

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6968 OF 2019

LM Wind Power Blades India Pvt. Ltd. ... Petitioner
V/s.
State of Maharashtra and ors. ... Respondents

Mr.Tushar Jarwal, Mr.Rahul Sateeja, Mr.Deepak Thackur i/by
M/s DMD Advocates, Advocates for the Petitioner.
Mr.V.A.Sonpal with Mrs.S.D.Vyas, "B" Panel AGP, Advocates
for Respondent Nos.1,3 and 4.
Mr.Pradeep S. Jetly, Senior Advocate with Mr.J.B.Mishra,
Advocates for Respondent Nos.2 and 5.

**CORAM : UJJAL BHUYAN &
ABHAY AHUJA, JJ.
DATE : SEPTEMBER 15, 2020**

P.C.(UJJAL BHUYAN, J.):-

1. Heard Mr.Tushar Jarwal, learned counsel for the petitioner; Mrs.S.D.Vyas, learned AGP for respondent Nos.1, 3 and 4; and Mr.Jetly, learned senior counsel alongwith Mr. Mishra, learned counsel for respondent Nos.2 to 5.

2. By filing this petition under Articles 226/227 of the Constitution of India, petitioner seeks a direction to the respondents to refund an amount of Rs.4,73,26,512.00 alongwith appropriate interest following encashment of eight bank guarantees dated 26th October, 2018 bearing Nos. 0005BG00008819, 0005BG00008919, 0005BG00009019, 0005BG00009119, 0005BG00009219, 0005BG00009319,

0005BG00009419 and 0005BG00009519 of ICICI Bank by respondent No.4.

3. Case of the petitioner is that it is a dealer registered under the Central Goods and Services Tax Act, 2017 (briefly “the CGST Act” hereinafter) and Karnataka Goods and Services Tax Act, 2017. It is a private limited company engaged in the business of supplying components to the wind energy industry. In the course of its business petitioner had supplied capital goods i.e., blade moulds from its Bangalore unit in Karnataka to its Halol unit in Gujarat vide tax invoice dated 5th August, 2018. Being an inter-state supply of goods, it was a taxable transaction. Value of the goods as per invoice was Rs.13,14,62,520.00 and integrated goods and service tax (IGST) payable thereon at the rate of 18% was Rs.2,36,63,256.00. The goods were being transported by four vehicles which were intercepted by respondent No.4 on 11th October, 2018 at Solapur in the State of Maharashtra. Taking the view that the e-way bills were faulty and undervalued, orders of detention were passed by respondent No.4 under Section 129 of the CGST Act on 17th October, 2018. Simultaneously, demand notices dated 17th October, 2018 were issued levying IGST of Rs.59,15,814.00 and an equivalent amount of penalty for each of the four vehicle, thus total IGST demand levied was Rs.2,36,63,256.00 and equivalent amount of penalty imposed.

4. Petitioner submitted reply on 29th October, 2018 admitting that discrepancies in the e-way bills were

inadvertent clerical errors due to oversight. Petitioner therefore stated that it would pay the IGST as determined but requested respondent No.4 not to impose penalty. In this connection petitioner furnished four bonds dated 26th October, 2018 alongwith eight bank guaranties of ICICI Bank bearing Nos. 0005BG00008819, 0005BG00008919, 0005BG00009019, 0005BG00009119, 0005BG00009219, 0005BG00009319, 0005BG00009419 and 0005BG00009519, all dated 26th October, 2018, each amounting to Rs.59,15,814.00. Thus, the bank guarantees were for total amount of Rs.4,73,26,512.00 covering the entire demand of IGST and penalty.

5. Pursuant thereto respondent No.4 passed separate orders dated 29th October, 2018 releasing the detained goods. He also passed four separate but identical orders all dated 29th October, 2018 confirming the entire amount of IGST levied and penalty imposed. Petitioner was directed to make payment within seven days.

6. Petitioner paid IGST amounting to Rs.2,36,63,256.00 on 20th November, 2018 under self assessment returns. At the same time petitioner filed four appeals against the original orders dated 29th October, 2018 before the appellate authority i.e. Deputy Commissioner of State Appeal, Solapur under Section 107 of the CGST Act. As a pre-condition for filing the appeals petitioner had to deposit 10% of the IGST levied which amounted to Rs.23,66,326.00 on 29th January, 2019. However, the appellate authority vide the orders

dated 26th March, 2019 dismissed the appeals of the petitioner and confirmed the levy of tax and imposition of penalty.

