



WP No. 104172 of 2021

R

**IN THE HIGH COURT OF KARNATAKA, DHARWAD
BENCH**

DATED THIS THE 21ST DAY OF APRIL, 2022

BEFORE

**THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ
WRIT PETITION NO. 104172 OF 2021 (LB-TAX)**

BETWEEN

1. HUBBALLI DHARWAD ADVERTISERS ASSOCIATION (R)
NO.10-B, 3RD MAIN, PADMASHREE
NEAR KAMAKSHI TEMPLE,
DESHPANDE NAGAR,
HUBBALLI-580029,
REP. BY ITS PRESIDENT,
MR.SANDEEP K ROKHADE
2. M/S POORNIMA ARTS
NO.18/8, 8TH CROSS,
VYASYA BANK COLONY,
PARSWADI, KESHWAPUR,
HUBBALLI-580023,
BY PROPRIETOR,
MR.DEVARAJ URS.
3. M/S COLOUR POINT ADS C/O MOHAN'S DIGI PRINT
MAHADWAR SHOP, BESIDE AIRTEL OFFICE
2ND FLOOR
EUREKA BLUESTAR COMPLEX
NEELIGIN ROAD
HUBBALLI-580029
REP BY ITS PROPRIETOR MR. MOHAN GURUSWAMY
4. M/S THE PRISM



WP No. 104172 of 2021

NO S-16, B BLOCK, 2ND FLOOR
REVANKAR COMPLEX
T.B. ROAD, HUBBALLI-580029
REP BY ITS PROPRIETOR MR VIJAY NEELAREDY

5. M/S THIRUMALA ADVERTISING SERVICE
NO. HUBBALLI - 580029
REP BY ITS PROPRIETOR
MR MADHAN UPADYAYA

6. ARIHANT ADS
1ST FLOOR, MARCHANT ASSOCIATION BUILDING
NEAR TRAFFIC POLICE STATION, NEW COTTON MARKET,
REP. BY ITS PROPRIETOR
MR.SNADEEP K ROKHADE

...PETITIONERS

(BY SRI.U G KATTIMANI, ADVOCATE
AND SRI.ZAMEER PASHA, ADVOCATE)

AND

1. STATE OF KARNATAKA
DEPARTMENT OF REVENUE
VIKAS SOUDHA
AMBEDKAR VEEDHI
BANGALORE - 560001
REP BY ITS SECRETARY

2. HUBLI DHARWAD MAHANAGARA PALIKE
HUBLI
REPRESENTED BY ITS COMMISSIONER

3. THE DEPUTY COMMISSIONER
REVENUE DIVISION
HUBLI DHARWAD MAHANAGARA PALIKE
HUBLI

...RESPONDENTS

(BY SRI.SHIVAPRABHU HIREMATH, AGA FOR R1 & R3,
SRI.G.I.GACHCHINAMATH, ADVOCATE FOR R2)



WP No. 104172 of 2021

THIS PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO (I) ISSUE A WRIT OR ORDER OR DIRECTION SETTING ASIDE THE IMPUGNED DEMAND NOTICE VIDE ANNEXURE A7 DATED 13.06.2018 ISSUED BY THE RESPONDENTS. (II) ISSUE A WRIT OF PROHIBITION OR ORDER OR DIRECTION TO THE RESPONDENTS NOT TO MEDDLE WITH THE ADVERTISEMENT DISPLAYS AND HOARDINGS OF THE PETITIONERS.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS, COMING ON FOR 'PRONOUNCEMENT OF ORDER', THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. The petitioners are before this Court seeking for the following reliefs:

(i) issue a writ or order or direction setting aside the impugned demand notice vide Annexure A7 dated 13.06.2018 issued by the respondents.

(ii) issue a writ of prohibition or order or direction to the respondents not to meddle with the advertisement displays and hoardings of the petitioners.

2. Petitioner No.1 is a registered association of the advertising agencies and petitioner Nos.2 to 6 are the members of petitioner No.1. The petitioners claim to be in the business of advertisement on the advertisement hoardings licensed by respondent No.2- Hubballi Dharwad Mahanagara Palike. The



WP No. 104172 of 2021

petitioners are also stated to be registered as dealers under Section 22 of the Karnataka Value Added Taxes Act having received wide circulation in Form 7.

