IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6744 OF 2021

M/s. Stanship Logistics Pvt. Ltd.
290, 2nd Floor, Anand Bhavan,
Shahid Bhagat Singh Road,
Fort, Mumbai - 400 001 ...Petitioner

Versus

1. The Deputy Commissioner
of State Tax (Appeal), GST Bhavan,
Thane Collectorate, Court Naka,
Thane

2. The Assistant Commissioner of State
Tax & GST, SGST, GST Bhavan,
Thane Collectorate, Court Naka,
Thane

3. State of Maharashtra ...Respondents

Mr.Stebin Mathew with Ms.Dishya Pandey and Mr.Pradhuman Chauhan for the Petitioner.
Ms.Shruti D.Vyas, 'B' Panel Counsel for the Respondent-State.

CORAM : G. S. KULKARNI &
JITENDRA JAIN, JJ.
DATE : 11th September 2023

Judgment (Per Jitendra Jain, J.) :-

. Rule. Rule made returnable forthwith. Ms.Shruti Vyas, 'B' Panel Counsel waives service on behalf of the Respondent-State. By consent of the parties heard finally.

2. By this petition filed under Article 226 of the Constitution of India, the Petitioner has sought following substantive reliefs :-

> "(a) Rule be issued;
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> (b) This Hon'ble Court be pleased to issue any writ or order or direction most particular in the nature of Writ of Mandamus or any other appropriate writ directing the Respondents to admit the Appeal filed by the Petitioner and hear them on the merits of the case and thereafter issue an order on merits in accordance with law;
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> (c) This Hon'ble Court be pleased to issue any writ or order or direction most particular in the nature of Writ of Certiorari to call for the records of the case and peruse the same and issue appropriate directions or any other appropriate writ directing the Respondents to admit the Appeal filed by the Petitioner and hear them on the merits of the case and thereafter issue an order on merits in accordance with law;
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> (d) any other writ or order or direction as this Hon'ble Court may deem fit and proper in the circumstances of the case and in the interest of justice."

3. Brief facts in the present petition are as under :-

The Petitioner is engaged in the business of transportation of goods on behalf of various customers and are also registered under Goods and Service Tax Act (for short 'CGST Act).

4. On 26th September 2019, the customer of the Petitioner, M/s.Blue Star Ltd. imported a consignment of Split Air Conditioners and filed Bill of Entry No.5062946 for clearance of the said goods. On 9th

October 2019, E-Way Bill via Truck No.MH 43 U 0973 and 4537 was generated for transportation of said goods. However, on 10th October 2019, the said E-Way Bill was updated with a new vehicle no.MH 46 H 3087 as one of the truck could not reach CF Station on time due to break down.

5. On 11th October 2019, Respondent no.2 intercepted the truck at Bhiwandi and after conducting physical verification, passed an order of detention under Section 129(1) of the CGST Act with remark ‘validity of E-way bill expired.’

6. On 14th October 2019, a show cause notice was issued to the Petitioner under Section129(1) of the CGST Act and the same was replied by the Petitioner on 22nd October 2019. On 23rd October 2019 Respondent No.2 passed Order-in-Original against the Petitioner confirming demand of Rs.10,09,154/- towards IGST Tax and imposed penalty of the same amount under Section 129 of the Act. M/s. Blue Star Ltd. deposited the said amount aggregating to Rs.20,18,308/- to secure release of goods since they were affected by detention and the said amount was subsequently deducted from the account of the Petitioner by M/s. Blue Star Ltd.

7. Being aggrieved by the aforesaid Order-in-Original, the Petitioner on 27th January, 2020 approached Respondent No.1 to file an appeal challenging the order. However, Respondent No.1 refused to take an appeal on record by making a note on the covering letter that payment of Rs.20,18,308/- is made under Section 129(1) of the CGST Act by M/s. Blue Star Ltd., owner of the goods and the Petitioner being a transporter cannot file an appeal.

8. It is on this backdrop, the present petition is filed, seeking appropriate direction against the refusal of Respondent No.1 to take appeal of the Petitioner on record.

9. Heard learned counsel for the Petitioner and the Respondents and with their assistance have perused the records of the case.

10. The Petitioner contended that the Order-in-Original is passed against the Petitioner imposing tax and penalty aggregating to Rs.20,18,308/-. The owner of the goods M/s. Blue Star Ltd. made this payment for releasing the goods but the said payment has been deducted from the account of the Petitioner with M/s. Blue Star Ltd. The Petitioner therefore, contended that it is the aggrieved person to file the appeal

against the Order-in-Original. The Petitioner has contended that there is no provision in the Act which provides that the appeal has to be filed by a person who deposited the tax and penalty. Although the said deposit in the facts of the present case was made by M/s. Blue Star Ltd., it was for and on behalf of the Petitioner and the same was also deducted from the account of the Petitioner by M/s. Blue Star Ltd. The Petitioner, therefore, contended that Respondent No.1 was not justified in refusing to take the appeal on record.

11. Per contra, Respondents supported the noting made on the covering letter by Respondent No.1 refusing to take appeal on record. However, Respondents could not point out any provision in the Act which entitles the Appellate Authority not to take on record the appeal from a person against whom the Order-in-Original is passed but tax and penalty has been deposited by another person on behalf of the person against whom the Order-in-Original is passed.

12. In our view, Respondent No.1 is not justified in refusing to take the appeal, proposed to be filed by the Petitioner, on record. The Order-in-Original against which the appeal is proposed to be filed is passed against the Petitioner. The fact that the goods which were being

transported were released to M/s. Blue Star Ltd. by making payment of Rs.20,18,308/- on behalf of the Petitioner would not mean that appeal has to be filed by M/s. Blue Star Ltd. The said payment was made by M/s. Blue Star Ltd. for release of the goods in its capacity as an owner of the goods and the same was also deducted from the account of the Petitioner with M/s.Blue Star Ltd. Therefore, payment was made by M/s. Blue Star Ltd. for and on behalf of the Petitioner, thus, Respondent No.1 was not justified in refusing to take the appeal on record. The counsel for the Respondents could not bring to our notice any provision in the Act which would not entitle a person against whom the Order-in-Original is passed, but the tax and penalty has been paid on his behalf by somebody else cannot file an appeal challenging the Order-in-Original. The appeal has to be filed by person aggrieved and in the present case the Order-in-Original is passed against the Petitioner and therefore, the Petitioner is an aggrieved person and is entitled to file an appeal against the said order.

13. We, therefore, pass the following order :-

ORDER

(i) Noting made by Respondent No.1 on covering letter dated 27th January, 2020 is required to be quashed/deleted.

(ii) The Petitioner to lodge the appeal, manually, challenging the

Order-in-Original dated 27th January, 2020 within a period of four weeks from the date of uploading the present order.

(iii) Respondent No.1 to take the said appeal on record and adjudicate the same on merit without any objection as to limitation since the Petitioner was pursuing *bonafide* before this Court.

(iv) Respondent No.1 to adjudicate the appeal as expeditiously as possible. No order as to cost.

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