7. Apprehending that the bank guarantees would be encashed petitioner sent email dated 28th March, 2019 to respondent No.4 stating that the bank guarantees would be renewed and that petitioner was in the process of filing further appeals under Section 112 of the CGST Act. It therefore requested respondent No.4 not to encash the bank guarantees.

8. Notwithstanding the same, respondent No.4 encashed all the eight bank guarantees covering an amount of Rs.4,73,26,512.00 on 28th March, 2019 itself.

9. It is stated that the appellate tribunal under Section 112 of the CGST Act has not yet been constituted in the State of Maharashtra. However, as a pre-condition for filing of appeals petitioner made payment of 20% of the IGST amount as pre-deposit under Section 112(8) of the CGST Act. This amount came to Rs.47,32,651.00.

10. Since no appellate tribunal under Section 112 of the CGST Act has been constituted in the State of Maharashtra and being aggrieved by the encashment of the bank guarantees as above, petitioner has approached this court by filing the present writ petition seeking the reliefs as indicated above.

11. Respondent No.4 in his affidavit has stated that when a vehicle carrying taxable goods is detained under Section 129, the owner of goods has the option to either pay the amount of tax in cash and equal amount of penalty or he can furnish bank guarantee for such amount to ensure that the vehicle can continue its onward journey. Referring to the bank guarantees furnished by the petitioner it is stated that those had validity till 31st March, 2019. Petitioner was bound to discharge its liabilities before 31st March, 2019 and having not discharged the same till 27th March, 2019 which was in immediate proximity to the date of expiry of the bank guarantees, respondent No.4 had no other option but to enforce the bank guarantees. It is stated that respondents were not informed before encashing the bank guarantees that petitioner intended to renew the bank guarantees. Bank guarantees were encashed on 28th March, 2019, whereas part payment under Section 112(8) of the CGST Act was made on 29th March, 2019. Though admitting that payment of the said amount would lead to automatic deemed stay under Section 112(9) of the CGST Act, it is however submitted that it was not effective since the bank guarantees were already invoked.

12. Petitioner has filed rejoinder affidavit denying the contentions of respondent No.4. It is reiterated that petitioner had informed respondent No.4 about its intention of renewal of the bank guarantees. Petitioner has stated that as against the total demand of Rs.4.73 crores (IGST +

penalty), respondents have recovered Rs.7.8 crores much more than the demand. Even if the appeals filed by the petitioner under Section 112 of the CGST Act are decided by the appellate tribunal against it, still respondents would hold excess amount of Rs.3.3 crores which is highly unjust and oppressive.

13. On 10th July, 2019, this court had summed up the grievance of the petitioner while calling upon the respondents to file affidavit. Order dated 10th July, 2019 reads as under :-

“1) This petition under Article 226 of the Constitution of India challenges the action of the respondents in encashing 8 bank guarantees on 29th March 2019 aggregating to Rs.4.72 crores. This encashment of bank guarantee was done consequent to the order dated 26th March 2019 of the Appellate Authority under Section 21 of Integrated Goods and Service Tax Act read with Section 107 of the Maharashtra Goods and Service Tax Act, 2017.

2) The grievance of the petitioner is that the order dated 26th March 2019 passed by the Dy. Commissioner of Sales Tax is subject to further appeal to the Goods Service Tax Appellate Tribunal (Tribunal). The statute provide a period of three months to the aggrieved party to file an appeal to the Tribunal. In spite of the above and the petitioners specific request not to encash the bank guarantee as they are in process of preparing the appeal from the order dated 26th March 2019 of the Appellate Authority, the 8 Bank Guarantee have been encashed.

3) This action of the respondents is *prima facie* contrary to the decision of this Court in Mahindra and Mahindra Ltd. vs. Union of India - 59 ELT 505.

4) Mr. Sonpal, learned Special Counsel for the respondents-State, seeks time to take instructions and file an affidavit, if so required. At his request, the petition is adjourned to 19th July 2019 at 3.00

p.m. Parties are put to notice that the petition is likely to be disposed of finally on the next date.”

