those circumstances, he is being deprived his potential business opportunity to sell the goods from Duty Free Shops. The petitioner's grievance is that in absence of exemption notification

under the Central Goods and Services Tax Act, 2017 and the Integrated Goods and Services Tax Act, 2017, the Duty Free Operators are unable to buy the goods manufactured in India without paying the applicable rate of taxes as provided under the CGST, IGST or SGST as the case may be.

15- The petitioner's contention is that supplies from all over the world (except India) are permitted to be at an Indian Duty Free Shop without payment of duties and taxes. The petitioner has prayed for following relief:-

> **"**(i) Issue a writ of Mandamus or any other appropriate Writ, Order or Direction in the nature of Mandamus, ordering and directing any supply of goods and services made by an Indian supplier to the duty free shops in India to be treated as an export without payment of CGST and IGST, since, the duty free shops at international airports in India are located beyond the customs frontier of India and any transaction that takes place in a duty free shop is said to have taken place outside India.
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> (ii) Issue a writ of Mandamus or any other appropriate Writ, Order or Direction in the nature of Mandamus, ordering and directing supply of goods and services made by an Indian supplier to the duty free shops in India to be without payment of CGST and IGST, since, transaction undertaken at duty free shop is treated as an export of goods or services.
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> (iii) Issue a writ of Mandamus or any other appropriate Writ,Order or Direction in the nature of Mandamus, ordering and directing input tax credit on CGST, SGST, IGST levied on the goods and services supplied by the Indian supplier to the duty free shops and refund the input tax credit thereof, enabling supply of goods and services made by an Indian supplier to the duty free shops in India to be free of CGST, SGST and IGST.
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> (iv) Pass such other or further orders or directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.**"**

16- The petitioner has raised various grounds before this

Court and his contention is that the action of the respondents authorities in enacting the GST legislation without clarifying the position regarding supply of goods and services by an Indian supplier without payment of taxes including GST is illegal and has resulted in loss of business opportunity to the petitioner and other identically placed persons.

17- A further ground has been raised stating that sale from Duty Free Shops in the past has helped to maximize non-aeronautical revenues at airports, which ultimately bring down aeronautical tariffs for the passengers and ultimately the Government of India is the biggest gainer as it has and will receive significantly large funds from the supplies made from Duty Free Shops at international airport in India as revenue share. The revenue so generated can be utilized by the Government of India to provide air connectivity to far flung corners of the country where private investment may not be forthcoming due to long gestation periods.

18- It has been stated that on account of enactment of GST, the benefits of earlier circulars / notifications is not available and therefore, an appropriate writ, order or direction be issued granting exemption from payment of CGST / IGST / SGST. It has also been stated that various global brands from all over the world can be sold in Indian Duty Free Shops without payment of any taxes and duties

and the products manufactured in India can not be sold at Duty Free Shops without payment of taxes and therefore, the action of the respondents authorities has severely failed to carry forward its Brand India initiative.

19- It has also been argued that Indian supplier cannot export goods without payment of GST and on account of lack of similar exemptions, which were available during the pre GST regime and the action of the respondent is violative of Articles 12, 14 and 19 (1) (g) of the Constitution of India. The action of the respondent authorities is also in violation of Article 21 of the Constitution of India. It has been argued by learned Senior Counsel appearing before this Court to issue a writ of mandamus by directing the respondents to treat the Duty Free Shops in India as an export without payment of CGST and IGST, since the shops are located beyond the customs frontier of India and any transaction that takes place in a Duty Free Shop is said to have taken place outside India.

20- Learned counsel for the petitioner has placed reliance upon judgments delivered in the case of **Hotel Ashoka (Indian Tourism Development Corporation Limited) Vs. Assistant Commissioner of Commercial Taxes and another** reported in **(2012) 276 ELT 433 SC**, **J. V. Gokal & Co. (Pvt.) Ltd. Vs. Assistant Collector Sales Tax (Inspection) and Others** reported in **AIR 1960 SC 595**, **Commissioner of Service Tax-VII Vs.**

**Flemingo Duty Free Shop Pvt. Ltd.** reported in **Manu/CM/0675/2017**, **DFS India Pvt. Ltd. Vs. Commr. Of Customs** passed by apex Court in Special Leave to Appeal (Civil) No.2436/2010 decided on 12/03/2010, **DFS India Pvt. Ltd. and Another Vs. The Commissioner of Customs** passed by Bombay High Court in Writ Petition No.2578/2009 decided on 17/03/2010, **All India Federation of Tax Practitioners and Others Vs. Union of India and Others** reported in **AIR 2007 SC 2990**, **Union of India and Others Vs. Bengal Shrachi Housing Development Ltd. and others** reported in **AIR 2017 SC 5228** and **A-1 Cuisines Pvt. Ltd. Vs. Union of India and Another** passed by Bombay High Court in Writ Petition No.8034/2018 on 28/11/2018.

