

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5808 OF 2023

Jacobs Solutions India Pvt.Ltd.

... Petitioner

Versus

1. The Union of India
2. The Additional Commissioner of Central Tax.
3. The Commissioner of CGST & CX, Navi Mumbai
4. The Deputy Commissioner of CGST & CX. ... Respondents

Mr.Prakash Shah with Mr.Suyog Bhav i/b. PDS Legal, for the
Petitioner.

Mr.Jitendra B. Mishra with Mr.Ashutosh Mishra, for the Respondents

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

DATED: 31 July, 2023

Oral Judgment (Per G. S. Kulkarni, J.)

1. Rule. Rule made returnable forthwith. By consent of the parties, heard finally.
2. This petition under Article 226 of the Constitution of India is filed praying for the following reliefs:

(a) this Hon'ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the Petitioner's case and after going into the validity and legality thereof be pleased to quash and set aside the Impugned order dated 27.01.2023 passed by the Respondent No.4 (Exhibit "A");

(b) this Hon'ble Court be pleased to issue a Writ of Mandamus or a writ in the nature of Mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India ordering and directing the Respondents to forthwith sanction the refund of Rs.11,69,07,326 as claimed by the Petitioner along with the appropriate interest;

(c) pending the hearing and final disposal of this Petition, this Hon'ble Court be pleased to direct the Respondents by an interim order and injunction to forthwith deposit an amount of Rs.11,69,07,326 in this Hon'ble Court with a liberty to the Petitioner to withdraw the same, without prejudice to the Petitioner's right of refund of the actual amount along with appropriate interest;

(d) for interim relief in terms of prayer (c) above; and

(e) for costs of the Petition;

(f) for such further and other reliefs, as this Hon'ble High Court may deem fit and proper in the nature and circumstances of the case."

3. The petitioner is engaged *interalia* in providing engineering consulting services to its group entities located outside India. During the relevant period, the petitioner exported consulting services to its group entities outside India, without payment of GST thereon. Consequently, the petitioner became eligible to claim refund of the ITC availed on the inputs and input services utilized for the export of the said services. To such effect an application came to be made on 31 December 2021. On 1 February 2022, a show cause notice was issued to the petitioner raising an objection to the petitioner's claim, *interalia* on the ground of non disclosure of invoice details, etc. The petitioner replied to the said show cause notice by its reply dated 14 February 2022. By an order dated 22 February 2022 passed in Form GST RFD-06, the refund claim as made by the petitioner

was rejected, against which an appeal was filed by the petitioner before respondent No.2. By an order dated 11 October 2022, the appeal filed by the petitioner was allowed *intreralia* holding that the letters issued by the HSBC were sufficient proof of correlation of the invoice number / date with the relevant Bank Realisation Certificates / the FIRC's.

4. In pursuance of the order dated 11 October 2022 passed in an appeal, the petitioner again filed a refund claim on 29 November 2022 as per the procedure. On such refund claim, the Assistant Commissioner of CGST & CX (Central Excise) issued a show cause notice dated 28 December 2022, calling upon the petitioner to show cause as to why the refund claim ought not to be rejected on the ground of non disclosure of invoice details of FIRC's. Such show cause notice was responded by the petitioner by its reply dated 11 January 2023, pointing out that these issues were considered by the Appellate Authority in adjudicating the appeal and a finding of fact was recorded, that there is sufficient proof and correlation between the invoices and FIRC's. It was also contended that such issues cannot be gone into in any such adjudication as purportedly opened by the show cause notice dated 28 December 2022, on the refund application. The Assistant Commissioner by the impugned order dated 27 January 2023 rejected the petitioner's refund claim whereby he confirmed the show cause notice. It is against such order the petitioner is before this Court.

