

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

WRIT PETITION NO.5254 OF 2022

**PRIYA
RAJESH
SOPARKAR**

Schlumberger Asia Services Limited ... Petitioner

V/s.

The Union of India and ors. ... Respondents

Digitally signed by
PRIYA RAJESH
SOPARKAR

Date: 2022.07.25
10:47:10 +0530

Mr.Prasad Paranjape i/by M/s Lumiere Law Partners, Advocate for
Petitioner.

Ms.S.D.Vyas, "B" Panel Counsel for Respondent No.2/State.

**CORAM : K.R.SHRIRAM AND
A.S.DOCTOR, JJ.**

DATE : JULY 20, 2022.

P.C.:-

1. Petitioner is impugning 11 identical orders all dated 25th August, 2021, by which petitioner's appeals were rejected. Petitioner is a company incorporated under the laws of Hongkong and is registered as a branch office in India engaged in the business of providing services in relation to mining, offshore exploration, drilling of crude petroleum and natural gas etc..

2. Petitioner, in the course of its business, had filed claims for refund of all unutilized input tax credit for the period April, 2018 to March, 2019 (excluding May, 2018) under section 16(3) of Integrated Goods and Services Tax Act, 2017 ("IGST Act") read

with section 54 of the Central Goods and Services Tax Act, 2017 ("CGST Act"), Maharashtra Goods and Services Tax Act, 2017 ("MGST Act") and rules framed therein. The order passed by respondent No.5 was impugned by petitioner in an appeal that was filed before respondent No.4. Respondent No.4 rejected petitioner's appeal on the ground that, it did not reflect zero rated turnover in the returns. Petitioner states that it was a clerical error and not suppression of sales turn over. Mr.Paranjape for petitioner submitted that it was not reflected in the monthly returns filed, but it got reflected in the annual returns filed on 24th March, 2021. Mr.Paranjape states that the appeal in which the impugned orders have been passed was filed on 14th March, 2021 and in the appeal memo petitioner had stated that petitioner was yet to file its annual return for F.Y. 2018-19 and in the annual return petitioner shall report the zero rated supplies, which was not reported earlier due to clerical error. Mr.Paranjape submitted that during the personal hearing that was granted to petitioner on 30th July, 2021 copies of the annual returns were tendered, but the same has not been reflected in the orders impugned in this petition.

3. Ms.Vyas submitted that there is nothing in the petition to even indicate that the annual returns were submitted and if only the annual returns had been submitted as stated by

Mr.Paranjape, it would have certainly been reflected in the impugned orders.

4. Mr.Paranjape submitted that for the subsequent period April, 2019 to September, 2019 also a similar situation arose and the concerned authority permitted petitioner to accept petitioner's subsequent returns and pass suitable orders.

5. In our view, since the annual returns have been filed and it is not clear whether respondent No.4 got an opportunity to consider the annual returns, the matter has to be remanded to respondent No.4 for *de novo* consideration. The statement of Mr.Paranjape that copy of the annual returns will be supplied to respondent No.4 within two weeks from today is accepted.

6. Therefore, the impugned 11 orders all dated 25th August, 2021 are hereby quashed and set aside. The matter is remanded for *de novo* consideration. Respondent No.4 shall dispose the appeal within four weeks of receiving copy of the annual returns filed. Before passing any final order if the order is going to be adverse to petitioner's interest, then personal hearing shall be granted and notice for personal hearing shall be communicated atleast seven working days in advance. The order shall be reasoned order.

7. We clarify that we have not made any observations on the merits of the matter.

8. Petition disposed. No order as to costs.

(A.S.DOCTOR, J.)

(K.R.SHRIRAM, J.)

....