21- A detailed and exhaustive reply has been filed on behalf of the revenue and the respondents have vehemently opposed the reliefs prayed by the petitioner. The contention of learned counsel for the respondent is that present petition has been filed seeking issuance of a writ to enact a subordinate legislation of a particular nature and a prayer has been made for issuance of a writ, order or direction directing the supply of goods and services to Duty Free Shops in India to be treated as an export without payment of CGST and IGST.

22- It has been argued that keeping in view the cardinal principles of jurisprudence, no such writ / direction can be issued as

the same is policy matter and is within the exclusive domain of the legislature to enact any such legislation and the petition deserves to be dismissed on this ground alone.

23- The respondents have also stated that the judgment relied upon by the petitioner in the case of **M/s. Hotel Ashoka** (Supra) is of the year 2012 is of no help to the petitioner as it was a judgment delivered prior to GST regime and in the year 2016 CGST Act has been implemented and an entirely new scheme of statute with various definitions have been introduced to the statute book and in such circumstances, various defining clauses have to be seen and examined in back drop of the present statute, which is in force as on today. It has been further stated that as per Union Budget, 2017, the definition of Indian territory has been extended to 200 nautical miles and in such circumstances also, all such duty free shops fall within the territory of India and the claim of the petitioner deserve to be dismissed.

24- The respondents have also stated that a similar issue was examined by the Authority on Advance Ruling and the same was analyzed in back drop of the judgment passed by the Hon'ble Supreme Court in the case of **M/s. Hotel Ashoka** (Supra) and the respondents have quoted the relevant portion of the Rule and their contention is that by no stretch of imagination the petitioner can be exempted from payment of CGST / IGST / SGST.

25- The respondents have argued before this Court that so far as point of sale is concerned the case goods are being manufactured at Indore, price of the goods is being received at Indore and they are being dispatched to Duty Free Shops, which is certainly within the territory of India and the person, who is purchasing the goods from the Duty Free Shop is the exporter or the person, who has purchased the goods, meaning thereby, the Duty Free Shop is an exporter and not the petitioner.

26- It has also been argued that exemptions cannot be claimed as a matter of right and the competent authority granting exemption can very well withdraw the exemption granted. In the present case, earlier exemption was not under the GST and therefore, the question of granting exemption keeping in view the fact that petitioner is manufacturing the goods in India, is selling them from Indore to a Duty Free Shop, the question of grant of exemption to the petitioner and to such a class to which the petitioner belongs does not arise. The respondents have prayed for dismissal of the writ petition.

27- It has also been stated that the petitioner does have an alternative remedy also under Section 96 of CGST Act and the petition deserves to be dismissed. It has been argued by Shri Prasanna Prasad, learned counsel for the respondent that this Court is not the competent authority to legislate on a particular

subject nor this Court can issue exemption certificate granting exemption to the petitioner as the statute does not provide for any such exemption as prayed by the petitioner.

28- It has been further contended by the respondents that the judgment of the Hon'ble Supreme Court in the case of **M/s. Hotel Ashoka (Indian Tourism Development Corporation Limited) Vs. Assistant Commissioner of Commercial Taxes and another** (Civil Appeal No.2560/2010) reported in **(2012) 276 ELT 433 SC** was delivered under the erstwhile VAT regime wherein the authority of State to levy VAT on sale of goods taking place at DFS located at international airports was challenged. Sales Tax / VAT Acts of various States have been subsequently subsumed under the GST Law. Also, the present petition does not relate to levy of VAT on sale of goods. Instead, it challenges the discontinuation of exemption that existed under erstwhile Central Excise regime wherein the supply of domestically manufactured goods to DFS was exempted from the payment of Central Excise Duty *vide* notification No.19/2013-CE (Non-Tariff). However, exemption from payment of GST for such supplies has not been provided under the current GST regime.

