

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 22nd DAY OF OCTOBER 2018

BEFORE

THE HON'BLE Dr.JUSTICE VINEET KOTHARI

WRIT PETITION No.37514/2017 (T-RES)

BETWEEN:

XL HEALTH CORPORATION INDIA PVT. LTD.
A COMPANY INCORPORATED UNDER
THE COMPANIES ACT 1956
HAVING ITS OFFICE AT:
ABACUS CENTRE NO.54, 1ST MAIN
III PHASE, J.P NAGAR, SARAKKI INDUSTRIAL AREA
BANGALORE-560078
REP. HEREIN BY ITS AUTHORISED SIGNATORY
MR. DEEPAKA TULUPULE (ADULT)

... PETITIONER

(By Mr. TARUN GULATI, ADV., &
Mr. VINAYAK MATHUR, ADV., FOR
M/S. KEYSTONE PARTNERS)

AND:

1. THE UNION OF INDIA
THROUGH THE SECRETARY FINANCE
DEPARTMENT OF REVENUE
GOVT. OF INDIA, NORTH BLOCK
NEW DELHI-110001.
2. DEPUTY COMMISSIONER
SERVICE TAX, DIVISION-III
SERVICE TAX-I, COMMISSIONERATE
1ST FLOOR, TRAFFIC AND TRANSIT
MANAGEMENT CENTRE
BMTc BUS STAND COMPLEX
BANASHANKARI, BENGALURU-560070.

3. COMMISSIONER OF SERVICE TAX (APPEALS)
TRAFFIC AND TRANSIT MANAGEMENT CENTRE
BMTc BUILDING
NO.9, 4TH FLOOR, ABOVE BMTc BUS STAND
DOMLUR, BENGALURU-560071.

... RESPONDENTS

(By Mr. JEEVAN J. NEERALGI, ADV.,)

THIS W.P. IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER DATED 9.6.2017 IN APPEAL NO. 610-621/2017 PASSED BY R-3 AT ANNEX-A AND ACCORDINGLY DIRECT THE RESPONDENTS TO PROCESS THE REFUNDS & ETC.

THIS W.P. COMING ON FOR ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

Mr. Tarun Gulati, Adv. &
Mr. Vinayak Mathur, Adv. for
M/s. Keystone Partners, Advs., for Petitioner
Mr. Jeevan J. Neeralgi, Adv. for Respondents

1. The petitioner – **XL Health Corporation India Pvt. Ltd.**, has challenged the order dated **09.06.2017** vide **Annexure-A** passed by **Mr.Suresh Kumar**, Commissioner of Service Tax (Appeals), Bangalore, while deciding the **Appeal Nos. 610-621/2017** filed by the petitioner-assessee, reiterating his stand taken in the

earlier appeal order passed by him on **01.02.2016** in **OIA Nos.165-177/2016** for the earlier period.

2. The petitioner-assessee claimed refund of tax on account of the export of services rendered by it. The said issue for the previous period came to be decided by the **CESTAT**, the Higher Appellate Forum in the case of the petitioner-assessee itself and the Tribunal set aside the order of the Commissioner of Service Tax (Appeals) dated **01.02.2016** in **OIA Nos.165-177/2016** with the following observations:-

“ 6. After considering the submissions of both the parties and perusal of the records, I find that the learned Commissioner (A) has wrongly invoked the doctrine of unjust enrichment in the present case. I also find that unjust enrichment principle is not applicable and has been specifically excluded by the proviso to Section 11B providing claim of refund. Further, I also find that in the various decisions cited supra, it has been clearly held that the principle of unjust enrichment is not applicable in the export of services. Further, I also find that the impugned

order has clearly traveled beyond the show-cause notice and the Order-in-Original and the appellant has been put into a worse off situation than originally he was because of the Order-in-Appeal.

6.1 Following the ratios of the decisions cited supra, I am of the view that the impugned order is not sustainable in law and I set aside the impugned order and remand the case back to the original authority to decide the refund afresh keeping in view the various decisions cited by the appellant and keeping in view the documents which the appellant has produced and may like to produce before the original authority in support of all their claims. Therefore, all the appeals are allowed by way remand to the original authority to decide and quantify the refund claim. The original authority will decide the claim within three months from the date of receipt of certified copy of the order”.

