

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14095 OF 2022

Chetankumar Jasraj Palgota HUF ...Petitioner

Versus

State of Maharashtra & Ors. ...Respondents

WITH
INTERIM APPLICATION NO.464 OF 2023
IN
WRIT PETITION NO.14095 OF 2022

Chetankumar Jasraj Palgota HUF ...Applicant/Petitioner

Versus

State of Maharashtra & Ors. ...Respondents

Mr. Brijesh Pathak for the Petitioner.

Ms. Shruti D. Vyas, Addl. G.P. a/w. Ms. P. N. Diwan, AGP for Respondent (State).

CORAM : G. S. KULKARNI,
JITENDRA JAIN, J.J.

DATE : 4th DECEMBER, 2023.

P.C.

1. By this petition under Article 226 of the Constitution of India, the Petitioner has prayed for various relief, however at the time of the hearing the Petitioner has pressed prayer clause (b) which reads thus:-

“(b) Issue a writ in the nature of certiorari or any other appropriate writ or order thereby quashing the impugned Order dated 19.04.2022, Exhibit A, issued by the Respondent No.3 along with consequential reliefs;”

2. The Petitioner has thereafter also filed an interim application praying for the following relief:-

“a. direct the Respondents and their subordinates to forthwith consider the deposits made in terms of Challans at Exhibit B, as sufficient compliance of section 107 (6) of the MGST Act, and accept the Appeal filed by the Applicant on 10.10.2022, Exhibit E;”

3. We propose to dispose of the interim application and the writ petition by this common order since the issues are related.

4. The Petitioner is carrying on business of bullion trading in the name of Chamunda Bullion. It is the contention of the Petitioner that on 19th April 2022 Respondent No.3 had blocked the amount of Input Tax Credit (ITC) lying in the electronic credit ledger. During the course of the search, a statement of the Petitioner was recorded. The Petitioner deposited under protest a sum of Rs.1 Crore on 25th April 2022 and 26th April 2022.

5. A show cause notice was thereafter issued to the Petitioner, on following which on 29th August 2022, an Order-in-Original (O-I-O) came to be passed, raising a tax demand of Rs.7,32,73,629/- against the Petitioner for the period 2021-22. The Petitioner filed an appeal against the said order and requested the Appellate-Authority to adjust the sum of Rs.1 Crore deposited under protest on 25th April 2022 and 26th April 2022 as a pre-deposit for the appeal proposed to be filed. The Petitioner's request of adjustment towards the pre-deposit under Section

107(6) to file an appeal came to be rejected by the Appellate-Authority. The Petitioner being aggrieved by such order passed by the Appellate-Authority has listed the interim application praying for a direction to the Respondents to consider the deposit of Rs.1 Crore as sufficient compliance of Section 107(6) of the CGST/MGST Act and for a further direction to accept the appeal filed by the Applicant/Petitioner.

6. The Petitioner submits that the sum of Rs.1 Crore was paid “under protest” without their being any demand on the day when the deposit was so made. The Petitioner submits that the Respondents are not justified in retaining the same and further demanding a sum equal to 10% as pre-deposit for filing an appeal without adjusting the said deposit. The Petitioner has placed reliance on the decision of this Bench in the case of *Vinod Metal Vs. State of Maharashtra*¹ to contend that in an identical fact situation, this Court has held that the deposit made “under protest” should be considered as pre-deposit under Section 107(6) of the CGST Act. The Petitioner further contended that insofar as the blocking of credit is concerned, the period of one year under Section 83 has expired and, therefore, by operation of law, the said blocking ceases to have effect as per Section 83(2) of the CGST/MGST Act.

¹ (2023) 9 Centax 178 (Bom.)

7. Per contra, the Respondents would contend that the amount of deposit of Rs.1 Crore under protest is a voluntary deposit and, therefore, the same cannot be permitted to be treated as pre-deposit under Section 107(6) of the CGST/MGST Act. The Respondents would further contend that this deposit was made voluntarily and the order sought to be challenged in appeal is under Section 74 and, therefore, the decision in the case of *Vinod Metal (supra)* is not applicable. Insofar as the blocking of credit is concerned, the Respondents state that they have not blocked the credit and, therefore, the prayer made by the Petitioner is misconceived.

8. We have heard learned counsel for the Petitioner and learned counsel for the Respondents. With their assistance we have perused the records of the writ petition and the interim application.

9. Insofar as the deposit of Rs.1 Crore on 25th April 2022 and 26th April 2022 is concerned, the said deposit has been made “under protest” as evident from the challans. On the date of the deposit, there was no demand against the Petitioner, therefore, the retention of the said amount by the Respondents is without authority of law inasmuch as the Respondents can retain only that amount which is against the demand raised and admittedly on the date of the deposit, there was no such demand. Subsequently, an Order in Original was passed on 29th

August 2022 and a demand was raised by the Respondents. The Petitioner has challenged the said order by filing an appeal and requested the Appellate-Authority to adjust the said sum of Rs.1 Crore as compliance under Section 107(6) of the CGST/MGST Act.

