

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL APPLICATION NO.201 OF 2019
IN
WRIT PETITION NO.204 OF 2019

Zuari Agro Chemicals Ltd. Applicant.

Versus

The Union of India & ors.. Respondents.

Mr. Gajendra Jain with Ms. Vidya Naik, Advocates for the Applicant.

Ms. Asha Dessai, Senior Central Government Standing Counsel for the Respondents.

Coram : M.S. Sonak &
Prithviraj K. Chavan, JJ.

Date : 25th November, 2019.

P.C.:

Heard Mr. Gajendra Jain for the Applicant and Ms. Asha Desai for the Respondents.

2. By this Civil Application, the Applicant seeks a stay on the operation of the Order-in-Original dated 10th January, 2019 and the Order-in-Original dated 19th August, 2019, made by the Assistant Commissioner of Central Goods and Service Tax (Respondent No.3).

3. In the first place, we find that there is no substantive challenge to the Order-in-Original dated 19th August, 2019. In the

absence of any substantive challenge, there is no question of entertaining the application, simply seeking an interim relief. To overcome the aforesaid position, Mr. Jain points out that the Order-in-Original dated 19th August, 2019 only seeks to implement the Order-in-Original dated 10th January, 2019, which is challenged in the main Petition.

4. In the main Petition, Rule has already been issued and liberty was granted to the Petitioner to apply for interim relief, if occasion so arises. The challenge in the main Petition is to Rule 89(5) of the CGST Rules, which restricts refund of input services. Grant of any interim relief, as prayed for, would virtually amount to directing the Respondents to act contrary to the provisions of Rule 89(5) of the CGST Rules. Normally, unless a case, much stronger than a mere *prima facie* case is made out, there is no question of grant of stay to any legislation or the Rules, having statutory force.

5. Besides, we find that the relief, which the Applicant seeks, is virtually requiring the Respondents to refund certain amount, already retained by them. In this sense, the Applicants are seeking a mandatory relief, though the relief is styled as seeking stay on the impugned orders. There is really no case made out for grant of such a relief in mandatory terms, at the interim stage.

6. Accordingly, this Civil Application is rejected. There shall

be no order as to costs.

7. In any case, there was a direction for taking up the main Petition for final disposal on 10th July, 2019. In view of the aforesaid, we place the main Petition for final disposal in the week commencing from 13th January, 2020.

Prithviraj K. Chavan, J.

M.S. Sonak, J.