

**THE HON'BLE SRI JUSTICE T. VINOD KUMAR  
AND  
THE HON'BLE SRI JUSTICE PULLA KARTHIK**

**WP No. 20885 of 2018**

**ORDER:** *(per Hon'ble Sri Justice T.Vinod Kumar)*

This Writ Petition is filed to issue a Writ of Mandamus to declare the action of the respondents in levying GST on the licence fee payable by the petitioner in respect of the licence granted to her to carry on the business in the premises of the respondents, as being illegal, arbitrary and in violation of principles of natural justice.

2. Heard Sri D.V.Chalapathi Rao, learned Counsel appearing on behalf of the petitioner and Sri Thoom Srinivas, learned Standing Counsel appearing on behalf of the respondents.

3. Petitioner contends that she was granted licence by the respondents-authorities to set up business for running pop-corn stall at the premises of the 3<sup>rd</sup> respondent on payment of agreed licence fee, and for the said purpose, she had entered into an agreement with the respondents, titled as 'deed of licence', dt.22.09.2015, under the signature of the 4<sup>th</sup> respondent.

4. Petitioner further contends that the respondents notwithstanding the terms of the Deed of Licence granted, demanded payment of GST, w.e.f. 01.07.2017 and that the said demand made is contrary to the terms of the Deed of Licence.

5. Per contra, Sri Thoom Srinivas, learned Standing Counsel appearing on behalf of the respondents would submit that in terms of the Deed of Licence, the licensee had agreed to pay service tax on the monthly licence fee and that the same was also collected in addition to the licence fee payable periodically

from the petitioner although the period upto 01.07.2017, and with the introduction of GST w.e.f. 01.07.2017, in place of Service Tax, the respondents-authorities have demanded payment of GST being a levy substituting the service tax and no additional or new levy is sought to be imposed on the petitioner by the respondents-authorities.

6. We have taken note of the respective contentions urged.

7. Clause (43) of the Deed of Licence entered into between the petitioner and the respondents reads as under:

“43. The license shall pay the service tax @ 14% as applicable on payment of monthly license fee every month under notification No.14/2015, dt.19.05.2015, issued by the Govt. of India.”

8. The document as placed before this Court by the respondents also shows that in addition to the licence fee for each month as fixed under the agreement titled as ‘Deed of Licence’, the respondents were also charging service tax separately and the same was being paid by the petitioner without any demur or protest.

9. Having regard to the fact that by the introduction of GST, the provision of Finance Act, 1994, under which service tax was levied, has been subsumed into the GST, it is not open for the petitioner to contend that demand of GST by the respondents is a new levy/imposition that has been fastened by the respondents.

10. Under the terms of Deed of Licence, since the petitioner had agreed to pay service tax in addition to the monthly licence fee fixed thereunder and the GST being a levy which has been introduced in the place of service tax, the petitioner cannot absolve herself of the liability to pay GST in place of service tax.

11. For the foregoing reasons, this Court is of the considered view that the claim of the petitioner of her non-liability to pay GST on the licence fee is devoid of merit and the Writ Petition has to fail on the said ground.

12. Accordingly, the Writ Petition is dismissed. No order as to costs.

13. Consequently, miscellaneous petitions pending, if any, shall stand closed in the light of this final order.

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**T. VINOD KUMAR, J**

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**PULLA KARTHIK, J**

12<sup>th</sup> December, 2022

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**Dt.12.12.2022**

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