10. In our view, the prayer made for adjustment as pre-deposit for maintainability of appeal by the Petitioner is justified and same is squarely covered by the decision of this Bench in the case of ***Vinod Metal (supra)***, wherein in a similar situation, this Court has observed that voluntary deposit made “under protest” cannot be excluded from considering it as a part of pre-deposit for filing an appeal before the Appellate Authority. The distinction sought to be made out by the Respondents, that the order in the case of the Petitioner is passed under Section 74, whereas in the case of ***Vinod Metal (supra)***, the order was passed under Section 73(5) is not tenable. The issue before us is not that under which section the deposit order was passed, but as to whether a deposit made “under protest” without their being any demand can be retained and whether the request of the Petitioner to treat such amount as a pre-deposit for the purpose of Section 107(6) of the CGST/MGST Act needs to be granted. In our view, the said issue is squarely covered by the decision in the case of ***Vinod Metal (supra)*** in which the Court as observed thus:-

“7. We have considered the rival submissions. The question is whether the amount as deposited by the Petitioner anterior to the filing of the appeal under the provisions of section 73(5) of the CGST Act can be taken into consideration for the purpose of compliance of the requirement of pre-deposit under Section 107(6) of the CGST Act.

8. In our view, there is much substance in the contentions as urged on behalf of the Petitioner. There cannot be two opinions, that any procedural rule or technical requirement cannot defeat the availability of a remedy of an appeal, made available to the assessee under a substantive statutory provision nor can such remedy be rendered illusory. The interpretation of the provisions need to be made to recognise the intention of the legislature, which is to aid access to justice, which itself is a fundamental right guaranteed under the Constitution. When it comes to right of an appeal, as guaranteed by a statutory provision, such right needs to be made effective and meaningful. It cannot be frustrated by shackles of complex procedural formalities.

9. In the present case, the Petitioner is in no manner disputing that the Petitioner is required to comply with the provisions of sub-section (7) of Section 107 of the CGST Act, in filing the appeal. In other words, the Petitioner is ready and willing to make the payment/deposit of the tax as per clauses (a) and (b) of sub-section (6) of section 107 of the CGST Act. However, the question raised by the Petitioner is that for fulfilment of such condition, the amount of tax, which is voluntarily deposited by the Petitioner, under protest under sub-section (5) of section 73 of the CGST Act, by permitted to be reckoned for the purposes of a pre-deposit for compliance of sub-section (6) of section 107 of the CGST Act. In our opinion, such request for the Petitioner is not something, which is opposed to law, inasmuch as, on a holistic reading of section 73 of the CGST Act, it can be said that an amount deposited under sub-section (5) section 73 of the CGST Act is not an amount, which is deposited in pursuance of any demand or any assessment order. It is certainly a voluntary deposit and which is subject to all the contentions of the assessee. Also such deposit would be accounted in the event of any the liability of the assessee to pay tax, and would be integral to the

assessment. Thus, when it comes to the compliance of sub-section (6) of section 107 of the CGST Act, namely, the mandatory payment of the tax, being a condition precedent, mandated in terms of the provisions of sub-sections (6)(a) and (6)(b) of section 107 of the CGST Act, in our opinion the principle as laid down in Supreme Court in VVF (India) Ltd. (supra) would become applicable considering that the provisions of the CGST Act on pre-deposit are not too different from the provisions of the MVAT act, which fell for consideration of the Supreme Court.”

11. Insofar as the prayer in regard to the blocking of input tax credit is concerned, the Respondents have stated that they have not blocked the input tax credit and, therefore, the issue does not arise for our consideration in the light of the said statement made by the Respondents. In any view of the matter, the input tax credit is contended to have been blocked on 19th April 2022 and the period of one year expires on 19th April 2023, hence, by operation of law as per Section 83(2) of the CGST/MGST Act, the said attachment ceases to exist.

12. In view thereof, we pass the following order:-

- (i). The Respondents are directed to treat sum of Rs.1 Crore as pre-deposit for the purpose of Section 107(6) of the CGST/MGST Act and the appeal be decided on merits.
- (ii). The input tax credit alleged to have been blocked vide order dated 19th April 2022 stands defreezed by operation of law.

(iii). The Appellate-Authority shall decide the appeal filed by the Petitioner within a period of four months from the date of uploading of the present order.

(iv). Petition is disposed of in the aforesaid terms.

(v). In view of above writ petition, Interim Application No.464 of 2023 would also disposed of.

(vi). All contentions of the parties are expressly kept open.

(vi). No order as to costs.

[JITENDRA JAIN, J.]

[G. S. KULKARNI, J.]