29- Learned counsel for the respondent submits that according to sub-section (5) of Section 2 of the IGST Act, 2017, “Export of Goods” with its grammatical variations and cognate

expressions, means taking out of India to a place outside India. Further, moreover, as per Section 2 (56) of CGST Act, 2017 “India” means the territory of India as referred to in Article 1 of the Constitution, its Territorial Waters, Seabed and Sub-soil underlying such Waters, Continental Shelf, Exclusive Economic Zone (EEZ) or any other Maritime Zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 and the air-space above its territory and territorial waters. For the purpose of CGST Act, India extends the Exclusive Economic Zone upto 200 nautical miles from baseline. The location of the DFS, whether within customs frontier or outside, shall be within India as long as it is not beyond EEZ (200 nautical miles). Therefore, DFS cannot be said to be located outside India. Instead, the DFS is located within India. As the supply to a DFS by an Indian supplier is not to 'a place outside India', therefore, such supplies do not qualify as 'Export of Goods' under GST. Consequently, such supplies cannot be made without payment of duty by furnishing a Bond / Letter or Undertaking (LUT) under Rule 96-A of the CST Rules, 2017. Also, he cannot claim refund of unutilized Input Tax Credit (ITC) under Section 54 of the CGST Act, 2017.

30- It has been argued by learned counsel that in alternative and without prejudice to whatever has been stated above, under the GST law, the power to grant exemption to such supplies or to clarify

such issues is vested with the GST Council (a constitutional body constituted under Article 279-A of the Constitution of India) which comprises of the Union Finance Minister and the Finance Minister of all the States and it is not within the domain of this Court to issue such exemption notifications.

31- The respondents have placed reliance upon the judgments delivered in the case of **Mathew Antony Vs. State of Kerala** reported in **1991 SCC Online Ker 361**, **Shri Sarvan Singh and Another Vs. Shri Kasturilal** reported in **(1977) 1 SCC 750** and **Mittal Engineering Works (P) Ltd. Vs. Collector of Central Excise Meerut** reported in **(1997) 1 SCC 203**. A prayer has been made for dismissal of the writ petition.

32- Heard learned counsel for the parties at length, perused the record and the matter is being disposed of finally with the consent of the parties.

33- Article 265 of the Constitution of India provides that no tax shall be levied or collected except by authority of law. As per Article 246 of the Constitution, Parliament has exclusive powers to make laws in respect of matters given in Union List (List I of the Seventh Schedule) and State Government has the exclusive jurisdiction to legislate on the matters containing in State List (List II of the Seventh Schedule). In respect of the matters contained in Concurrent List (List III of the Seventh Schedule), both the Central

Government and State Governments have concurrent powers to legislate.

34- Before advent of GST, the most important sources of indirect tax revenue for the Union were customs duty (entry 83 of Union List), central excise duty (entry 84 of Union List), and service tax (entry 97 of Union List). Although entry 92C was inserted in the Union List of the Seventh Schedule of the Constitution by the Constitution (Eighty-eighth Amendment) Act, 2003 for levy of taxes on services, it was not notified. So tax on services were continued to be levied under the residual entry, i.e. entry 97, of the Union List till GST came into force. The Union also levied tax called Central Sales Tax (CST) on inter-State sale and purchase of goods and on inter-State consignments of goods by virtue of entry 92A and 92B respectively. CST however is assigned to the State of origin, as per Central Sales Tax Act, 1956 made under Article 269 of the Constitution.

35- On the State side, the most important sources of tax revenue were tax on sale and purchase (entry 54 of the State List), excise duty on alcoholic liquors, opium and narcotics (entry 51 of the State List), Taxes on luxuries, entertainments, amusements, betting and gambling (entry 62 of the State List), Octroi or entry tax (entry 52 of the State List) and electricity tax (entry 53 of the State List). CST was also an important source of revenue though the

same was levied by the Union.

36- The need arose in respect of imposition of uniform taxation scheme and the unification of Central VAT and State VAT was possible in form of a dual levy under the constitutional scheme. Power of taxation is assigned to either Union or States subject-wise under Schedule-VII of the Constitution. While the Centre is empowered to tax goods upto the production or manufacturing stage, the States have the power to tax goods at distribution stage. The Union can tax services using residuary powers but States could not. Under a unified Goods and Services Tax scheme, both should have power to tax the complete supply chain from production to distribution, and both goods and services. The scheme of the Constitution did not provide for any concurrent taxing powers to the Union as well as the States and for the purpose of introducing goods and services tax, amendment of the Constitution conferring simultaneous power on Parliament as well as the State Legislatures to make laws for levying goods and services tax on every transaction of supply of goods or services was necessary.

37- The Constitution (115th Amendment) Bill, 2011, in relation to the introduction of GST, was introduced in the Lok Sabha on 11/03/2011. The Bill was referred to the Standing Committee on Finance on 29/03/2011. The Standing Committee submitted its report on the Bill in August, 2013. However, the Bill, which was

pending in the Lok Sabha, lapsed with the dissolution of the 15th Lok Sabha.

