

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 10883 OF 2019

Rochem India Pvt. Ltd.
a company incorporated under
the Companies Act, 1956 and
having its registered office at
101, Dheeraj Arma, Anant Kanekar
Road, Bandra (E), Mumbai-400051

...Petitioner

vs.

1. The Union of India
The Secretary, (Revenue)
Ministry of Finance, Department
of Revenue, New Delhi.

2. The Central Board of Indirect Taxes
and Customs, Department of Revenue,
Ministry of Finance, Government of India,
North Block, New Delhi.

3. The GST Council
Through Chairperson
5th Floor, Tower II, Jeevan Bharti
Building, Janpath Road,
Cannaught Palace, New Delhi-110 001.

4. The State of Maharashtra
through the Government Pleader,
High Court, Mumbai.

5. Commissioner of CGST & CX,
Palghar Commissionerate GST Bhavan,
5th Floor, Bandra Kurla Complex,
Bandra (E), Mumbai- 400 051.

6. The Commissioner of State Tax,
8th Floor, GST Bhavan, Mazgaon,
Mumbai-400 009.

... Respondents

Mr. Prakash Shah i/b PDS Legal for Petitioner.
Mr. Anil C. Singh, ASG with Mr. J. B. Mishra, Mr. Sham Walve and
Mrs. Sangeeta Yadav for Respondents.
Ms. Shruti Vyas, 'B' Panel for Respondent-State.

WITH
WRIT PETITION NO. 4778 OF 2022
(ORDINARY ORIGINAL CIVIL JURISDICTION)

M/s Hindustan Construction Company Limited
having its office at Hincon House,
11th Floor, 247, Park,
Lal Bahadur Shastri Marg, Vikroli(West),
Mumbai-400 083
Through its authorized Representative
Sachin Y. Karkhanis

...Petitioner

vs.

1. The Union of India
Through the Revenue Secretary
Ministry of Finance, Department
of Revenue, North Block,
New Delhi-110 001.

2. The Central Board of Indirect Taxes
and Customs, Ministry of Finance,
North Block, New Delhi-110 001.

3. State of Maharashtra
Through the Secretary
Ministry of Finance,
Department of Revenue, Mantralaya,
Mumbai-400 001.

4. Goods and Services

Tax Council, GST Council Secretariat,
5th Floor, Tower II,
Jeevan Bharti Building, Janpath Road,
Connaught Place, New Delhi- 110 001.

5. Joint Commissioner of Central GST
& Central Excise Navi Mumbai Commissionerate,
16th Floor, Satra Plaza, Palm Beach Road,
Sector 19D, Vashi, Navi Mumbai-400 705.

6. Commissioner of Central Tax
Navi Mumbai, 16th Floor, Satara Plaza,
Palm Beach Road, Sector 19D, Vashi,
Navi Mumbai-400 705.

7. Commissioner of Central Tax (Appeals)
Raigad, 5th Floor, CGO Complex,
CBD Belapur, Navi Mumbai-400 614.

... Respondents

Mr. Bharat Raichandani with Mr. Rishabh Jain i/b UBR Legal
Advocates for the Petitioner.

Mr. Vijay Kantharia with Mr. Ram Ochani for Respondents No. 1,2
and 4 to 7.

Mr. Himanshu Takke, AGP for Respondent No.3.

**WITH
WRIT PETITION NO. 969 OF 2023
(CIVIL APPELLATE JURISDICTION)**

JSB Dream Homes Pvt. Ltd.
A Private Limited Company registered
under the provisions of Companies Act
Having its registered office at
1st Floor, Prateik Plaza S.V. Road,
Opp. Petrol Pump, Goregaon (W),
Mumbai-400 062.

...Petitioner

vs.

1. The Union of India
(Through the Revenue Secretary)
Ministry of Law and Justice,
Department of Legal Affairs,
Branch Secretariat, Aaykar Bhavan,
Annexe, 2nd floor, New Marine Lines,
Mumbai-400 020.

2. The Additional Commissioner (Appeals-III),
CGST & CX, Mumbai
office of the Commissioner of CGST
(Appeals-III), Mumbai
9th Floor, Piramal Chambers,
Jijiboy lane, Lalbaug, Parel,
Mumbai-400 012.

