IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4332 OF 2021

Morgan Construction Co. India Pvt. Ltd.
(Now merged with Siements Ltd.) … Petitioner
vs.
The Union of India & Anr. … Respondents

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Mr.V.Sridharan, Senior Advocate with Mr.Somesh Jain i/b. Mr.Sriram Sridharan for the Petitioner.
Mr.Ashutosh Misra for Respondent No.1 - Union of India.
Ms. Asha Desai, Senior Standing Counsel with Mr. Ram Ochani for Respondent No.2.

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CORAM : NITIN JAMDAR &
ABHAY AHUJA, JJ.

DATE : 23 JANUARY 2023

P.C. :-

Heard the learned Counsel for the parties.

2. In view of the stand taken by the learned Counsel for the Respondents, it is not necessary to detail the facts of the case. The Petitioner has challenged the order passed by the Commissioner, CGST & Central Excise, Belapur Commissionerate dated 29 January 2021. The operative portion of the same reads thus :

> "*a. I confirm the demand of Service Tax on the differential value, totally amounting to Rs. 16,56,54,302/- (Rupees Sixteen Crore Fifty Six Lakh Fifty Four Thousand Three Hundred Two*

Only) during the period April 2007 to March 2011 under Section 73 (2) of the Finance Act, 1994.

b. I drop the demand of Rs.90,74,104/- as discussed in para 5.8.

c. I confirm the demand of interest at appropriate rate on the amount of demand confirmed at Sr. No. 8 (a) above and order its recovery under Section 75 of the Finance Act, 1994.

d. I impose penalty of Rs. 16,56,54,302/- (Rupees Sixteen Crore Fifty Six Lakh Fifty Four Thousand Three Hundred Two Only) under Section 78 of the Finance Act, 1994. The notice is eligible to avail the benefit of reduced penalty as per the provisions of Section 78 of the erstwhile Finance Act, 1994 on fulfillment of conditions therein.

e. I confirm the demand of Service Tax on the differential value, totally amounting to Rs. 7,60,25,680/- (Rupees Seven Crore Sixty Lakh Twenty Five Thousand Six Hundred Eighty Only) during the period April 2011 to March 2012 under Section 73 (2) of the Finance Act, 1994.

f. I confirm the demand of interest at appropriate rate on the amount of demand confirmed at Sr. No. 8 (e) above and order its recovery under Section 75 of the Finance Act, 1994.

g. I impose penalty of Rs. 7,60,25,680/- (Rupees Seven Crore Sixty Lakh Twenty Five Thousand Six Hundred Eighty only) under Section 78 of the Finance Act, 1994. The notice is eligible to avail the benefit of reduced penalty as per the provisions of Section 78 of the erstwhile Finance Act, 1994 on fulfillment of conditions therein.

> *h. I refrain from imposing penalty under Section 76 of the Finance Act, 1994 as discussed in para 7.17 & 7.18.*
>
> *i. I refrain from imposing Penalty under Section 77 of the Finance Act, 1994 as discussed in para 7.16".*

3. When the petition came up on board on 3 January 2023, the Respondents had contended that the Petitioner has an alternate remedy under the statute of filing an appeal. Thereupon, the following order came to be passed on 3 January 2023 :

> *" The case of the Petitioner is that interference in writ jurisdiction is warranted as the Commissioner in the impugned order has taken a decision contrary to the binding decision of the Tribunal in the case of Go Bindas Entertainment Pvt. Ltd. vs. CST, Noida[1] and by not following the dicta binding on the Commissioner, he has committed judicial indiscipline.*
>
> *2 The learned Counsel for the Respondent states that an additional reply would be filed, as the affidavit filed on behalf of the Respondent indicates that this aspect is not satisfactorily dealt with.*
>
> *3 At the request of the learned Counsel for the Respondent, stand over to 23 January 2023".*

4. This order was passed since the Commissioner in the impugned order had made the following observations :

1 [2019 (27) GSTL 397 (Tri)]

> *"7.15. In view of the above I find that the case laws referred by the notice in this regard are not relevant in the subject case. The notice has quoted case law of Go Bindas Entertainment Pvt. Ltd. Vs. CST, Noida [2019 (27) GSTL 397 (Tri)] in their favour. It is ascertained from the jurisdictional authority that the case law referred by the noticee was accepted by the department on monetary grounds and not on merits. In the circumstances, the case law supra cannot be relied upon as a binding precedent".*

5. The learned Counsel for the Respondent No.2 states that instructions have been taken and the Commissioner who had passed the impugned order has expressed that there was an error in taking view as above and the decision in the case of *Go Bindas Entertainment Pvt. Ltd. (supra)* will have to be kept in mind and dealt with, and cannot be ignored.

6. In light of the stand taken by the Respondents, the impugned order will have to be quashed and set aside. Accordingly, the writ petition is disposed of by quashing and setting aside the impugned order dated 29 January 2021 passed by Respondent No.2. The proceeding stands restored to file of Respondent No.2, and it will be decided as per law and in light what is observed above.

ABHAY AHUJA, J. **NITIN JAMDAR, J.**