38- The Constitution (122nd Amendment) Bill, 2014 was introduced in the 16th Lok Sabha on 19th December, 2014. The Constitution Amendment Bill was passed by the Lok Sabha in May, 2015. The Bill was referred to the Select Committee of Rajya Sabha on 12/05/2015. The Select Committee submitted its Report on the Bill on 22/07/2015. The Bill with certain amendments was finally passed in the Rajya Sabha and thereafter, by Lok Sabha in August, 2016. Further the bill was ratified by required number of States and received assent of the President on 8/09/2016 and has since been enacted as Constitution (101st Amendment) Act, 2016 w.e.f. 16/09/2016.

39- The important changes introduced in the Constitution by the 101st Amendment Act are the following:

a) Insertion of new article 246-A which makes enabling provisions for the Union and States with respect to the GST legislation. It further specifies that Parliament has exclusive power to make laws with respect to GST on inter-State supplies.

b) Article 268-A of the Constitution has been omitted. The said article empowered the Government of India to levy taxes on services. As tax on services has been brought under GST, such a provision was no longer required.

c) Article 269-A has been inserted which provides for goods and services tax on supplies in the course of inter-State trade or commerce which shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council. It also provides that Parliament may, by law, formulate the principles for

determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

d) Article 270 has been amended to provide for distribution of goods and services tax collected by the Union between the Union and the States.

e) Article 271 has been amended which restricts power of the Parliament to levy surcharge under GST. In effect, surcharge cannot be imposed on goods and services which are subject to tax under Article 246-A.

f) Article 279-A has been inserted to provide for the constitution and mandate of GST Council.

g) Article 366 has been amended to exclude alcoholic liquor for human consumption from the ambit of GST, and services have been defined.

h) Article 368 has been amended to provide for a special procedure which requires the ratification of the Bill by the legislatures of not less than one half of the States in addition to the method of voting provided for amendment of the Constitution. Thus, any modification in GST Council shall also require the ratification by the legislatures of one half of the States.

i) Entries in List I and List II have been either substituted or omitted to restrict power to tax goods or services specified in these Lists or to take away powers to tax goods and services which have been subsumed in GST.

j) Parliament shall, by law, on the recommendation of the Goods and Services Tax Council, provide for compensation to the States for loss of revenue arising on account of implementation of the goods and services tax for five years.

k) In case of petroleum and petroleum products, it has been provided that these goods shall not be subject to the levy of Goods and Services Tax till a date notified on the recommendation of the Goods and Services Tax Council.

40- After the constitutional amendment, the Central Government introduced The Central Goods and Services Tax Act, 2017, The Integrated Goods and Services Tax Act, 2017, The Union Territory Goods and Services Tax, 2017, The Goods and Services Tax (Compensation to States) Act, 2017 in Lok Sabha on 27/03/2017. After a long discussion in Parliament, the Lok Sabha

has passed these bills on 29/03/2017, while Rajya Sabha passed them on 06/04/2017. The President of India assented them on 12/04/2017 and the law enacted are known as CGST Act, 2017 (12 of 2017), the Integrated GST Act, 2017 (13 of 2017), the Union Territory GST Act, 2017 (14 of 2017) and the GST (Compensation to States) Act, 2017 (15 of 2017).

41- The petitioner before this Court has made a prayer for directing the respondents to treat the goods supplied to the petitioner as an export without payment of CGST and IGST, only on the ground that Duty Free Shop at international airport are located beyond the customs frontier of India and any transaction that takes place in a Duty Free Shop is said to have taken place outside India.

42- The petitioner by virtue of earlier exemption notifications, which were issued under the Excise Act and Customs Act dated 23/05/2013 i.e. Notification No.07/2013-CE NT, Notification No.08/2013-CE NT, Notification No.09/2013-CE NT and CBEC Circular No.970/04/2013-CX is claiming exemption in the matter of payment of GST.

43- No provision of law has been brought to the notice of this Court under the Central Goods and Services Tax Act, 2017, which grants exemption from payment of taxes. A taxing statute has to be strictly construed. In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is

no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used (Principles of Statutory Interpretation by Justice G.P. Singh, Tenth Edition, General Principles of Strict Construction).

44- The Hon'ble Supreme Court has enunciated in similar words the principle of interpretation of taxing laws as under:-

> **"**Bhagwati, J. stated the principles as follows : "In construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of the law. If the Revenue satisfies the Court that the case falls strictly within the provisions of the law, the subject can be taxed. If, on the other hand, the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the Legislature and by considering what was the substance of the matter" [A. V. Fernandez Vs. State of Kerala, AIR 1957 SC 657, p. 661].
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> Shah, J., has formulated the principles thus : "Interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any assumed deficiency" [Sales Tax Commissioner Vs. Modi Sugar Mills, AIR 1961 SC 1047, p. 1051].
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> K. Iyer, J., more recently observed : "Taxation consideration may stem from administrative experience and other factors of life and not artistic visualisation or neat logic and so the literal, though pedestrian interpretation must prevail" [Martand Dairy and Farm vs. Union of India, AIR 1975 SC 1492, p. 1494]. Before taxing any person it must be shown that he falls within the ambit of the charging section by clear words used in the section [Commissioner of Wealth Tax, Gujarat Vs. Ellis Bridge Gymkhana, AIR 1998 SC 120, pp. 125, 126].