5. The primary contention as urged by Mr.Shah, learned Counsel for the petitioner is that the Assistant Commissioner has patently erred in passing the impugned order, inasmuch as, the Assistant Commissioner in fact has sat in appeal over the orders passed by the Additional Commissioner (Appeals) dated 11 October 2022, by which the appeal filed by the petitioner was allowed on merits. It is his submission that on the same reasons the Assistant Commissioner who is an authority lower in hierarchy and certainly bound by the orders which were passed by the Additional Commissioner (Appeals) cannot take such a position in law and reject the claim as raised by the petitioner on the same grounds which in fact were subject matter of consideration in the appeal proceedings. It is submitted that this would not only amount to gross administrative indiscipline but also result in subordinate authorities, not honouring the orders passed by the higher authorities, and more particularly the orders passed by the Additional Commissioner (Appeals), which were accepted and not assailed. Mr.Shah in making this submission has placed reliance on the decision of a coordinate Bench of this Court in **Globus Petroadditions Pvt. Ltd. VS. Union of India**¹ whereby in similar circumstances the Division Bench had set aside the orders passed by the Assistant Commissioner and had directed the Assistant Commissioner to comply with the orders in appeal within the time bound period.

1 2022(64) G.S.T.L. 54 (Bom.)

6. On the other hand Mr.Mishra, learned Counsel for the Revenue has drawn our attention to the reply affidavit filed on behalf of the respondents to contend that a decision has been taken to seek a review of the orders passed by the Appellate Authority dated 11 October 2022 in appropriate proceedings. In such context he would refer to the averments as made in paragraph 11 of the reply affidavit. He submits that Section 112(3) of the Central Goods and Services Tax,2017 provides for review of any order passed by the Appellate Authority which can be examined by the Commissioner for the purpose of satisfying himself as to the legality, or propriety of the said order and accordingly, may direct any officer subordinate to him to apply to the Appellate Tribunal for setting aside such orders. It is stated that in the present case the order passed by the Appellate Authority has been considered to be applied for a review by the Commissioner, CGST & C. Ex. by his order dated 18 April 2003, which has directed the respondent to file an appeal before the GST Appellate Tribunal, and as the Appellate Tribunal has not been constituted, he submits that such an appeal would be filed as and when the Tribunal is constituted. He has also drawn our attention to the opposition of the respondents on merits of the petitioner's case. However, Mr.Mishra is not in a position to justify as to how the Assistant Commissioner can take a position that he is not bound by the orders passed by the Commissioner, CGST & Central Excise in Appeal and would have authority to revisit the findings and to come to a conclusion different than what has been arrived by by the Appellate Authority.

7. We have heard learned Counsel for the parties. With their assistance we have perused the record. At the outset, we may observe that the petitioner has been pursuing the refund application in question from December 2021, when the petitioner made such application on 31 December 2021 and on such application, the entire procedure was adopted namely of issuance of a show cause notice dated 1 February 2022, its adjudication denying refund and an appeal against the same before the Appellate Authority culminated into a final order dated 11 October 2022 of the Additional Commissioner, CGST & Central Excise (Appeals) having taken place, is not in dispute.

8. A perusal of the order passed by the Additional Commissioner, CGST & Central Excise (Appeals), would indicate that all contentions of the department in regard to FIRC's in relation to single and multiple GSTIN were taken into consideration which are findings of fact as recorded on correlation of the entire material. The said observations read thus:-

“6.4 The appellant company is having multiple GSTINs for 5 different states including the present case of Maharashtra GSTN No. 27AAACH0055K2ZQ & holding four bank A/c Nos. 006193742-004/514/515.& 901 with HSBC Bank, Mumbai main branch, wherein foreign inward remittance is received against invoices raised by multiple GSTINs. With reference to the foreign inward remittances towards export of services made by the appellant company through their 5 different GSTINs for the period April-October,2020, the above Bank authorities have issued confirmation letter dtd. 11.03.2022, with statement showing GSTIN wise details of invoice number and date, FIRC number and date & foreign currency realisation thereof in USD/INR with exchange rate. The above details produced by the appellant before me is examined & found that there are FIRC's for single and multiple GSTINs; and in the case of multiple GSTINs the bank has given GSTIN wise details of invoice

number, foreign currency realisation etc. As regard the case of Maharashtra GSTN is concerned, from the HSBC Bank's above statement & copy of the export receipt register for April-October,2020, I find that the appellant could establish the correlation of the of invoices number/date with the relevant Bank Realisation Certificates or FIRC's on account of export of services."