3. The Deputy Commissioner of
CGST & CEX,
Division-IX, Mumbai,
1st Floor, Takshashila Building,
Samant Estate, Goregaon (East),
Mumbai- 400 063.

... Respondents

Mr. Brijesh Pathak for Petitioner.

Ms. Shruti D. Vyas, 'B' Panal Counsel for Respondents No. 4 & 6-
State.

Mr. Vijay Kantharia with Mr. Dhananjay Deshmukh for
Respondents.

WITH
WRIT PETITION NO. 266 OF 2022
(CIVIL APPELLATE JURISDICTION)

Dolace Solutions Private Limited
having its office at 24, Chawla Complex,
Plot No. 36, CBD Belapur,
Navi Mumbai-400 614.

...Petitioner

vs.

1. The Union of India
Through the Central Government Advocate
Aayakar Bhavan, Maharshi Karve Road,
Mumbai-400 002.

2. Commissioner of Central Goods &
Service Tax and Central Excise,
having its office at CGO Complex,
CBD Belapur, Navi Mumbai-400 614.

3. Joint Commissioner of Central Tax
(Appeals) Raigad.
Having office at 5th Floor,
CGO Complex, CBD Belapur,
Navi Mumbai-400 614.

4. Assistant Commissioner of Central Tax,
Raigad, Having office at CGO Complex,
CBD Belapur, Navi Mumbai-400 614.

... Respondents

Mr. V. A. Sonpal for Petitioner.
Mr. Sudhir Kumar for the Respondents.

CORAM : NITIN JAMDAR AND
ABHAY AHUJA, J.J.
DATE : 8 FEBRUARY 2023

Oral Judgement : (Per Nitin Jamdar, J)

. Rule. Rule made returnable forthwith. Taken up for disposal.

2 The common position in these Petitions is that Petitioners have challenged the order passed in appeal by Appellate authority under Central Goods and Services Act, 2017.

3 The Central Goods and Services Act provides a mechanism for appeals. Chapter XVIII deals with Appeals and Review. The order passed under the Act is appealable to the appellate authority under Section 107 of the Act. Section 112 of the Act provides an appeal thereafter to Appellate Tribunal. The constitution of the Appellate Tribunal is provide under Section 109 as under:-

“109. Constitution of Appellate Tribunal and Benches thereof,-(1) The Government shall, on the recommendations of the Council, by notification, constitute with effect from such date as may be specified therein, an Appellate Tribunal known as the Goods and Services Tax Appellate Tribunal for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority.

(2) The powers of the Appellate Tribunal shall be exercisable by the National Bench and Benches thereof (hereinafter in this Chapter referred to as “Regional Benches”), State Bench and Benches thereof (hereafter in this Chapter referred to as “Area Benches”).

(3) The National Bench of the Appellate Tribunal shall be situated at New Delhi which shall be presided over by the President and shall consist of one Technical Member (Centre) and one Technical Member (State).

(4) The Government shall, on the recommendations of the Council, by notification, constitute such number of Regional Benches as may be required and such Regional

Benches shall consist of a Judicial Member, one Technical Member (Centre) and one Technical Member (State).

(5) The National Bench or Regional Benches of the Appellate Tribunal shall have jurisdiction to hear appeals against the orders passed by the Appellate Authority or the Revisional Authority in the cases where one of the issues involved relates to the place of supply.

(6) The Government shall, by notification, specify for each State or Union territory, except for the State of Jammu and Kashmir, a Bench of the Appellate Tribunal (hereafter in this Chapter, referred to as "State Bench") for exercising the powers of the Appellate Tribunal within the concerned State or Union territory:

Provided that for the State of Jammu and Kashmir, the State Bench of the Goods and Services Tax Appellate Tribunal constituted under this Act shall be the State Appellate Tribunal constituted under the Jammu and Kashmir Goods and Services Tax Act, 2017:

Provided further that the Government shall, on receipt of a request from any State Government, constitute such number of Area Benches in that State, as may be recommended by the Council:

Provided also that the Government may, on receipt of a request from any State, or on its own motion for a Union territory, notify the Appellate Tribunal in a State to act as the Appellate Tribunal for any other State or Union territory, as may be recommended by the Council, subject to such terms and conditions as may be prescribed. Council:

(7) The State Bench or Area Benches shall have jurisdiction to hear appeals against the orders passed by the Appellate Authority or the Revisional Authority in the cases involving matters other than those referred to in sub-section

(5).