3. For the subsequent period, when the **Appeal Nos.610-621/2017** again came to be filed by the petitioner-assessee on the same set of facts, in total breach of the judicial discipline, the said Commissioner of Service Tax (Appeals) **Mr.Suresh Kumar** passed the

impugned order on **09.06.2017** even taking note of the order passed by the **CESTAT** on **23.03.2017**, he makes an observation that “ *I have discussed the issue in detail in OIA Nos.165 to 177/2016 dated 01.02.2016 (which order was set aside by the Tribunal)* and do not find any reason to change my mind or findings thereof and therefore see no reason or justification to set aside the Order in Original”. This he writes on **09.06.2017** fully being aware of the Tribunal’s order dated **23.03.2017** and taking note of it, the learned counsels at the bar further informed the Court that no further appeal to the High Court or SLP before the Supreme Court was filed and that order of the Tribunal and it has become final.

4. To support such an erroneous order passed by **Mr.Suresh Kumar** – the Commissioner of Service Tax (Appeals), the Respondent-Department has the audacity to file a Statement of Objections in this Court on **21.10.2017** and in **para-7** of which, they state, “*there*

were no new facts which necessitated going through the rigmarole or formality of hearing and is nothing but time wasting tactics being adopted by the petitioner”.

5. Firstly, in the impugned order, the first appellate authority throwing to the winds, the principles of judicial discipline and binding order passed by higher appellate forum, not only reiterated his own stand, which were set aside by the Tribunal but the same is sought to be defended by the Department with the aforesaid words quoted above. The total callous, negligent and disrespectful behaviour shown by the Departmental authorities in this Court should not be tolerated at all. It is this kind of lack of judicial discipline which if it goes unpunished, will lead to more litigation and chaos and such public servants are actually a threat to the society.

6. By way of leniency shown earlier, which this Court now realizes was misplaced, about a month ago,

this Court had passed an order on **24.09.2018** at the request of learned counsel for the Revenue to file the correct Affidavit of **Mr.Prashant Kumar Jha** - the Joint Commissioner of Central Tax, Bengaluru, who had filed the aforesaid Statement of Objections on **21.10.2017**, but despite of lapse of one month, neither the Affidavit with a sort of apology is filed by the Revenue nor the impugned order dated **09.06.2017** passed by the said Commissioner of Service Tax (Appeals) **Mr.Suresh Kumar** has been withdrawn by the said authority.

7. The learned counsel for the Respondents- Revenue informed the Court that since the said officer **Mr.Prashanth Kumar Jha** was transferred from Bangalore to Delhi, therefore, they may be either granted some more time to file the Affidavit or the present incumbent in the office may be allowed to file his Affidavit.

8. This request adds insult to the injury. The impugned order apparently flies in the face of the higher Tribunal's order dated **23.03.2017** and therefore cannot be sustained. The writ petition therefore clearly deserves to be allowed with exemplary costs.

9. The writ petition is accordingly allowed. The impugned order **Annexure-A** dated **09.06.2017** is quashed and set aside. The cost is quantified at **Rs.1 lakh (Rupees One Lakh only)** to be deposited by **Mr.Suresh Kumar, Commissioner of Service Tax (Appeals)** from his personal funds with the Registrar General of this Court within a period of one month from today. On failure to deposit, a copy of the order may be sent to the concerned Secretary of the Revenue Department, Ministry of Revenue for taking needful disciplinary action against the said Officer. Upon deposit, the said costs shall be made over to the **"Prime Minister's Relief Fund"**.

10. The petitioner-assessee may now approach the concerned Commissioner with a fresh request to consider the request of refund in accordance with law and in terms of the order passed by the Tribunal on **23.03.2017** and the said concerned officer will pass appropriate orders, granting the refund after verifying the facts within a period of three months from today.

**Sd/-
JUDGE**

Srl.