3. The petitioners claim to be making payments of advertisement tax regularly despite which the respondents have issued a notice dated 01.12.2014 at Annexure-A calling upon the petitioners to make payment of advertisement tax as regards advertisement hoardings used by them.
4. The contention of the petitioners is that on the enactment of the Goods and Service Tax Act (GST Act for brevity), the authority of the respondents to either levy or collect advertisement tax is ousted. Therefore, there could be no demand for advertisement tax post the enactment of the GST Act.
5. The respondents have collected the advertisement tax in terms of Section 134 of the Karnataka



WP No. 104172 of 2021

Municipal Corporations Act, 1976 (KMC Act for brevity). The power under Section 134 of the KMC Act flows from Entry 54, List II of Schedule VII of the Constitution of India. The said Entry 54 having been deleted the said power is divested. Hence, even on that ground no advertisement tax could be levied.

6. The respondents having no jurisdiction or authority to levy or collect advertisement tax after the enactment of GST Act the aforesaid reliefs are sought for.
7. Sri.Zameer Pasha, learned counsel appearing for the petitioners relies upon the decision of Allahabad High Court in Writ Tax No.354/2018 in the case of ***M/s Seive! Media Services Private Limited and Others vs. State of U.P. and Others*** wherein it is held that that in terms of Section 173 of the UPGST Act, 2017 which came into effect from 01.07.2017 it is GST which is liable to be paid. The power of the legislature to legislate with regard to advertisement



WP No. 104172 of 2021

tax had been deleted from the UP Municipal Corporations Act, with effect from 12.09.2016 there was no power left with the State Government or the Municipal Corporation for imposition of tax on the advertisement hoardings.

8. Relying on the said decision he submits that respondent No.2 also does not have any such power and therefore the demand at Annexure-A is required to be quashed.
9. Per contra, Sri.G.I.Gachchinmath, learned counsel appearing for respondent No.2 would submit that the power of respondent No.2 to collect the advertisement tax continues under Section 134 of KMC Act. In the decision relied upon by the counsel for the petitioner, said power had been deleted, whereas no such deletion has occurred in the KMC Act.



WP No. 104172 of 2021

10. He relies upon the decision of Gujarat High Court in R/Special Civil Application No.4538/2019 and connected matters in the case of **Selvel Media Services Private Limited vs. The Municipal Corporation** to contend that advertisement tax is more of a fee though it has been termed as tax, it would have to be construed as a fee. This fee is levied for the license granted to the petitioner and its members to exhibit advertisements on the advertisement hoarding on the land belonging to respondent No.2 and or private parties. Without such license, the petitioner cannot display any advertisement, the fee is charged for such display and the same has nothing to do with GST as claimed by the petitioner. Both of them stand on different footings.

11. If it all the petitioners are aggrieved by the levy of GST, the petitioners have to challenge the same. Insofar as advertisement tax is concerned,



WP No. 104172 of 2021

respondent No.2 is authorized to levy and collect the said advertisement tax/fee. On this ground he submits that the writ petition is liable to be dismissed.

12. Heard Sri.Zameer Pasha, learned counsel for the petitioners, Sri.Shivaprabhu Hiremath, learned AGA for respondent Nos.1 and 3 and Sri.G.I.Gachchinamath, learned counsel for respondent No.2. Perused papers.

13. The short but important question that arises for consideration in this matter are:

i. Whether on coming into force of the GST Act a Municipal Corporation can levy advertisement tax/fee?

ii. What order?

14. The GST Act has been introduced pursuant to 101st amendment to the Constitution which among other things has introduced Article 246(A) to the Constitution. The GST Act has been introduced with



WP No. 104172 of 2021

the intention to simplify the process of collecting indirect taxes. The indirect taxes like excise duty, sales tax, service tax, etc., have been subsumed in the GST Act wherein GST is levied on the supply of services and or goods.

15. Article 246(A) of the Constitution of India is reproduced hereunder for easy reference:

[246A. Special provision with respect to goods and services tax.—(1) Notwithstanding anything contained in articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.

