$~28

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Decision delivered on: 10.10.2022*

\+ **W.P.(C) 2032/2019**

M/S HERO MOTOCORP LTD. ..... Petitioner

Through: Mr Tarun Gulati, Sr. Advocate with Mr Ashwini Chandrasekaran, Ms Priyanka Rathi and Mr Kumar Sambhav, Advocates.

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Ms Suhani Mathur, Advocate.

CORAM:
HON'BLE MR JUSTICE RAJIV SHAKDHER
HON'BLE MS JUSTICE TARA VITASTA GANJU
[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

1. On 19.09.2022 when the matter had come up for hearing, the following had been recorded:

> *"1. The principal grievance of the petitioner is that the respondents/revenue are seeking to recover accumulated credit transitioned by it in terms of Section 140 of Central Goods & Services Tax Act, 2017 [in short, the "Act"] in respect of Input Service Distribution [in short, "ISD"].*
> *1.1. The petitioner is an Input Service Distributor and is registered with the respondents/revenue.*
> *2. The communication assailed in the writ petition i.e., the letter dated 04.02.2019, is a communication whereby the petitioner's request for allowing credit of unutilized ISD has been rejected.*
> *2.1. To be noted, this communication has been issued by respondent no. 4.*
> *3. Besides this, challenge is also laid to instructions dated 05.02.2017, issued by respondent no. 3, which prohibits*

ISDs from transitioning accumulated unutilized CENVAT credit.
4. Learned counsel for the petitioner says that the issue stands covered by the following judgments:
(i) Judgement dated 23.08.2022, rendered by the Bombay High Court in W.P. No. 109/2020, titled Unichem Laboratories Limited v. Union of India and 4 Ors.
(ii) Judgement dated 29.08.2022, rendered by the Bombay High Court in W.P. No.2168/2021, titled Colgate Palmolive (I) Limited v. Union of India & Ors.
(iii) Judgement dated 11.02.2022, rendered by the Gujrat High Court in R/Special Application No. 9151/2021, titled Bodal Chemicals Ltd. v. Union of India, 2022 SCC OnLine Guj 297.
5. Mr Harpreet Singh, who appears on behalf of respondents, says that he will examine the judgments and accordingly, return with instructions.
6. List the matter on 10.10.2022.
7. In the meanwhile, counsel for the petitioner will also file a two-page note, with regard to the issue(s) raised in the writ petition."

2. Ms Suhani Mathur, who appears on behalf of the respondents/revenue, says that in view of the judgments referred to in our order dated 19.09.2022, this writ petition can be allowed.

2.1 It is ordered accordingly.

3. The instructions dated 05.07.2018, issued by the respondent no.3 are quashed, as prayed in prayer clause (i).

3.1. Consequently, the relief sought in prayer clause (ii) is also allowed. No effect will be given to the communication dated 04.02.2019 issued to the petitioner by the office of Commissioner of Central GST Audit-II, Delhi.

3.2. Resultantly, the relief sought in prayer clause (iii) would also have to be allowed. Accordingly, the respondents are restrained from enforcing recovery of accumulated credit transitioned by the petitioner [*inter alia*, in terms of Section 140 of the Central Goods and Services Tax Act, 2017] concerning Input Service Distributor (ISD) registration granted to it by the respondents.

4. Having regard to the above, the petitioner would be free to approach the respondents for grant of consequential relief.

5. The writ petition is disposed of in the aforesaid terms.

(RAJIV SHAKDHER)
JUDGE

(TARA VITASTA GANJU)
JUDGE

OCTOBER 10, 2022 / tr