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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 848 OF 2022

M/s. The Maharashtra State Co-operative
Cotton Growers Marketing Federation Ltd. … Petitioner

V/s.

Union of India and Ors. ... Respondents

Mr. Sunil Patil with Mr. Viraj Jain for the Petitioner

Mr. Dhananjay Deshmukh i/b. Swapnil Bangur for the Respondents

CORAM : NITIN JAMDAR &
ABHAY AHUJA, JJ.

DATE : 11 APRIL 2023

P.C. **:-**

Heard the learned Counsel for the parties. For the order that is proposed to be passed, it is not necessary to detail the facts of the case.

2. The Petitioner is an Undertaking of Government of Maharashtra established under the Maharashtra Raw Cotton

(Procurement, Processing and Marketing) Act, 1971. The Petitioner – Undertaking is engaged in the activity of permitting the cotton growing and it is a non-profit organization. According to the Petitioner, it has suffered substantially during the Covid-19 Pandemic.

3. The Petitioner is before us in view of the order passed by the Deputy Commissioner of CGST, Mumbai dated 19 January 2022 directing the Petitioner to pay an amount of Rs.5,87,14,671/- towards interest for delayed payment. The Commissioner has observed that the Petitioner had merely deposited the amount in the Electronic Cash Ledger but did not accept it as a tax liability and deposited by furnishing GSTR-3B Return and this cannot be considered as a payment of tax and therefore, as per Section 50 of the Central Goods and Service Tax (CGST) Act, 2017, the Petitioner is liable to pay the interest as specified.

3. The reply affidavit is filed. The Petitioner has also filed rejoinder. In the reply affidavit the stand is reiterated that unless payment is made by furnishing GSTR-3B Return, it cannot be considered as payment of tax.

4. In the Petition and rejoinder the Petitioner has placed on record various factual aspects to demonstrate that for some period the Petitioner may have made the payment late but for substantial

period the Petitioner has not defaulted in making payment in time. The learned Counsel for the Petitioner points out to us that there is no distinction made between this period in the impugned order and the Petitioner is liable to pay the interest for the entire period i.e. from February 2020 to January 2021. In the rejoinder, the Petitioner has placed before us a chart to demonstrate that periodical payments made during this period was as per the prescribed period specified under Section 50 of the CGST Act, 2017. The Petitioner has also sought to contend that the amounts which were available to the Petitioner as the Input Tax Credit should be considered while calculating the liability under Section 50 of the CGST Act, 2017. This aspect is also not considered by the Deputy Commissioner. The learned Counsel for the Respondents has sought to contend that availability of the Input Tax Credit cannot be considered for the purpose of Section 50 of the CGST Act, 2017.

5. Therefore, both. the above mentioned factual aspect and legal aspect having been not considered and considering the fact that the Petitioner is a Semi Government Agency, we are of the opinion that the matter needs to be re-examined by the Deputy Commissioner in the light of what is stated above.

6. Accordingly, we dispose of the Writ Petition directing the Deputy Commissioner to give an opportunity to the Petitioner to put forth its say, to give audience to the representative of the

Petitioner and thereafter, pass a suitable order. We direct that the impugned order dated 19 January 2022 shall be considered as a *prima facie* opinion of the Deputy Commissioner who will pass the order after giving an opportunity to the Petitioner as above. Till the final order is passed, no coercive steps be taken against the Petitioner based on the impugned order dated 19 January 2022.

7. The Writ Petition is accordingly disposed of.

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

JYOTI PRAKASH PAWAR

Digitally signed by JYOTI PRAKASH PAWAR
Date: 2023.04.18 10:00:56 +0530