IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10541 OF 2022

Jai Matadi Enterprises
Through Rajeev Harimohan Sharma … Petitioner
V/s.
The Commissioner of State Tax and ors. … Respondents

Mr.Deepak K. Bapat with Ms.Sonali Bapat, Advocates for the Petitioner.
Ms.Shruti D. Vyas, "B" Panel Counsel for Respondent No.1/State.
Mr.Karan Adik with Ms.Maya Majumdar, Advocates for Respondent No.2.

CORAM : NITIN JAMDAR AND ABHAY AHUJA, JJ.
DATE : 12 JANUARY 2023.

P.C.:-

1. By this petition, the Petitioner has sought the following prayers:-

a. Directing the Respondent No.3 to unblock the Input Tax Credit amounting to Rs.81,68,812/- as per "Exhibit-A" and refund to petitioner.

b. Quashing the impugned orders as per "Exhibit-B", "Exhibit-C", "Exhibit-D", "Exhibit-E" and "Exhibit-F".

c. To waive the late fee u/s 47 and interest u/s 50 of the CGST & SGST Act for non filing of returns in

FORM-GSTR-3B within the prescribed time for the period February 2022 to August 2022 and the Proper Officer be directed to refund to petitioner the total amount of Rs.30,30,205/- paid by the petitioner as shown in "Exhibit-G".

d. Directing the Respondents not to pass the assessment order u/s 62 of the CGST Act for all the periods from October 2021 upto the period in which the Input Tax Credit amounting to Rs.81,68,812/- as per "Exhibit-A" is unblocked and refunded to petitioner."

2. This petition came up on board on 13 September 2022, when following order came to be passed:-

"1. Ms. Vyas seeks two weeks time to file reply. Time granted. Rejoinder, if any, to be filed and copy served within a week thereafter.

2. Stand over to 11th October 2022.
Until 15th October 2022 Input Tax Account be unblocked. Steps to be taken forthwith.

3. Mr. Bapat states that if petitioner fails in the petition, petitioner is even ready to face prosecution."

3. Thereafter the implications of this order were considered and a detailed order passed on 12 December 2022 which is as follows:-

"Heard learned counsel for the parties. The Petitioner has sought a direction to Respondent No. 3 to unblock Input Tax Credit Account in respect of entry

amounting to Rs. 81,68,812/- and further directions regarding refund etc.

2. This petition came up on board on 13 September 2022 before the Division Bench (K.R. Shriram and A.S. Doctor, JJ) when the following order was passed.

> *"1. Ms. Vyas seeks two weeks time to file reply. Time granted. Rejoinder, if any, to be filed and copy served within a week thereafter.*
> *2. Stand over to 11th October 2022.*
> *Until 15th October 2022 Input Tax Account be unblocked. Steps to be taken forthwith.*
> *3. Mr. Bapat states that if petitioner fails in the petition, petitioner is even ready to face prosecution."*

3. Reply filed by the Respondents, apart from dealing with the matter on merits, states that order dated 13 September 2022 has been given effect to and the ledger account was unblocked. We are informed that pursuant to the order of unblocking, Petitioner has utilized Input Tax Credit in question. Order dated 11 October 2022 passed by the Division Bench also refers that after Petitioner's Input Tax Credit has been unblocked, Petitioner has filed returns. The order dated 13 September 2022 was not challenged further.

4. According to the learned counsel for the Petitioner, proceedings under Section 73/74 of the Central Goods and Services Tax Act, 2017 (CGST) was the appropriate remedy and the account should not have been blocked. According to the learned counsel for the State, irrespective of powers under Section 73/74 of the Act, Respondents have powers under Rule 86A of the Rules to block the account so as to stop fraudulent transactions.

> *5. Since the order dated 13 September 2022 directing unblocking of the account was in the nature of final order and that thereafter the Petitioner has unblocked the account, it was put to learned counsel for the State that what is the implication thereof as to the course of action to be taken in the present petition, apart from question of law. Question would also be regarding returns for the next year to be filed. It is pointed out to us that action of blocking under Rule 86A(3) is for period of one year. As regards one of the suppliers, account was blocked on 21 October 2021 and other suppliers it was on 14 March 2022.*
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> *6. Respondents will file additional affidavit or give written instructions to their counsel as to whether in view of the order dated 13 September 2022, which order is not challenged, the petition has been rendered academic and whether the legal position can be kept open to be considered in an appropriate case and whether the facts of the Petitioner's case can be examined in the proceedings under Section 74 of the Act.*
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> *7. Stand over to 20 December 2022 under the caption "For Directions".*

The learned counsel for the Respondent No.1-State has tendered an affidavit-in-reply in response to the order dated 12 December 2022.

4. As regards Petitioner's stand is concerned, according to the Petitioner the amount as on that day was unblocked in view of the order dated 13 September 2022 and the Petitioner does not press this prayer on instructions. Learned counsel for the Petitioner states that

the proceedings are now pending in respect of the subject matter and there is no prayer for refund in this petition.

5. According to the learned counsel for the State, the order dated 13 September 2022 was without reply and there are other facets of the matter and the amount for which the petition will have to be considered and the Petitioner is not entitled to get the relief of the unblocking of the Input Tax Credit.

6. We have already discussed the implications of the order dated 13 September 2022 which has already been acted upon and there was no challenge to the said order, though the learned counsel for the Respondent No.1-State has sought to contend that State has not been given opportunity to contest the case, the Respondent-State has permitted to utilize the account. It is not possible for us to reverse the effect of the order dated 13 September 2022 as it has already been given effect to by the Respondents without challenging the said order. Though Petitioner states that amount more than what was prayed in prayer clause (a) was allowed to be utilized, we do not find anything on record regarding the same nor prayer clause (a) is amended.

7. In this situation, after hearing the parties and considering that the proceedings are pending, we find that the proper course of action would be to dispose of the writ petition as follows.

8. As regards the amount as prayed for in the petition in prayer clause (a), the issue is concluded in view of order dated 13 September 2022 and other aspects are kept open either to be considered in pending proceeding or for the Respondents to take such action as may be available in law, which the Petitioner will be entitled to challenge and contest as per law.

9. Writ Petition is accordingly disposed of in above terms.

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

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