(8) *The President and the State President shall, by general or special order, distribute the business or transfer cases among Regional Benches or, as the case may be, Area Benches in a State.*

(9) *Each State Bench and Area Benches of the Appellate Tribunal shall consist of a Judicial Member, one Technical Member (Centre) and one Technical Member (State) and the State Government may designate the senior most Judicial Member in a State as the State President.*

(10) *In the absence of a Member in any Bench due to vacancy or otherwise, any appeal may, with the approval of the President or, as the case may be, the State President, be heard by a Bench of two Members:*

Provided that any appeal where the tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined in any order appealed against, does not exceed five lakh rupees and which does not involve any question of law may, with the approval of the President and subject to such conditions as may be prescribed on the recommendations of the Council, be heard by a bench consisting of a single member.

(11) *If the Members of the National Bench, Regional Benches, State Bench or Area Benches differ in opinion on any point or points, it shall be decided according to the opinion of the majority, if there is a majority, but if the Members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President or as the case may be, State President for hearing on such point or points to one or more of the other Members of the National Bench, Regional Benches, State Bench or Area Benches and such point or points shall be decided according to the opinion of the majority of Members*

who have heard the case, including those who first heard it.

(12) The Government, in consultation with the President may, for the administrative convenience, transfer—

(a) any Judicial Member or a Member Technical (State) from one Bench to another Bench, whether National or Regional; or

(b) any Member Technical (Centre) from one Bench to another Bench, whether National, Regional, State or Area.

13) The State Government, in consultation with the State President may, for the administrative convenience, transfer a Judicial Member or a Member Technical (State) from one Bench to another Bench within the State.

(14) No act or proceedings of the Appellate Tribunal shall be questioned or shall be invalid merely on the ground of the existence of any vacancy or defect in the constitution of the Appellate Tribunal.”

4 These Writ Petitions under Article 226 of the Constitution of India are filed on the ground that the Appellate Tribunal is not yet constituted. Since various such Petitions are being filed in this Court and taking note of the large pendency of such cases, we had directed the Respondents to file a reply affidavit as to the position brought about by non-constitution of the Appellate Tribunal.

5. The Chairman of the Central Board of Indirect Taxes and Customs (the “Board”) has filed an affidavit in Writ Petition no. 10883 of 2019 on 12 October 2022, wherein the Chairman has

given the factual position as under:-

“ ii) Vide Notification SO 1359(E) dated 13.03.2019, the creation of the National Bench of the Goods and Services Tax Appellate Tribunal (GSTAT) at New Delhi, was notified. Vide Notification dated 21.08.2019 and 29.11.2019, the Government, on the recommendations of the GST Council, notified the creation of various state benches of GSTAT.

iii) Subsequently, vires of section 109 & section 110 of the Central Goods & Service Tax Act, 2017, related to the constitution of GSTAT and the qualification, appointment and conditions of service of its members, were challenged in WP No. 21147 of 2018 titled as Revenue Bar Association Vs. Union of India before the Madras High Court.

ix) These Rules were challenged and subsequently were struck down by Hon'ble Supreme Court in its order dated 13.11.2019 in CA No. 8588 of 2019 in the case of Rojer Mathews vs. Union of India.

x) While doing so, the Hon'ble Apex Court laid down certain basic tenets to be followed and directed framing of fresh rules. Accordingly, Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2020 were brought in place. The said Rules 2020 were also challenged and in its order dated 27.11.2020 in WP(C) No. 804 of 2020 in the case of Madras Bar Association Vs. Union of India, Hon'ble Supreme Court of India directed certain changes to be brought in the Rules. Later, incorporating certain important aspects of the principles, Central Government promulgated the Tribunal Reforms Ordinance, 2021 which has now been replaced by the Tribunal Reforms Act 2021.

xi) In its 47th meeting held on 28-29 June 2022 in Chandigarh, the GST Council discussed the changes pertaining to the GST Appellate Tribunal in the GST Laws to bring it in conformity with judgments of the Courts in

relation to various aspects concerning Tribunals. In the aforesaid meeting, the Council has decided to constitute a Group of Ministers to look into the issues involved. Accordingly, Department of Revenue, Govt. of India, vide OM dated 06.07.2022 (Annexure I) has constituted a Group of Ministers.

xii) Group of Ministers held its first meeting on 26/7/2022 and its final meeting on 17/08/2022 in Bhubaneswar. The Group of Minister's report shall be placed in the next meeting of the GST Council and after seeking the Councils' approval, amendment to CGST/SGST Acts shall be moved in Parliament/Legislature.