The statute governing the field does not provide any such exemption as prayed by the petitioner.

45- The relevant statutory provisions, which are necessary for adjudicating the present controversy reads as under:-

> **"Article 269(1) and Article 286(1) of the Constitution of India:-**
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> (i) Article 269(1) before amendment on 08/09/2016 : Taxes on the sale or purchase of goods and taxes on the consignment of goods shall be levied and collected by the Government of India but shall be assigned and shall be deemed to have been assigned to the States on or after the 1st day of April, 1996 in the manner provided in clause (2).
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> *Explanation*.—For the purposes of this clause,—
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> (a) the expression "taxes on the sale or purchase of goods" shall mean taxes on sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce;
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> (b) the expression "taxes on the consignment of goods" shall mean taxes on the consignment of goods (whether the consignment is to the person making it or to any other person), where such consignment takes place in the course of inter-State trade or commerce.
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> (ii) Article 286(1) before amendment on 08/09/2016 : Restrictions as to imposition of tax on the sale or purchase of goods :
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> (1) No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place—
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> (a) outside the State; or
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> (b) in the course of the import of the goods into, or export of the goods out of, the territory of India.
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> **Section 5 and Section 2(ab) of the Central Sales Tax Act, 1956:-**
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> **5. When is a sale or purchase of goods said to take place in the course of import or export.—** (1) A sale or purchase of goods shall be deemed to take place in the course of the export of the goods out of the territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India.
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> (2) A sale or purchase of goods shall be deemed to take

place in the course of the import of the goods into the territory of India only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontiers of India.

(3) Notwithstanding anything contained in sub-section (1), the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall also be deemed to be in the course of such export, if such last sale or purchase took place after, and was for the purpose of complying with, the agreement or order for or in relation to such export.

(4) The provisions of sub-section (3) shall not apply to any sale or purchase of goods unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner a declaration duly filled and signed by the exporter to whom the goods are sold in a prescribed form obtained from the prescribed authority.

(5) Notwithstanding anything contained in sub-section (1), if any designated Indian carrier purchases Aviation Turbine Fuel for the purposes of its international flight, such purchase shall be deemed to take place in the course of the export of goods out of the territory of India.

***Explanation*** — For the purposes of this sub-section, "designated Indian carrier" means any carrier which the Central Government may, by notification in the Official Gazette, specify in this behalf.]

**2(ab). "Crossing the customs frontiers of India" means crossing in the limits of the area of a customs** station in which imported goods or export goods are ordinarily kept before clearance by customs authorities.

***Explanation*** — For the purposes of this clause, "customs station" and "customs authorities" shall have the same meanings as in the Customs Act, 1962 (52 of 1962).

**Sections 2(4), 2(5), 2(23) and 16(1) of the Integrated Goods and Services Tax Act, 2017**:-

2(4). "customs frontiers of India" means the limits of a customs area as defined in section 2 of the Customs Act, 1962 (52 of 1962);

2(5). "export of goods" with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India;

2(23). "zero-rated supply" shall have the meaning assigned to it in section 16;

16(1). "zero rated supply" means any of the following supplies of goods or services or both, namely:—

(a) export of goods or services or both; or

(b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.

**Section 2(56) of the Central Goods and Services Tax Act, 2017**:-

2(56). “India” means the territory of India as referred to in article 1 of the Constitution, its territorial waters, seabed and sub-soil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and the air-space above its territory and territorial waters;

**Sections 2(11), 2(18) and 2(27) of the Customs Act, 1962**:-

2(11). "customs area" means the area of a customs station or a warehouse and includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities;

2(18). "export", with its grammatical variations and cognate expressions, means taking out of India to a place outside India;

2(27). "India" includes the territorial waters of India;

**Section 3(1), (2) and (3) of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976**:-

(1) The sovereignty of India extends and has always extended to the territorial waters of India (hereinafter referred to as the territorial waters) and to the seabed and sub-soil underlying, and the airspace over, such waters.

(2) The limit of the territorial waters is the line every point of which is at a distance of twelve nautical miles from the nearest point of the appropriate baseline.

