IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4997 OF 2019

Gulf Oil Lubricants India Ltd. .. Petitioner
v/s.
The Union of India Through
The Secretary, Ministry of Law
and Justice And Anr. .. Respondents

WITH
WRIT PETITION (STAMP) NO.16446 OF 2023
(NOT ON BOARD)

Gulf Oil Lubricants India Ltd. .. Petitioner
v/s.
The GST Officer UTGST-DNH .. Respondent

....

Mr. Ishaan Patkar, a/w. Mr. Drugesh G. Desai, Mr. Abhinav Shah, i/b. Jindagi Shah, for the Petitioner.

Mr. Jitendra B. Mishra, a/w. Ms. Sangeeta Yadav, for the Respondents.

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CORAM: G.S. KULKARNI &
JITENDRA JAIN, JJ.

DATE : 16th OCTOBER, 2023

P.C:-

The prayers as made in Writ Petition No.4497 of 2019, as they originally stood and also after the amendment, reads thus:

"(a) that the Hon'ble Court may be pleased to issue a declaration that the Rule 117 of the Central Goods and Service Tax Rules, 2017 is ultra vires the Parent Act and consequentially strike down the said rule;

(b) that the Hon'ble Court may be pleased to issue a writ of mandamus and/or any other appropriate writ, order or direction to Respondent to allow the filing FORM TRAN-1 and to allow Petitioner to carry forwardcreditto its electronic credit ledger under the GST regime as well as to allow the revision of the last return under the service tax law in order to comply with the provisions of Section 140(1) of the CGST Act;

(ba) that in the event the Hon'ble Court is not inclined to grant prayer (b), the Hon'ble Court may be pleased to declare the para 2(1)(d)(i) (EEC) of the Service Tax Rules, 1994 substituted by the Notification No.16/2017-ST dated 13th April, 2017 ultra vires the Finance Act, 1994 as well as Constitution of India and direct the Respondent No.1 to the amount of Rs.48,36,905/- in cash alongwith interest @ 9% per annum from 27.4.2018 till date of payment of the refund.

(c) Interim and ad-interim reliefs in terms of prayer clause (a) and (b) above.".

2. The Co-ordinate Bench of this Court on 27th March 2023, passed the following order:-

" Heard learned Counsel for the parties.

2 Learned Counsel for the Petitioner states that the Petitioner had, pursuant to orders dated 14 December 2022 and 12 January 2023, applied to the concerned GST Authorities. Learned Counsel states that claim of the Petitioner was examined on merits and has been rejected by order dated 27 February 2023.

3 In the present petition, Petitioner is challenging the notification dated 13 April 2017 and seeking refund in respect of the amount paid under the said notification. The order dated 27 February 2023 and the prayer for refund are separate. In the present Petition, Petitioner has been granted leave to amend by the Division Bench of this Court by order dated 15 February 2021. Learned Counsel for the Petitioner states that even though the challenge to Rule 117of the CGST Rules now stands concluded, the Petition is being pursued in light of the

> *amendment carried out pursuant to order dated 15 February 2021. That may be so, but according to us, the order dated 27 February 2023 constitute a separate cause of action.*
> *4 Learned Counsel for the Petitioner states that the order dated 27 February 2023 would be challenged by way of the separate petition.*
> *5 Hearing of this Petition is deferred to 7 June 2023. Liberty to the Petitioner to circulate the new Petition to be heard along with the present petition."*

3. Considering such order as also orders passed by the Supreme Court in the case of **Union of India and Anr. vs. FILCO Trade Centre Pvt. Ltd. & Anr.**[1], as fairly admitted at the bar, prayer clause (a) and (b) of the above referred petition is rendered infructuous. What remains for adjudication would be prayer clause (b) (a) in so far as the Petitioner's challenge to para 2(1)(d)(i)(EEC) of Service Tax Rules, 1994 as substituted by the Notification No.16/2017-ST dated 13th April 2017 and the consequential reliefs of claim to an amount of Rs.48,36,805/- being the refund as asserted by the Petitioner.

4. On the backdrop of the earlier orders passed by this Court, the Respondent passed an order dated 27th February 2023 after the Petitioner had taken the advantage of the orders passed by the Supreme Court in **FILCO Trade Centre Pvt. Ltd.** (supra). Such order dated 27th February 2023 is the subject matter in the Writ Petition (Stamp) No. 16446 of 2023 (E-filed) (Not on Board. Taken on board).

1 Petition(s) for Special leave to Appeal (C) Nos. 32709-32710/2018.

5. The prayers as made in Writ Petition (Stamp) No.16446 of 2023 reads thus:

> *"(a) that the Hon'ble Court may be pleased to issue a writ of certiorari and/or any other writ, direction or order quashing and setting aside the Impugned Order dated 27 February 2023 being* ***"Exhibit A"*** *to the Petition;*
> *(b) that the Hon'ble Court may be pleased to issue a writ of mandamus and/or any other appropriate writ, order or direction to Respondent to credit the Electronic Credit Ledger of the Petitioner on the GST Portal with the transitional credit of Rs.43,06,561/- being Service Tax paid on reverse charge basis on 27 April 2018;*
> *(c) Interim and ad-interim reliefs in terms of prayer clause (a) and (b) above.*
> *(d) For costs of this petition; and,*
> *(e) For such other order as the Hon'ble Court may deem fit to pass in light of the facts and circumstances of the case."*

6. We have also perused the averments as made in the petition and which are without prejudice to the rights of the Petitioner to assert the challenge as raised in Writ Petition No. 4997 of 2019.

7. Considering the complexion of both the proceedings as the grievance of the Petitioner ultimately would be common, we are of the opinion that these petitions ought to be disposed of with liberty to the Petitioner to file a fresh consolidated petition so that all issues of challenge intended to be urged by the Petitioner which are required to be gone into can be subject matter of one proceeding instead of having a piecemeal adjudication on both these petitions.

8. We, accordingly, dispose of both the petitions with liberty to the Petitioner to file a fresh consolidated petition asserting its cause in the appropriate perspective.

9. All contentions of the parties are expressly kept open.

10. Disposed of. No costs.

(JITENDRA JAIN, J.) **(G.S. KULKARNI, J.)**