IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3365 OF 2018

Sodexo SVC India Private Limited a company incorporated under the Companies Act, 1956 and having its office at	))))	Petitioner

Vs

1. The State of Maharashtra Through the Government Pleader High Court, Mumbai 2. Pune Municipal Corporation, PMC Main Building, Near Mangla Theatre, Shivajinagar, Pune – 411 005 3. The Municipal Commissioner Pune Municipal Corporation, PMC Main Building, Near Mangla Theatre, Shivajinagar, Pune – 411 005	))))))))))))))	Respondents

Mr.Prakash Shah, Mr.Arun Jain I/b PDS Legal for the Petitioner.

Mrs.K.R.Kulkarni, AGP for State-Respondent No.1.

Mr.Vishwanath Patil for Respondent Nos.2 and 3.

CORAM :- S. C. DHARMADHIKARI &
B.P.COLABAWALLA, JJ.

DATE :- APRIL 16, 2019

P.C. :-

1. Heard both sides.

2. By this petition under Article 226 of the Constitution of India, the petitioner has claimed the following relief :-

> "this Hon'ble Court be pleased to issued writ of Mandamus or a writ in the nature of Mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India, ordering and directing the Respondents, their subordinate servants and agents to forthwith to take all steps and proceedings under the Act and sanction the refund of the balance amount of Rs.1,72,76,886/-, along with applicable interest on the entire amount of Rs.3,05,34,775/-, collected from the Petitioner under the guise of Octroi/LBT"

3. Since the petition involves a short point, it is disposed of finally by this order.

4. Rule. Respondents waive service. By consent, Rule is made returnable forthwith.

5. The petitioner is in the business of operating a payment system by issuing pre-paid payment instruments styled as "Sodexo vouchers". This is governed by the Payment and Settlement Systems Act, 2007.

6. The second and the third respondent took the view that these vouchers being exchanged, it is nothing but goods and, therefore, such goods having been transported, the Octroi would

be leviable. In other words, as vouchers qualify as goods under clause 25 of Section 2 of the Maharashtra Municipal Corporation Act, 1949 read with Pune Municipal Corporation Octroi Rules, 2008, the petitioner paid the Octroi.

7. Thereafter, the petitioner objected to the levy, assessment and recovery of Octroi duty. The objections were rejected. The petitioner filed Writ Petition No.5653 of 2010 in this Court and on that writ petition, a detailed order came to be passed. The petitioner found that despite this detailed order being confirmed right upto the Hon'ble Supreme Court, later on, the replacement of the Octroi duty/Local Body Tax (LBT) was claimed. It is in these circumstances that once again the petitioner applied to this Court and objected to the levy, assessment and recovery of Local Body Tax. That writ petition was also admitted being Writ Petition No.7503 of 2013 and was to be heard with the prior petition. The petitioner was aggrieved by an interim order of this Court and that interim order was modified by the Hon'ble Supreme Court. Thus, both petitions are at the same interim arrangement.

8. Thereafter on 20th March, 2015, this Court rejected the writ petition Nos. 5653 of 2010 and 7503 of 2013. A copy of that order is annexed to the petition as Exhibit 'I'. Aggrieved and

dissatisfied by that judgment and order, the petitioner approached the Hon'ble Supreme Court . After the matter was fully heard and a detailed judgment was delivered, copy of which is at Exhibit 'K', it is evident that the said vouchers were not held to be goods. Thus, on 9th December, 2015, the Hon'ble Supreme Court settled the controversy. These vouchers, therefore, are not goods and, hence, whatever was recovered as the Octroi duty or Local Body Tax has to be refunded.

9. The complaint of the petitioner is that despite the legal position being set out and the authorities being satisfied, only partial refund has been granted. In the writ petition, paragraphs 23 to 27 read as under :-

> "23. The Petitioner further submits that, during the period from September 2008 to February 2011 i.e. period prior to granting of interim relief vide interim order dated 21.10.2010 by this Hon'ble High Court in Writ Petition No.5653 of 2010 read with modification order dated 29.10.2010 in Civil Application No.2784 of 2010 in Writ Petition No.5653 of 2010 and modification order dated 19.01.2011 in Civil Application No.110 of 2011 in Writ Petition No.5653 of 2010, the Petitioner was coerced by the officers of the Respondent No.2 and 3 to deposit Rs.2,60,34,775/- on the Sodexo vouchers imported into the limits of Respondent No.2, through their carrier Blue Dart Express Limited (courier company). The said amount was initially paid by the courier company. The deposits effected by the courier company were on behalf of the Petitioner and were reimbursed to them by the Petitioner immediately. Hereto annexed and marked as **Exhibit "M"** is the specimen challan when the payment of octroi is made through the Blue Dart Express Limited. Hereto annexed and marked as **Exhibit "N"** is the invoice raised by the Blue Dart Express Limited on the Petitioner for reimbursement of octroi

amount. Hereto annexed and marked as **Exhibit "O"** is the copy of Delivery challan. Hereto annexed and marked as Exhibit "P" is the Airway Bill. Hereto annexed and marked as Exhibit "Q" is the invoice raised by the Petitioner on the customer.