(3) Notwithstanding anything contained in sub-section (2), the Central Government may, whenever it considers necessary so to do having regard to International Law and State practice, alter, by notification in the Official Gazette, the limit of the territorial waters.”

46- Undisputedly, the petitioner is supplying goods to Duty Free Shops and as per Section 2(5) of IGST Act, 2017 export of goods takes place only when goods are taken out to a place outside India. India is defined under Section 2(27) of Customs Act,1962 as

“India includes territorial waters of India”. Similarly under the CGST Act, 2017 under Section 2(56) “India” means the territory of India including its territorial waters and the air-space above its territory and territorial waters and therefore, the goods can be said to be exported only when they cross territorial waters of India and the goods cannot be called to be exported merely on crossing customs frontier of India.

47- The petitioner's contention is that no GST is payable on such supply taking place beyond the customs frontiers of India as the same should be considered as export of goods under Section 2(5) of the IGST Act, 2017 and should be zero rated supply under Section 2(23) read with Section 15(1) of the IGST Act, 2017 is misconceived. The term “Export of Goods” has been defined under Section 2(5) of the IGST Act, 2017 as taking goods out of India to a place outside India.

48- The India is defined under Section 2(56) of the CGST Act as “India” means the territory of India as referred to in Article 1 of the Constitution, its territorial waters, seabed and sub-soil underlying such waters, continental shelf-exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and the air-space above its territory and territorial waters and therefore, the export of goods can be treated and it is

complete only when the goods crosses air space limits or its territory or territorial waters of India.

49- Undisputedly, in light of the definition as contained under the IGST Act, 2017 a Duty Free Shop situated at the airport cannot be treated as territory out of India. The petitioner is not exporting the goods out of India. He is selling to a supplier, who is within India and the point of sale is also at Indore as the petitioner is receiving price of goods at Indore.

50- The petitioner is a manufacturer and exporter of garments in India and specializes in manufacturing of high quality products for children with customer base in Middle East, South Africa and USA. He intends to supply goods to Duty Free Shops (DFSs) situated in the duty free area at international airports. The petitioner is aggrieved by the fact that the benefit available to him under the erstwhile central excise regime of removing goods from his factory to DFS located in the international airports without payment of duty is not available to him under the GST regime.

51- *Vide* notification No.19/2013-Central Excise dated 23/05/2013 and notification No.07/2013-Central Excise (NT) dated 23/05/2013, the Central Government had exempted the goods falling under the First Schedule to the Central Excise Tariff Act, 1985 (hereinafter referred to as indigenous goods) when brought into DFS located in the arrival halls at the international customs airports

from the factories of their manufacture situated in India for sale to passengers or members of crew arriving from abroad, from the whole of the duty of excise leviable thereon. No such exemption notification has been issued under GST till date.

52- In the case of **Kothari Industrial Corporation Limited Vs. Tamil Nadu Electricity Board and Another** reported in **(2016) 4 SCC 134**, the apex Court has held that there is no estoppel against law and recipient of a concession has no legally enforceable right against the Government to grant or to continue to grant a concession except to enjoy benefits of concession during the period of its grant. The apex Court in paragraph No.10 and 11 of the aforesaid judgment has held as under:-

> **"**10. The question referred to this bench, as noticed, is whether the State would be estopped from altering/modifying the benefit of concessional tariff by means of the impugned G.O No. 861 dated 30.4.1982 on the principle of promissory estoppel. In fact, insofar as the caustic soda unit of M/s. Kothari Industrial Corporation Ltd., subsequently taken over by Southern Petro Chemical Industrial Corporation Ltd., is concerned, strictly speaking, the above question would not even arise inasmuch as at the time when the unit was set up and had started commercial production, the Act had not yet come into force. The promise, if any, was made by the letter dated 29.6.1976 on the terms noticed above, namely, the tariff payable by the industry was to be at a rate less than what was applicable to the other two units of the State for the first three years and thereafter at the rate equivalent to what was being paid by the said two units.
>
> 11. Be that as it may, the question referred has been squarely answered by this Court in Shree Sidhbali Steels Limited vs. State of Uttar Pradesh & Ors.[1] wherein this Court has considered a similar question with regard to the withdrawal of concessional tariff/rebate to an industrial unit carrying on business in the hill areas of the State of U.P. (now the State of Uttarakhand). After an in depth consideration of the provisions of Section 48/49 of the Electricity Supply Act, 1948 under which the

> concessional tariff/rebate was granted and the provisions of Section 21 of the General Clauses Act as well as the provisions of the U.P. Electricity Reforms Act, 1999 under which the concessional tariff/rebate was later withdrawn this Court in para 51 came to the following conclusion –
>
> > "From the above discussion, it is clear that the petitioners cannot raise plea of estoppel against the Notification dated 7.8.2000 reducing hill development rebate to 0% as there can be no estoppel against the statute."

