

Union Of India vs Vodafone Group Plc & Anr on 14 December, 2022

Author: Siddharth Mridul

Bench: Siddharth Mridul, Talwant Singh

\$-S-2

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ RFA(OS) 38/2018

UNION OF INDIA

Through:

.....
Mr. Kirtiman Singh, CG
with Mr. Ashutosh Kuma
Vidhi Jain and Mr. Bha
Singh, Advocates for U

versus

VODAFONE GROUP PLC & ANR

..... Respond
Through: Mr. Harish N. Salve, Senior

Advocate along with Ms.
Anuradha Dutt, Ms. Fereshte D.
Sethna, Ms. Ekta Kapil, Mr.
Haaris FAzili, Mr. Kaushal Jee
Kait and Mr. Kunal Dutt,
Advocates.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE TALWANT SINGH

ORDER

% 14.12.2022 CM APPL. 44282/2022 (Exemption) Exemption allowed, subject to all just exceptions. The application is disposed of accordingly. CM APPL. 44281/2022 (for clarification of orders dated 17.11.2020 and 08.12.2020) The present application has been instituted on behalf of the applicants/the original respondent Nos. 1 and 2, praying as follows:-

"In the premises, it is most respectfully prayed this Hon'ble Court may be pleased to:

(a) Pass orders clarifying and/or modifying the orders dated 17 November 2020 and 8 December 2020 to record that the Respondents' undertaking recorded therein pertains exclusively to VIH BV disputes arising out of the Measures liable to Nullification, and that VISPL disputes remain within the remit of the pending arbitration under the India-UK BIT, subject of course to all rights, remedies and defences available to both the Respondents and the Union of India; and

(b) Pass such other order(s) as this Hon'ble Court may deem fit and appropriate in the facts and circumstances of the case."

Learned counsel appearing on behalf of the parties, jointly state that, they have consented to the following modification, in respect of the undertaking furnished by the respondent Nos. 1 and 2, to this Court, as recorded in the orders dated 17.11.2020 and 08.12.2020.

Learned counsel in unison state that the parties are desirous that the said orders dated 17.11.2020 and 08.12.2020, be clarified as follows:-

"(1) The undertaking given by Vodafone to this Hon'ble Court- as recorded in the orders of this Hon'ble Court dated 17.11.2020 and 08.12.2020- is clarified to specify that such undertaking does not bar the pursuit of the specific claim(s) on behalf of VISPL identified and reserved in paragraphs 66 & 80 of the Notice of Arbitration under the India UK BIT dated 24.01.2017. However, Union of India reserves all defences (including defences relating to maintainability abuse of process, res judicata, etc.) in relation to such claims.

(2) Further, on account of Vodafone obtaining relief under the Taxation Laws (Amendment) Act, 2021, and the settlement of the disputes covered by the award dated 25.09.2020 in the arbitration under the India-Netherlands BIT, such award is unenforceable and cannot be relied upon by Union of India and the Respondents (or any group entity of the Respondents) for any purpose- including in connection with the claims pertaining to VISPL."

Accordingly, the orders dated 17.11.2020 and 08.12.2020, be read along with the above clarification.

In terms of the directions issued by this Court vide orders dated 17.10.2022 and 02.11.2022 and in the backdrop of paragraph 3 of the communication dated 20.07.2022, authored by Mr. Ajay Kumar Sharma, Commissioner of Income-Tax (International Taxation)04, Mumbai, the time to fulfill the conditions stipulated vide the Income-Tax Authorities Letter dated 22.04.2022, is extended for a further period of 30 days from today.

The application is disposed of accordingly.

SIDDHARTH MRIDUL, J.

TALWANT SINGH, J.

DECEMBER 14, 2022/rs Click here to check corrigendum, if any