9. Accordingly, the Appellate Authority allowing the petitioner's appeal, passed the following order:-

7. In view of the above discussions and findings, I set aside the impugned order passed by the adjudicating authority; and allow the refund of Rs.11,69,07,326/- (Rs.4,32,62,920/- IGST plus Rs.2,98,74,868/- CGST plus Rs.4,37,69,538/- SGST) to the appellant.

ORDER

8. Held accordingly. Hence, the appeal is allowed."

10. In our opinion, when the entire fact finding exercise was subjected to the scrutiny in an appeal resulting in the appeal being allowed, then it is difficult to accept the contention as urged on behalf of the respondents that the Assistant Commissioner, who has had no authority and jurisdiction to re-visit the concluded findings of fact and the conclusions as derived by the Additional Commissioner of Appeals. The only remedy for the department and as rightly asserted in the reply affidavit filed on behalf of respondent Nos.1, 3 and 4 if at all was to seek review. If the department was of the opinion that the order passed by the Additional Commissioner needs to be challenged, the same was required to be assailed in the appropriate proceedings as set out in paragraph 11 of the reply

affidavit. Thus, from the position as taken by respondent Nos.1, 3 and 4, certainly it was not open to the Assistant Commissioner to pass the impugned order which amounted to sitting in appeal over the order passed by the Additional Commissioner of Appeals. On this ground, the impugned order is required to be held to be passed in patent lack of jurisdiction, as also on the face of it illegal. The Assistant Commissioner could not have passed the impugned order, of the nature he has passed as he was certainly bound by the orders passed by the Additional Commissioner (Appeals), and in the absence of any stay to the orders passed by the Additional Commissioner (Appeals), grants benefit of the orders of the Additional Commissioner (Appeals) dated 11 October 2022 to the petitioner.

11. Mr. Shah, in our opinion, is correct in placing reliance on the decision of the Division Bench of this Court in **Globus Petroadditions Pvt. Ltd.** (supra) in which in similar circumstances the Court has observed that the Assistant Commissioner is required to comply with the orders passed by the Commissioner of Appeals and in taking such view the Assistant Commissioner would not have refused to comply with the orders passed by the Commissioner of Appeals. In the present case, at the time when the impugned orders were passed, there are no decision of whatsoever to assail the orders passed by the Additional Commissioner of Appeals in exercising the review power under Section 112(3) of the CGST Act, 2017.

12. In the aforesaid circumstances, the principles of law as laid down by the Supreme Court are well settled. In **Union of India Vs. Kamlakshi Finance Corporation Ltd.**² the Supreme had directed the department to adhere to the judicial discipline and give effect to the orders of higher appellate authorities which are binding on them. The relevant observations of the Supreme Court are required to be noted which read thus:-

“6. The High Court has, in our view, rightly criticised this conduct of the Assistant Collectors and the harassment to the assessee caused by the failure of these officers to give effect to the orders of authorities higher to them in the appellate hierarchy. It cannot be too vehemently emphasised that it is of utmost importance that, in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of the appellate authorities. The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not “acceptable” to the department - in itself an objectionable phrase - and is the subject-matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent Court. If this healthy rule is not followed, the result will only be undue harassment to assesseees and chaos n administration of tax laws.

.....

8. The observations of the High Court should be kept in mind in future and utmost regard should be paid by the adjudicating authorities and the appellate authorities to the requirements of judicial discipline and the need for giving effect to the orders of the higher appellate authorities which are binding on them.”

2 1991(55) E.L.T. 433 (S.C.)

13. In view of the above discussion, we have no manner doubt that the petition needs to succeed. We accordingly allow this petition in terms of prayer clause (a). We direct the respondents to sanction to the petitioner the refund amount of Rs.11,69,07,326/- with appropriate interest in terms of Section 56 of the CGST Act,2017.

14. The amount be refunded within a period of two weeks from today.

15. The petition is accordingly disposed of in the above terms. No costs.

(JITENDRA JAIN, J.)

(G. S. KULKARNI, J.)