24. The amount deposited by the Petitioner at the time of import of Sodexo vouchers into the limits of Respondent No.3 is entirely borne by the Petitioner. The Petitioner has not recovered any part of the amount deposited from its customers.

25. In view of the order dated 09.12.2015 of the Hon'ble Supreme Court finally deciding the issue in favour of the Petitioner and resting all the doubts about the applicability of Octroi/LBT on the Sodexo vouchers, the amount of Rs.3,05,34,775/- (Rs.2,60,34,775 + Rs.45,00,000) deposited by the Petitioner in cash becomes refundable to the Petitioner along with applicable interest and the bank guarantee of Rs.10,65,00,000/- needed to be cancelled and returned to the Petitioner. Hereto annexed and marked as Exhibit "R" is the statement of various bank guarantee furnished by the Petitioner. Hereto annexed and marked as **Exhibit "S"** is the statement of challans under which payment of Rs.3,05,34,775/- is made.

26. Accordingly, vide letter dated 24.12.2015, the Petitioner, inter alia, requested the Respondent No.3 to return the bank guarantee of Rs.10,65,00,000/- furnished by the Petitioner and sanction refund of Rs.3,05,34,775/- (mentioned as Rs.3,14,74,733 in the letter) deposited by the Petitioner alongwith applicable interest. Hereto annexed and marked as **Exhibit "T"** is the copy of letter dated 24.12.2015.

27. On not receiving any response/communication from Respondent No.3, vide reminder letters dated 28.01.2016, 22.02.2016 and 11.03.2016, the Petitioner, inter alia, once again requested the Respondent No.3 to return the bank guarantee of Rs.10,65,00,000/- furnished by the Petitioner and sanction refund of Rs.3,05,34,775/- (mentioned as Rs.3,14,74,733 in the letter) deposited by the Petitioner along with applicable interest. Hereto annexed and marked as **Exhibit "U", "V" and "W"** are the copies of reminder letters dated 28.01.2016, 22.02.2016 and 11.03.2016."

10. Once the petitioner found out from the status of the refund that full amount has not been refunded, it took up the matter with

respondent Nos.2 and 4 and this time a technical objection was raised that the payment was made by M/S Blue Dart Limited. If Blue Dart Limited has made the payment, the refund cannot be granted to the petitioner.

11. It is this stand of respondent Nos.2 and 3 which is objected to in this writ petition. Pertinently it is pointed out that by cheque No.660221 dated 16th November, 2016, respondent No.3 sanctioned a refund of Rs.1,32,57,889/- to the petitioner. The petitioner stated that despite forwarding the details in relation to the balance amount of Rs.1,32,57,889/- (the original challans and supporting documents), the petitioner is not being sanctioned this amount of refund, which has now mounted to Rs.1,72,76,886/- alongwith applicable interest on the entire amount.

12. We have seen that the only objection that has been continuously raised is firstly, to produce the original challans and secondly, that refund cannot be made admissible to the petitioner for the duty has been paid by a distinct party.

13. Before us also the petitioner has clarified and repeatedly that the Octroi/LBT in all cases has been paid initially by the courier company through which the petitioner has dispatched vouchers. In cases where the petitioner has dispatched Sodexo

vouchers directly to the customer company's premises, the name of the customer company appears as importer in the Octroi/LBT Challan. Where the Sodexo vouchers are dispatched by the Petitioner to its branch office in Pune, the name of the petitioner appears as importer in the Octroi/LBT challan. The Octroi/LBT in both the situations is initially paid by the courier company and later on by the petitioner to the courier company. Thus, the incidence of tax is borne by the petitioner and no-objection certificate was produced from the courier company. Yet, respondent No.3 has taken no cognizance of the same.

14. We have been repeatedly inquiring with respondent Nos.2 and 3 as to how the refund could be withheld.

15. The counsel appearing for respondent Nos.2 and 3 states that there are some guidelines issued, by which respondent Nos.2 and 3 have been advised not to grant refund to the parties like the petitioner, who are not importers, but to the actual importers. We do not see how guideline is an impediment in granting the relief particularly, when the party like the petitioner has produced a no-objection certificate from the courier company. There is no third party involved. Additionally, in the absence of any statutory prescription and if at all respondent Nos.2 and 3 are fearing that they will be dragged into unnecessary litigation, the petitioner or

party like it can be called upon to furnish the indemnity, indemnifying the Municipal Corporation against any claim made by a third party insofar as the refund.

16. When Mr.Shah appearing for the petitioner has stated on instructions that the petitioner is ready and willing to furnish such an indemnity indemnifying respondent Nos.2 and 3 and its officials, servants and agents against any claim lodged by third party or any litigation initiated by it, then, all the more we are not inclined to uphold the action or stand of respondent Nos.2 and 3.

17. As a result of the above discussion, the writ petition succeeds. Rule is made absolute in terms of prayer clause (a). The amount be refunded within a period of eight (8) weeks from the date of receipt of a copy of this order.

18. All concerned to act on an authenticated copy of this order.

(B.P.COLABAWALLA, J.) **(S.C.DHARMADHIKARI, J.)**

M.M.Salgaonkar