IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3393 OF 2014

Amita Kishor Mansukhani …. Petitioner
V/s.
Union of India & Ors. …. Respondents

Mr. Anil V. Anturkar, Sr. Counsel, a/w. Mr. Sugandh B. Deshmukh, for the Petitioner.

Mr. Y.S. Bhate a/w. Mr. Neelesh V. Kalantri for Respondent Nos.1 to 3.

Mr. P. Kumar Jain, i/by M/s. Prakash Panjabi & Co., for Respondent No.4.

CORAM : S.C. DHARMADHIKARI &
DR. SHALINI PHANSALKAR-JOSHI, J.J.

DATE : 2ND MAY, 2016.

P.C. :

1. We have heard Mr. Anturkar, learned Senior Counsel appearing for the Petitioner. With his assistance, we have perused the Petition.

2. The Petition seeks a direction to the Respondent-Government to refund a sum of Rs.8,97,567/- stated to be excess service tax paid by the Petitioner.

3. It is common ground that the Petitioner and Respondent No.4 had an Agreement of Leave and License. That had a duration. That duration was of five years, commencing from 20th May 2008. The Petitioner states

that on account of some subsequent development, with mutual consent, this Agreement of Leave and License was cancelled on 21st December 2009 by a written document styled as “Cancellation Deed”, copy of which is at Annexure-B of the paper-book. The Cancellation Deed records, according to the Petitioner, that Respondent No.4 would remit the amount of service tax payable on the License Fee to the Licensor only when the issue relating to payment of service tax on renting of the immovable property is finally decided by the Supreme Court of India.

4. It is now conceded that the said issue was dealt with by a Full Bench of the Delhi High Court in a Judgment delivered by it on 23rd September 2011. Equally, there was another matter decided by this Court in ***Retailers Association of India Vs. Union of India in Writ Petition No.2238 of 2010, decided on 4th August 2011, reported in 2011 (23) STR 561 (Bom.)***. The matter was carried to the Hon'ble Supreme Court of India and from the record, as produced before us by Mr. Bhate, learned counsel for Respondent Nos.1 to 3, it is apparent that the matter is still pending before the Hon'ble Supreme Court of India from the Judgments of the two High Courts.

5. However, we find that in the light of the Judgments delivered by this Court and the concession in terms thereof, the Service Tax was payable at-least on the rental component and it was paid from 20th May 2008 till 21st December 2009. As far as the payment of the consolidated sum constituting five years license fee in advance, how the excess payment was treated is a matter of fact. That is the dispute on fact and since the Petitioner seeks to apply for refund of the money paid and recovered by the Department, we grant the Petitioner leave to file a Refund Application,

invoking the powers of the Respondents under Section 11B of the Central Excise Act, 1944. If such an application is filed, we expect the Respondents to dispose it of in accordance with law.

6. The Writ Petition is disposed of by granting liberty to the Petitioner to file such an application, which the Petitioner's counsel states that would be filed within a period of two weeks from today.

7. No costs.

[DR. SHALINI PHANSALKAR-JOSHI, J.] [S.C. DHARMADHIKARI, J.]