14. Thereafter, on 19th July, 2019, rule was issued with the observation that since the issue involved is within a narrow compass, petition would be disposed of on the next date failing which grant of interim relief would be considered.

15. On 10th January, 2020, this court noted the grievance of the petitioner, further recording the submission of the petitioner that petitioner was willing to secure the respondent authorities for the balance amount of Rs.1,65,64,279.00 on refund of the amount covered by the encashed bank guarantees. Court directed the respondents to place on record the amount which according to the respondents is payable by the petitioner in case petitioner fails in his challenge after deducting the amounts paid by the petitioner and after encashment of the bank guarantees. Calculation sheet furnished by the petitioner was taken on record. Order dated 10th January, 2020 is extracted hereunder:-

“ Heard learned Counsel for the parties.

2. The learned Counsel for the Petitioner submitted that according to the Petitioner the amounts now lying with the Government by encashment or bank guarantee, tax paid voluntarily and pre-deposit for statutory appeals, is far in excess than the amount the Petitioner is liable to pay if he fails in all his challenges. According to the Petitioner, the amount with the Government is Rs.7,80,88,745/- but the amount payable to the Respondent-authorities is Rs.1,65,64,279/- assuming the Petitioner fails in

his challenges. He submits that the Petitioner is willing to secure the Respondent-authorities for this amount. He submits that he has to make this request in the peculiar facts and circumstances that there is no appellate Tribunal currently functioning which can take up the grievance of the Petitioner on merits. *Prima facie*, we find request made by the Petitioner as fair.

3. Considering the fact that the matter has been pending for some time and orders have been passed by this Court, we direct Respondents to place on record the amount which according to the Respondents is payable by the Petitioner in case the Petitioner fails in his challenge, after deducting the amounts paid by the Petitioner and after encashment of bank guarantee.

4. Place the Petition on board under the caption, 'For Directions' on 21 January, 2020. By this date we expect a positive statement from the Respondents regarding the above aspect. The Petitioner has produced a calculation sheet and states the same will be furnished to the Respondent-authorities for their reference."

16. On 30th January, 2020 it was noted by the court that according to the State Government of Maharashtra there are no dues payable by the petitioner to the State of Maharashtra. However, no response was filed by the Central Government and so time was granted to the Central Government to file response.

17. No response has been filed.

18. Learned counsel for the petitioner submits that action of respondent No.4 in encashing the bank guarantees without waiting for expiry of the appeal period is wholly illegal and

should be declared as such by this court. He submits that respondent No.4 has appropriated an amount much more than the demand and penalty put together which is required to be refunded back to the petitioner with applicable interest. Petitioner had paid the IGST and thereafter 30% of the said amount at two stages; firstly 10% while filing the first appeals before the first appellate authority and secondly, 20% at the stage of filing further appeals before the appellate tribunal under Section 112 of the CGST Act and which unfortunately in the State of Maharashtra has not yet been constituted. In the light of the above, he prays for return of the amount covered by the eight bank guarantees and further submitted that petitioner would secure the interest of the revenue by providing fresh bank guarantees to cover the balance amount of penalty imposed.

19. Learned special counsel representing respondent Nos.1,3 and 4 submits that the bank guarantees had to be invoked under special and compelling circumstances as validity of those were expiring on 31st March, 2019. The above action was done bonafidely to protect the interest of the revenue.

20. Mr.Jetly submits that Central Government has no role to play in the matter and no response is called for.

21. Submissions made by learned counsel for the parties have been considered.

22. From the pleadings and the orders passed by this court the controversy in this case has narrowed down considerably; rather it now lies within a narrow compass.

23. Admittedly, there is IGST demand of Rs.2,36,63,256.00 with equal amount of penalty imposed, together the total dues comes to Rs.4,73,26,512.00.

