

Rajasthan High Court

Myteam11 Fantasy Sports Private ... vs Union Of India on 18 January, 2023

Bench: Pankaj Mithal, Shubha Mehta

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil Writ Petition No. 1100/2023

Myteam11 Fantasy Sports Private Limited

----Petitioner

Versus

Union Of India

----Respondent

For Petitioner(s) : Mr. Sudhir Gupta, Sr. Advocate assisted by Mr. Sandeep Shekhawat Mr. David Mehla Ms. Shweta Chauhan Ms. Sejal Harneja For Respondent(s) : Mr. V.P. Mathur Mr. Sandeep Pathak with Ms. Vartika Mehra HON'BLE THE CHIEF JUSTICE MR. PANKAJ MITHAL HON'BLE MRS. JUSTICE SHUBHA MEHTA Order 18/01/2023

1. The petitioner-Company is engaged in providing online gaming services such as Rummy, Poker, Fantasy sports and casual games (Cricket, Candy Crush, Carrom, Solitaire, etc.) on their websites MyTeam11.in.

2. The petitioners have been served with a show cause notice under Section 74(1) of the Central Goods & Services Tax, 2017 (for short 'CGST, 2017') alleging that the petitioner-Company by misclassifying their supply as service instead of actionable claims which are goods and by undertaking activities in the form of betting has avoided tax and as such why the demands of GST, interest thereon and penalty as referred to in the notice may not be confirmed.

(2 of 4) [CW-1100/2023]

3. The petitioners through the present writ petition has thrown a challenge to the above show cause notice contending that the issue as to whether nature of gaming services as provided by it is in the nature of services or an actionable claim is no longer res- integra and has been decided by catena of the authorities which hold that the said games are game of skill and would not be covered as gaming of chance or gambling.

4. The submission of Shri Sudhir Gupta, learned Senior Advocate appearing for the petitioner-Company is that once controversy regarding classification of the products stands settled by the decision of the Court, the respondents have no jurisdiction to issue any show cause notice taking a different opinion in the matter and in case any such notice is issued, it would be without jurisdiction as has been laid down in Union of India & Anr. Vs. Vicco Laboratories-(2007) 13 SCC 223.

5. Learned counsel for the petitioner also submits that the impugned show cause notice in fact is not a mere show cause notice rather is in the nature of a final order determining the tax liability, interest

and penalty and requiring the petitioner to deposit the same.

6. Shri Sandeep Pathak, learned counsel appearing for respondent Nos.2 to 5 opposes the petition on the ground that it is not maintainable as it is only directed against a show cause notice. The petitioners can file reply to the notice and wait for the final decision. It is also submitted that the petitioner-Company is indulging in betting and as such there is no illegality in initiating the above action. The gaming services provided by the petitioner- Company is not in the nature of skill but pure and simple betting and gambling. The show cause notice is not of a final nature. It (3 of 4) [CW-1100/2023] only tentatively determines the amount of tax interest and the penalty subject to confirmation upon consideration of the reply of the petitioner-Company. The direction to deposit part of the tax interest and penalty is in consonance with the statutory provisions which provides that if the assessee deposits tax dues, interest and penalty equivalent to 25% of the tax, the matter would stand concluded with no further enquiry.

7. A Division Bench of this Court in Chandresh Sankhla Vs. State of Rajasthan & Ors.-D.B. Civil Writ Petition No.6653/2019 decided on 14.02.2020 in respect of a similar company Dream11 which also provided gaming services online held that the issue is no longer res-integra and as such gaming services are not in the nature of betting/gambling.

8. The view taken by the Division Bench has not been disturbed by the Supreme Court and the SLP against it stands dismissed.

9. A similar view has also been taken by a different Division Bench of our High Court in the case of Ravindra Singh Chaudhary Vs. Union of India D.B. Civil Writ Petition No.20779/2019 decided on 16.10.2020 which also stands approved by the Supreme Court as the SLP against it stands dismissed.

10. In the case of Dr. K.R. Laxmanan Vs. State of Tamil Nadu-(1996) 2 SCC 226 it has been observed that the games so offered are games of skill and not of chance.

11. In view of the totality of the facts and circumstances of the case, we are prima facie satisfied that some of the games offered by the petitioners online have already been held to be games of skill rather than that of chance or that of betting/gambling. Thus when the matter is so settled by various Courts, the issuance of (4 of 4) [CW-1100/2023] the impugned show cause notice is nothing but an abuse of the process of law.

12. Accordingly, we call upon the respondents to file counter affidavit to the writ petition within a period of one month from today.

13. The writ petition is directed to be listed for admission/final disposal immediately thereafter.

14. Until further orders of the Court, the respondents shall not take any coercive measures to recover any amount from the petitioners pursuant to the impugned show cause notice dated 09.12.2022, provided petitioners file reply to the said show cause notice, if not already filed, within a

period of one month from today till the respondents take a final decision in the matter which would be subject to the decision of this petition.

(SHUBHA MEHTA) , J

N.K. GANDHI/LAKSHYA SHARMA /8

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