IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1697 OF 2022

Mercedes Benz India Pvt. Ltd., Pune ..... Petitioner

Vs.

The Union of India and Ors. ..... Respondents

Mr. Prasad Paranjape i/b M/s.Lumiere Law Partners for the Petitioner

Mr.Karan Adik a/w Mr.Ram Ochani for the Respondents

CORAM: S.V. GANGAPURWALA & M. G. SEWLIKAR, JJ.

DATED : MAY 2, 2022

P.C.

1. The basic contention of the Petitioner is that the order impugned in the Appeal is beyond the show cause notice issued. The additional submissions of the present Petitioner and reliance placed by Petitioner in the case of ***Godrej & Boyce Mgd. Co. Ltd. vs. Union of India and others, 2021 (11) TMI 157*** decided by this Court has not at all been dealt with by the appellate authority. Appellate authority failed to consider the case of the Petitioner that the order is beyond the scope of the show cause notice.

2. The learned Counsel for the Respondents submits that the order does not travel beyond the show cause notice. The order has been passed by the appellate authority considering the relevant provisions of the statute and the rules. The only refund Application of the Petitioner was rejected by the Respondent no.4.

3. According to the learned Counsel for the Respondents the contention of the Petitioner is directed towards the admissibility of the Cenvat credit of EC & SHEC as ITC in the GST regime and also as to how the amendment to section 140 (1) of the Act not being applicable, which cannot effect and prevent the transition. The appeal was not against the disallowance of ITC regarding the amount representing Cenvat credit or Cess. The only issue is regarding the admissibility of credit in the GST regime in respect of EC and EHEC and this appeal is not about admissibility of Credit.

4. We have considered the submissions.

5. On the first date, the predecessor bench of this Court on 21.12.2022 asked the learned Counsel for the Respondents to take instruction whether impugned order passed by appellate authority can be set aside and remanded back for deciding the matter afresh. It would appear that the appellate authority has not considered the judgement of this Court in case of ***Godrej & Boyce Mgd. Co. Ltd. (Supra)***. The said judgment is relied by the Petitioner to contend that in similar circumstances, show cause notice

issued seeking to recover transition of EC and SHEC in the Electronic Credit Ledger based on the Amendment Act, 2018 was set aside. The said aspect has not been dealt with by the appellate authority. Additional submissions also does not appear to have been considered. The contention of the Petitioner that the order could not travel beyond the show cause notice, also does not appear to have been considered by the appellate authority.

6. In light of the above, impugned judgment of the appellate authority is quashed and set aside. The matter is remanded back to the appellate authority for deciding afresh. Of course, after considering the contention raised by the Petitioner, Petitioner shall appear before appellate authority on 31.05.2022. Appellate authority shall thereafter decided the matter.

7. Writ Petition disposed of. No costs.

(M. G. SEWLIKAR, J.) **(S.V. GANGAPURWALA, J.)**