IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11112 OF 2022

Well Wisher Properties .. Petitioner
Versus
Khopoli Municipal Council & Ors. .. Respondents

Mr. Aman Kacheria with Ms. Sakshi Dube and Krushika Udeshi i/b. Agarwal & Dhanuka Legal Advocate for Petitioner.
Ms. Ankita Katakdhond i/b. M/s. L. C. Tolat & Co. Advocates for Respondent No.1.

CORAM : G. S. KULKARNI &
JITENDRA JAIN, JJ.
DATE : 10th July 2023

P.C.:-

. Leave to amend to implead the Assistant Commissioner, State GST, CBD, Belapur as party-respondent. Amendment to be carried out forthwith. Amended copy of the petition to be served upon the respondents.

2. The petitioner has filed this petition under Article 226 of the Constitution of India inter alia challenging the failure on the part of the respondent no.1-Khopoli Municipal Council to deposit an amount of Rs.38,94,868/- paid by the petitioner towards Goods and Service Tax to the respondent no.1.

3. The petitioner, a Partnership Firm is engaged in the business of construction and development of real estate. It is registered under the Goods and Services Tax (GST) laws, in the State of Maharashtra bearing GST Identification Number as set out in the petition. The petitioner has constructed a housing project in the name and style of 'Wellwisher Town' at CTS No.2480, Village Varose, Tal. Khalapur, District Raigad within the jurisdiction of the respondent no.1-Khopoli Municipal Council. On 29th August 2019, the respondent had granted permission to the petitioner for construction of such project.

4. The petitioner had deposited an amount of Rs.2,16,38,153/- towards the premium charges in respect of the development work on the subject property. In addition, the Khopoli Municipal Council has also directed the respondent to pay the Goods and Services Tax @18% on the premium charges and informed the petitioner that they would be given input credit. Accordingly on 30th August 2019, the petitioner had deposited an amount of Rs.38,94,868/- with the Khopoli Municipal Council towards 18% GST on the premium charges.

5. It is the case of the petitioner that despite receipt of the GST amount by the Khopoli Municipal Council, it failed to make the payment and deposit the GST amount with the said GST Authorities. It is contended that the input credit for the GST was also pending on the GST portal. It is also contended that on account of the same, the petitioner could not avail of the input credit in respect of the said GST amount. The petitioner has filed representations however, none of the representations were considered by the respondent no.1. On this backdrop, the petitioner has filed the present petition inter alia praying for a direction that the Khopoli Municipal Council be directed to deposit an amount of Rs.38,94,868/- towards Goods and Services Tax to the GST Authorities.

6. On the earlier occasion, this Court had heard the learned counsel for the parties when the following order dated 27th June 2023 came to be passed :-

> *"1. Heard learned counsel for the parties.*
>
> *2. The petitioner has filed this petition under Article 226 of the Constitution of India, praying for a direction against Respondent No.1 to deposit Rs.38,94,868/- towards Goods and Service Tax (GST) with the GST Authorities.*
>
> *3. The Petitioner is in the business of construction and development of real estate and is registered under the Central Goods and Service Tax Act, 2017, bearing GST Identification*

No.27AACFW4134F1ZB.

4. On 31st January 2019, the Petitioner applied to Respondent No.1, seeking permission to develop and construct building at Khalapur, District Raigad. The Petitioner deposited a sum of Rs.2,16,38,153/- towards the premium charges in respect of the aforesaid development work and further paid an amount of Rs.38,94,868/- under reverse charge mechanism, being GST on premium charges. However, the amount should have been deposited with Respondent No.2 but erroneously was deposited with Respondent No.1. The Petitioner vide various letters requested Respondent No.1 to deposit the said amount with Respondent No.2. However, having failed to do so, the Petitioner has approached this Court for the relief for appropriate directions against Respondent No.1.

5. Admittedly, the Petitioner erroneously deposited sum of Rs.38,94,868/- with Respondent No.1, when infact they should have deposited with the GST Authorities. This has further resulted the Petitioner being deprived of the input tax credit under the GST Act, since the said amount has not been deposited by Respondent No.1 with the GST Authorities. In our view, Respondent No.1 cannot retain the said amount and having failed to deposit the same with Respondent No.2, we hereby direct Respondent No.1 to deposit a sum of Rs.38,94,868/- in this Court within a period of two weeks from today.

6. Stand over to ***10th July 2023****, "High on Board".*

7. In pursuance of the above order, we are informed by the learned counsel for the Khopoli Municipal Council that the amount of Rs.38,94,868/- has been deposited in this Court on 6th July 2023 by demand draft. If that be so, what remains is the deposit of the said amount with the GST Authorities, in even proportion as per the requirement of the Central Goods and Services Tax (CGST) Act and

also the Maharashtra State Goods and Services Tax (MGST) Act.

8. Registry of this Court accordingly to receive intimation from the learned Advocate for the said Respondents authorities, to furnish bank account details of the concerned jurisdictional authorities so that the said amount can be transferred by this Court. The said compliance would be completed within two weeks from today and on receipt of such information, office to deposit the amount as directed within one week thereafter.

9. Mr.Sethna, learned counsel for respondent no.2 submits that even in such peculiar circumstances, interest liability would subsist. In such context, we may refer to the order dated 5th September 2022 passed by a co-ordinate Bench of this Court in Writ Petition No.2963 of 2022 in case of ***Arun Krishnachandra Goswami Vs. Union of India & Ors.*** whereby in similar circumstances in so far as the interest was concerned, the Court made the following observations :-

> *"12. We also hope that in view of the unusual facts and circumstances of this case, the CGST authorities and SGST authorities would consider the Petitioner's case sympathetically when it comes to interest and penalty. Unless they have some other reason, Petitioner should not be saddled with interest and penalty."*

10. In our opinion, in the peculiar facts of this case, the said observation would be applicable. The CGST Authorities and SGST Authorities to consider the Petitioner's case sympathetically with regard to interest and penalty.

11. Needless to observe that on such deposit made by the petitioner as permissible in law, the petitioner would be entitled to claim input credit. All the contentions of the parties on other issues are expressly kept open.

12. Disposed of in the aforesaid terms. No costs.

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

corrected as per the speaking to minutes order dated 27.07.2023.