(2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

16. The argument of Sri.Zameer Pasha, learned counsel is that petitioners cannot be subjected to both GST and advertisement tax. If so done there is double taxation which is impermissible and that on coming into force of the GST Act, it is only GST which is



WP No. 104172 of 2021

applicable to the petitioners and no advertisement tax is liable to be paid.

17. On enquiry and being called upon to produce any details of payment of GST by the petitioners and or their members, Sri.Zameer Pasha submits that he is unable to do so and there is no GST paid.
18. The GST as stated above is levied on any supply of goods or services. The petitioners carrying on advertisement business it is during the course of the said business that the petitioner is required to collect GST from any of its/their clients and remit it to the authorities. It is not that the petitioners are making payments of GST out of their own pockets. The petitioners supplying services and or goods, on the invoice that the petitioners were to raise on their respective clients the invoice amount would be required to be accompanied by a GST amount on the basis of the categorization of services and or goods under the GST Act. The said GST collected from the



WP No. 104172 of 2021

client of the petitioners, the amount is required to be remitted by the petitioners to the GST authorities.

19. In this transaction the petitioners are only a collecting agency who collects the GST payable on the service rendered and deposits the same with the authorities, the incidence of tax, i.e., GST being on the services rendered or goods supplied, the obligation of payment being on the person availing the service and or receiving the goods.
20. The incidence of GST is on the service rendered by the petitioner to its clients and has nothing to do with respondent No.2-HDMC. The transaction with HDMC is the permission and or license granted by the HDMC to put up hoarding and or use a hoarding either on the land belonging to the HDMC and or on land belonging to a private party.
21. The incidence of advertisement tax or advertisement fee is on the license granted by HDMC permitting the



WP No. 104172 of 2021

petitioner to put up hoarding or make use of the hoardings, this incidence of advertisement tax or fee has nothing to do with supply or service or goods by the petitioner to its clients.

22. In view of the above there are two distinct transactions. The incidence of tax on both transactions are different.
23. The first transaction is the permission by respondent No.2-HDMC to put up a hoarding or advertisement to use their hoarding for the purpose of advertisement, as regards which respondent No.1-HDMC charges the fee or advertisement tax.
24. The second transaction is on the petitioners making use of the hoarding to display advertisements of its clients towards which the petitioners charge their client which is a supply of services or goods as regards which the GST is liable to be paid.



WP No. 104172 of 2021

25. Both the transactions being independent and distinct the incidence of both the GST and advertisement fee being on two distinct transactions inasmuch as the GST not being charged by the respondent No.1-HDMC and advertisement fee not being charged by the GST authorities, though of course there may be GST charged on the Advertisement Fee charged by the HDMC, I am unable to accept the submission of Sri.Zameer Pasha that there is double taxation.
26. By extending the analogy the petitioners cannot contend that on the business being done by them, they are also making payment of income tax. Therefore, GST cannot be levied or vice-versa. That would end up in a ridiculous situation that would be completely untenable.
27. As afore observed the transactions being independent the incidence of tax being independent, the same would not amount to double taxation.



WP No. 104172 of 2021

28. As regards the contention of Sri.Zameer Pasha that on the deletion of Entry 54 to List II of Schedule VII of the Constitution the respondents cannot levy any advertisement tax, the said issue has been considered by the Division Bench of the Gujarat High Court in R/Special Civil Application No.4538/2019 (supra) and other matters, wherein the said Court by referring to Articles 243-X and 243-XF of the Constitution has held that the power to impose Advertisement tax is conferred on the Municipality who can collect and appropriate such taxes, duties and fees in accordance with the procedure and subject to such limits.

29. Article 243-X of the Constitution is reproduced hereunder for easy reference:

243X. Power to impose taxes by, and Funds of, the Municipalities.—The Legislature of a State may, by law,—(a) authorise a Municipality to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;(b) assign to a Municipality such taxes, duties, tolls and fees levied and collected by the State Government for such purposes and subject to such conditions and limits;(c) provide for making such grants-in-aid to the Municipalities from the Consolidated



WP No. 104172 of 2021

Fund of the State; and(d) provide for constitution of such Funds for crediting all moneys received, respectively, by or on behalf of the Municipalities and also for the withdrawal of such moneys therefrom, as may be specified in the law.