03. I humbly say and submit that delay in the formation of GSTAT is neither intentional nor due to negligence or apathy but due to the circumstances stated above.

04. I humbly say and submit that no hardship is caused to the taxpayers/trade due to non-formation fo GSTAT as period of limitation for filing appeal to the Tribunal is extended vide Central Goods & Service Tax (ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 (Annexure II), so that the appeal can be filed within three months after constitution of Tribunal."

(emphasis supplied)

6 Mr. Anil Singh, learned Additional Solicitor General has placed the Circular No. 132/2/2020-GST dated 18 March 2020 issued by the Board, giving clarification in respect of appeals in regards to non-constitution of Appellate Tribunal. After quoting the relevant Rules, the Circular states as under:-

"4.2 The appellate tribunal has not been constituted in view of the order by Madras High Court in case of Revenue Bar Assn. v. Union of India and therefore the appeal cannot

be filed with three months from date on which the order sought to be appealed against is communicated. In order to remove difficulty arising in giving effect to the above provision of the Act, the Government, on the recommendations of the Council, has issued the Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019. It has been provided through the said Order that the appeal to tribunal can be made within three months (six months in case of appeals by the Government) from the date of communication of order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.

4.3 Hence, as of now, the prescribed time limit to make application to appellate tribunal will be counted from the date on which President or the State President enters office. The appellate authority while passing order, may mention in the preamble that an appeal may be made to the appellate tribunal whenever it is constituted within three months from the President or the State President enters office. Accordingly, it is advised that the appellate authorities may dispose all pending appeals expeditiously without waiting for the constitution of the appellate tribunal.

5. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.”

The State Authorities have also issued an identical Trade Circular with some modifications.

7 Therefore, what emerges from the Circular and Affidavit filed by the Chairman of the Board is that the appeal to the Appellate Tribunal can be filed within three months (six months in the case of

Appeals by the Government) from the date of the communication of the order or date on which the President or State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.

8 As of date, we do not have any positive statement from the respondents to the exact time or date on which the contingency provided in Clause 4.2, that is, President or State President entering office, would occur.

9 The question is whether the Petitions need to be kept pending in this Court. In most of the Petitions filed on the ground that the Tribunal is unavailable, this Court has granted interim protection.

10 The Chairman of the Board, in the affidavit, has indicated that no hardship would be caused to the taxpayers because of the non-constitution of the Tribunal. Reading the affidavit along with Circular, it is clear that the Government does not intend that taxpayers are prejudiced for want of the Tribunal. With that intent, the period of limitation has been extended. As a corollary of the intention expressed in the affidavit and the Circular, it follows that the appealable orders (to the Tribunal) would not be implemented till the Tribunal becomes functional. That being the position, the writ petitions do not need to remain pending in this Court. Some time after the tribunal becomes functional as above can be given.

11 It would be advisable, to avoid further complications, that the Respondent-Board issues instructions to incorporate Clause 4.2 of the Circular dated 18 March 2020 in each order which is appealable to the Appellate Tribunal constituted under Section 109 of the Act. This would guide the aggrieved parties as to the future course of conduct and reduce needless litigation in the form of filing writ petitions such as the present ones. The Learned ASG states that this option would be considered

12. Therefore, we dispose of the Petitions as follows.

a) The period of filing the Appeal will stand extended as indicated in Clause 4.2 of the Circular dated 18 March 2020.

b) The impugned order will not be given effect until two weeks after the period prescribed for filing an appeal as under Clause 4.2 of the Circular dated 18 March 2020 is over.

13. All contentions of the parties are kept open, including a challenge to the validity of the provisions, if any.

14 With this clarification, the Writ Petitions are disposed of.

(ABHAY AHUJA, J.)

(NITIN JAMDAR, J.)