In light of the aforesaid judgment, the concessions / exemptions granted earlier during the pre-GST regime cannot be claimed as a matter of right.

53- In addition, the petitioner in paragraph 7(i) of the petition has prayed this Court to issue a writ of mandamus ordering and directing that any supply of goods and services made by and Indian supplier to the DFSs in India to be treated as export since the DFS are located beyond the customs frontier of India and any transaction that takes place in a DFS is said to have taken place outside India. Further, in para 7(ii) of the petitioner it has been prayed to allow supply of goods and services by an Indian supplier to the DFS without payment of GST as the transaction undertaken at DFS is treated as an export of goods or services.

54- As per Section 2(5) of the Integrated Goods and Services Tax Act, 2017, "export of goods" with its grammatical variations and cognate expressions, means taking out of India to a place outside India. Further, as per Section 2(56) of Central Goods

and Services Tax Act, 2017 “India” means the territory of India as referred to in Article 1 of the Constitution, its Territorial Waters, Seabed and Sub-oil underlying such waters, Continental Shelf, Exclusive Economic Zone (EEZ) or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and the air space above its territory and territorial waters. For the purpose of CGST Act, India extends upto the Exclusive Economic Zone upto 200 nautical miles from baseline. The location of the DFS, whether within customs frontier or beyond, shall be within India as long as it is not beyond EEZ (200 nautical miles). Therefore, DFS cannot be said to be located outside India. Instead, the DFS is located within India. As the supply to a DFS by an Indian supplier is not to 'a place outside India', therefore, such supplies do not qualify as 'export of goods' under GST. Consequently, such supplies cannot be made without payment of duty by furnishing a bond/letter of undertaking (LUT) under rule 96-A of the CGST Rules, 2017. Also, he cannot claim refund of unutilized input tax credit (ITC) under Section 54 of the CGST Act, 2017.

55- In light of the above, the petitioner is liable to pay GST on supply of indigenous goods to DFS. Whether, transaction under taken at a DFS (i.e. sale of goods to outgoing passengers) are to be treated as export of goods or services does not form part of the

instant writ petition.

56- The judgment relied upon by the learned counsel in the case of **M/s. Hotel Ashoka (Indian Tourism Development Corporation Limited** (Supra) is not at all applicable in the peculiar facts and circumstances of the case. The Duty Free Shop is situated within India and it is not at all situated outside of India / beyond air-space or territorial waters of India and the petitioner is selling the goods to a Duty Free Operator.

57- The other judgments relied upon by the learned counsel for the petitioner are in respect of regime and keeping in view the specific definition as per Section 2(56) of the Central Goods and Services Tax Act, 2017, the judgments relied upon by learned counsel for the petitioner are of no help to the petitioner, who is producer / manufacturer of garments at Indore and intent to supply indigenous goods to Duty Free Shops.

58- Respondents have placed reliance upon judgment delivered in the case of **Mathew Antony Vs. State of Kerala** reported in **1991 SCC Online Ker 361**. In the aforesaid case, it has been held that binding nature of the decision would come to an end when the law is changed subsequently. Paragraph No.8 of the aforesaid judgment reads as under:

> **"8.** Section 11 of the Code of Civil Procedure is only applicable to suits. S. 141 of the Code makes the procedure regarding suits applicable to proceedings. Explanation to

> Section 141 excludes proceedings under Art. 226 from the purview of the Section. Even then general principles of respondent judicata are applicable to such proceedings also though S. 11 as such is not applicable. Though a decision to inter parties may not be respondent judicata even under general principles which do not take in the rigour of S. 11, the law laid down by the High Court is binding on it. Decisions may be on questions of facts, questions of law or on mixed question of fact and law. If a decision on facts is rendered by applying the relevant provisions of law to the facts the binding nature of the decision on that point will come to an end when the law is changed subsequently. That is because the law as then stood alone was interpreted in relation to the facts. When the law is changed the cause of action itself is changed. Though the former decision which has become final may continue to bind the parties thereto, when the law is changed and thus the cause of action became different, the new law will have to be applied to the facts in the subsequent case even though facts are same because law applicable is different. The Division Bench rendered the decision by defining "place" with reference to the law applicable at that time. Now the definition underwent radical changes to embrace another room int he same building or a nearby building within a radius of 50 meters in such a way that the existing distance is not further reduced. The definition of "place" in 1991 (1) KLT 543 cannot therefore be relied on now as the law binding the parties in this case. There is no case that Door No.7/597 is more than 50 meters away from Door No.7/594 or that the distance is further reduced. Both are in the same building and as earlier pointed out, the distance is only seven meters as found in the said decision itself. Admittedly, Door No.7/597 was used for the same purpose continuously from 1987-88 upto the end of 1989-90. I do not think that there is any violation of any of the Rules involved.**"**

In light of the aforesaid judgment, as no such exemption is available to the petitioner in light of the GST Act, 2017, the judgment relied upon by the petitioner is of no help and the petitioner cannot escape from the liability of payment of GST.