30. After examining all aspects, the Gujarat High Court has come to a conclusion that the charges levied by the Municipal Corporation permitting putting up of advertisement is more of a fee than a tax inasmuch as there is a *quid pro quo* by way of permission to put up an advertisement hoarding.

31. Section 134 of the Karnataka Municipal Corporations Act reads as under:

134. Tax on advertisement. - *Every person who erects, exhibits, fixes or retains, upon or over any land, building, wall or structure any advertisement or who displays any advertisement to public view in any manner whatsoever, in any place whether public or private, shall pay on every advertisement which is so erected, exhibited, fixed, retained or displayed to public view, a tax calculated at such rates and in such manner and subject to such exemptions, as the corporation may, with the approval of the Government, by resolution determine:*

Provided always that the rates shall be subject to the maxima and minima laid down by the Government in this behalf:

Provided further that no tax shall be levied under this section on any advertisement or a notice,-



WP No. 104172 of 2021

- (a) of a public meeting, or corporation of the city, or*
- (b) of an election to any legislative body, or*
- (c) of a candidature in respect of such an election:*

Provided also that no such tax shall be levied on any advertisement which is not a sky-sign and which,-

- (a) is exhibited within the window of any building; or*
- (b) relates to the trade or business carried on within the land or building upon or over which such advertisement is exhibited, or to any sale or letting of such land or building or any effects therein or to any sale, entertainment or meeting to be held upon or in such land or building; or*
- (c) relates to the name of the land or building, upon or over which the advertisement is exhibited, or to the name of the owner or occupier of such land or building; or*
- (d) relates to the business of any railways; or*
- (e) is exhibited within any railway station or upon any wall or other property of a railway except any portion of the surface of such wall or property fronting any street.*

Explanation 1. - The word 'structure' in this section shall include any movable board on wheels used as an advertisement or an advertisement medium.

Explanation 2. - The expression 'sky-sign' shall, in this section, mean any advertisement, supported on or attached to any post, pole, standard, frame work or other support wholly or in part upon or over any land, building, wall or structure which, or any part of which shall be visible against the sky from some point in any public place and includes all and every part of any such post, pole, standard, frame-work or other support. The expression 'sky-sign' shall also include any balloon, parachute or other similar device employed wholly or in part for the purposes of any advertisement upon or over any land, building or structure or upon or over any public place but shall not include,-



WP No. 104172 of 2021

(a) any flag-staff, pole, van or weather-cock, unless adapted or used wholly or in part for the purpose of any advertisement; or

(b) any sign, or any board, frame or other contrivance securely fixed to or on the top of the wall or parapet of any building, or on the cornice or blocking course of any wall, or to the ridge of a roof:

Provided that such board, frame or other contrivance be of one continuous face and not openwork, and does not extend in height more than one meter above any part of the wall or parapet or ridge to, or against, or on which it is fixed or supported; or

(c) any advertisement relating to the name of the land or building, upon or over which the advertisement is exhibited, or to the name of the owner or occupier of such land or building; or

(d) any advertisement relating exclusively to the business of a railway, and placed wholly upon or over any railway, railway station, yard, platform or station approach belonging to a railway, and so placed that it cannot fall into any street or public place; or

(e) any notice of land or buildings to be sold, or let, placed upon such land or buildings.

Explanation 3. - 'Public place' shall, for the purpose of this section, mean any place which is open to the use and enjoyment of the public, whether it is actually used or enjoyed by the public or not.

32. In the present case, there is no challenge either to Section 134 of the Karnataka Municipal Corporations Act nor is there a challenge made to GST Act. The only reliefs which have been sought for are for



WP No. 104172 of 2021

setting aside the impugned demand notice at Annexure-A and a writ of prohibition directing the respondents not to meddle with the advertisement display and the hoardings of the petitioners.

33. For all the aforesaid reasons, I pass the following:

ORDER

- (i) The writ petition is dismissed.
- (ii) It is declared that there is no conflict between the power to levy GST under GST Act and power of Municipal Corporation to levy advertisement fee or advertisement tax under Section 134 of the Karnataka Municipal Corporations Act.

**Sd/-
JUDGE**

sh