24. As against this, petitioner had paid IGST of Rs.2,36,63,256.00. At the stage of preferring the first appeals petitioner had deposited 10% of the IGST dues amounting to Rs.23,66,326.00. Thereafter while filing the second appeals under section 112 of the CGST Act petitioner deposited Rs.47,32,651.00 being 20% of the IGST dues. Thus, petitioner had deposited an amount of Rs.70,98,977.00 (Rs.23,66,326.00 + Rs.47,32,651.00) in addition to IGST dues already deposited. In all petitioner has deposited Rs.3,07,62,233.00, the break-up of which is as follows:-

(I)	IGST dues paid	-	Rs.2,36,63,256.00
(ii)	10% of IGST dues paid at the time of filing first appeals	-	Rs. 23,66,326.00
(iii)	20% of IGST dues paid at the time of filing second appeals	-	Rs. 47,32,651.00

Total -			Rs.3,07,62,233.00

25. The amount covered by the eight bank guarantees is Rs.4,73,26,512.00. If both the figures are added i.e., the amount covered by the bank guarantees and the dues paid by the petitioner, the amount would be Rs.7,80,88,745.00 (Rs.4,73,26,512.00 + Rs.3,07,62,233.00) which amount is now with the respondents as against demand and penalty of Rs.4,73,26,512.00. From the above, it is evident that an amount of Rs.3,07,62,233.00 (Rs.7,80,88,745.00 - Rs.4,73,26,512.00) is lying in excess with the respondents. Even if the appeals filed by the petitioner under section 112 of the CGST Act are dismissed, petitioner would be required to pay a further amount of Rs.1,65,64,279.00 only whereas respondents are holding onto an amount of Rs.3,07,62,233.00 of the petitioner much in excess of the dues.

26. Section 107 of the CGST Act provides for appeals to appellate authority. Sub-section (1) says that any person who is aggrieved by any decision or order passed under the CGST Act may appeal to the prescribed authority within three months from the date on which the impugned decision or order is communicated. Sub-section (6)(b) provides that no such appeal shall be filed unless appellant has paid a sum equal to 10% of the remaining amount of tax in dispute arising from the impugned decision or order. There is provision for filing further appeal to the appellate tribunal under Section 112. As per sub-section (1), any person who is aggrieved by an order passed against him under Section 107

or by the revisional authority under Section 108 may prefer appeal to the appellate tribunal against such order within three months from the date on which the order sought to be appealed against is communicated to the aggrieved person. As per sub-section 8(b), no appeal shall be filed under sub-section (1) unless the appellant has paid a sum equal to 20% of the remaining amount of tax in dispute, in addition to the amount paid under sub-section (6) of Section 107. Sub-section (9) clarifies that when the appellant pays the pre-deposit as per sub-section (8), recovery proceedings for the balance amount shall be deemed to be stayed till disposal of the appeal.

27. Section 115 provides for payment of interest on refund of amount paid for admission of appeal. It says that where an amount paid by the appellant under sub-section (6) of Section 107 or sub-section (8) of Section 112 is required to be refunded consequent to any order of the appellate authority or of the appellate tribunal, interest at the rate specified under Section 56 shall be payable in respect of such refund from the date of payment of the amount till the date of refund of such amount. Reverting to Section 56, we find that this section deals with interest on delayed refunds. Section 54, more particularly sub-section (5) thereof, deals with refund of tax. Section 56 says that if any tax is ordered to be refunded under sub-section (5) of Section 54, interest at such rate not exceeding six percent as may be specified shall be payable in respect of such refund.

28. Though we have briefly referred to the relevant provisions, it may not be necessary to dilate further on the provisions as the contours of the *lis* has narrowed down considerably.

29. That being the position and without entering into the controversy as to whether respondent No.4 received request of the petitioner for extension of the bank guarantees before encashment, we are of the view that having regard to the facts and circumstances of the case, the following directions will meet the ends of justice.

30. Accordingly, we direct as under :-

- a. Respondent Nos.3 and 4 shall refund the amount of Rs.4,73,26,512.00 covered by the eight encashed bank guarantees with applicable statutory interest thereon to the petitioner within a period of four weeks from the date of receipt of a copy of this order;
- b. Petitioner to furnish fresh bank guarantee(s) from nationalized bank to respondent No.4 for an amount of Rs.1,65,64,279.00 covering the balance amount of penalty imposed on the petitioner within a period of four weeks from the date of receipt of a copy of this order.

31. With the above directions, writ petition is disposed of. However, there shall be no order as to cost.

32. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(ABHAY AHUJA, J.)

(UJJAL BHUYAN, J.)

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