59- Reliance has also been placed in the case of **Shri Sarvan Singh and Another Vs. Shri Kasturilal** reported in **(1977) 1 SCC 750**. Paragraph No.21 of the aforesaid judgment reads as under:-

> **"21.** For resolving such inter se conflicts, one other test may also be applied through the persuasive force of such a test is but one of the factors which combine to give a fair meaning to the language of the law. That test is that the later enactment must prevail over the earlier one. Section 14A and Chapter IIIA having been enacted with effect from December 1, 1975 are later enactments in reference to Section 19 of the Slum Clearance Act which, in its present form, was placed on the statute book with effect from February 28, 1965 and in reference to Section 39 of the same Act, which came into force in 1956 when the Act itself was passed. The legislature gave over- riding effect to Secition14A and Chapter IIIA with the knowledge that Sections 19 and 39 of the Slum Clearance Act contained non-obstante clauses of equal efficacy. Therefore the later enactment must prevail over the former. The same test was mentioned with approval by this Court in Shri Ram Narain's case (Supra) at page 615.**"**

In the aforesaid judgment, it has been held that later act would prevail over the former enactment and therefore, as a new enactment has come into existence i.e. Central Goods and Services Tax Act, 2017, the statutory provisions under the Act or 2017 are to be followed.

60- In the case of **Mittal Engineering Works (P) Ltd. Vs. Collector of Central Excise Meerut** reported in **(1997) 1 SCC 203**, it has been held that the judgment is not a precedence on a preposition which it did not decide. Paragraph 8 of the aforesaid judgment reads as under:-

> **"8.** Learned counsel for Revenue submitted that if even a weighbridge was excisable, as held in the case of Narne Tulaman Manufacturers Pvt. Ltd. [(1989) 1 SCC 172] so was a mono vertical crystalliser. The only argument on behalf a Narne Tulaman Manufacturers Pvt. Ltd. was that it was liable to excise duty in respect of the indicating system that it manufactured and not the whole weighbridge. The contention that weighbridges were not 'good' within the meaning of the Act was not raised and no evidence in that behalf was brought on record. We cannot assume that weighbridges sand on the same footing as mono

> vertical crystallisers in that regard and told that because weighbridges were held to be exigible to excise duty so must mono vertical crystalliser. A decision cannot be relied upon in support of a proposition that it did not decide.**"**

In light of the aforesaid judgment, the issue involved in the present case has not been decided in the case of M/s. Hotel Ashoka (Supra) as it was not a case of supplier supplying goods to a Duty Free Operator.

61- Similarly the judgment delivered by the Bombay High Court in the case of **A-1 Cuisines Pvt. Ltd** (Supra) does not deal with the subject involved in the present writ petition. It was a case of a person seeking issuance of writ of mandamus directing the respondents therein to exempt the petitioner from charging applicable taxes under the GST legislations on sale of cosmetic products in respect of retail outlet which he intended to setup at Domestic Security Area at Dr. Babasaheb Ambedkar International Airport. Again the judgment is distinguishable on facts and does not help the petitioner in any manner.

62- The petitioner cannot escape the liability to pay GST. He is manufacturing certain goods and supplying to a person, who is having a Duty Free Shop. It is true that we cannot export our taxes but the facts remains that it is not the petitioner, who is exporting the goods or taking goods out of India. He is selling to a person, who is having Duty Free Shop (to a Duty Free Operator), which is located

in India as per the definition clause as contained under the GST Act. In light of the aforesaid, this Court does not find any reason to issue writ of mandamus directing the respondents not to charge GST on the petitioner or to legislate on the subject granting exemptions as prayed by the petitioner.

63- A statute is an edict of the legislature and the Courts do not have the power to enact a statute and the Court can only do interpretation of statute and once the Court does not have power to legislate, the question of granting exemption in absence of any statutory provision to the petitioner under the GST Act does not arise.

64- With the aforesaid, writ petition stands dismissed.

Certified copy as per rules.

No order as to costs.

(S. C. SHARMA)
J U D G E

(VIRENDER SINGH)
J U D G E

*Tej*