Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2693 OF 2021

Sodexo India Services Pvt. Ltd. .. **Petitioner**
vs.
The Union of India & Ors. .. **Respondents**

Mr. Prasad Paranjape i/b. PDS Legal for the petitioner.
Mr. Pradeep Jetly, Senior Advocate a/w. Mr. Dhananjay B. Deshmukh for the respondent nos. 1 to 4.

CORAM :- DIPANKAR DATTA, CJ &
G. S. KULKARNI, J.

Date :- July 13, 2021.

PC :

1. An order in Appeal No. NA/GST/A-III/MUM/16/2021-22 dated May 10, 2021 is the subject matter of challenge in this writ petition.

2. The sole ground on which challenge is laid by Mr. Paranjape, learned advocate for the petitioner to such appellate order is that the Appellate Authority, i.e., Commissioner (Appeals-III), GST & CX, Mumbai felt not to be bound by the decision dated April 12, 2018 of the Regional Bench of the Customs, Excise and Service Tax Appellate Tribunal at Allahabad in the case of **M/s. ICS Foods Pvt. Ltd. vs. Commissioner of Service Tax, Noida** on the ground that the department had elected to carry the said order in an appeal before the Supreme Court and hence the said decision had not

attained finality. It has been brought to our notice by Mr. Paranjape that although the matter could not be placed before the Commissioner (Appeals-III) at the time of hearing, but later in the evening, the petitioner had mailed a copy of the order dated January 3, 2019 passed by the Supreme Court in Civil Appeal No. 43505 of 2018 whereby the appeal preferred by the Commissioner of Service Tax, Noida challenging the judgment and order dated April 12, 2018 of the Customs, Excise and Service Tax Appellate Tribunal stood dismissed. According to him, this is sufficient reason for setting aside the impugned appellate order.

3. Mr. Jetly, learned senior advocate appearing for the respondents, does not dispute that the decision of the Customs, Excise and Service Tax Appellate Tribunal dated April 12, 2018 has since attained finality with the dismissal of the appeal preferred thereagainst by the Commissioner of Service Tax, Noida. He, however, submits that the petitioner has a further remedy of appeal before the Additional Secretary and the point which is sought to be urged before us by the petitioner can also be urged before such secretary.

4. We do not see reason to relegate the petitioner to the appellate remedy at this stage. In our opinion, interest of justice would be sufficiently served if a limited remand is ordered to the Commissioner

(Appeals-III) for revisiting his decision based on the circumstance that the decision of the Customs, Excise and Service Tax Appellate Tribunal dated April 12,2018 in the case of **ICS Foods Pvt. Ltd**. (supra) has since attained finality. If indeed the said decision has applicability to the facts and enures to the benefit of the petitioner, the Commissioner (Appeals-III) shall be at liberty to pass an appropriate order reversing his earlier decision which is impugned before us. However, if even after consideration of the decision in **ICS Foods Pvt. Ltd.** (supra) there is no change in the final outcome, the Commissioner shall be at liberty to pass a fresh order, whereafter the petitioner may have to pursue his remedy in appeal before the Additional Secretary.

5. With this direction, the writ petition stands disposed of. No costs.

6. All contentions on merits limited to the remand, as ordered, are kept open.

7. Needless to observe, the Commissioner (Appels-III) shall make honest endeavour to pass an order upon remand as early as possible but preferably within one month.

(G. S. KULKARNI, J.) **(CHIEF JUSTICE)**