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

WRIT PETITION NO. 914 OF 2023

S Mahendrakumar Devichand ..Petitioner
Versus
The Union of India & Ors. ..Respondents

Mr. Prakash Shah with Mr. Jas Sanghavi and Mr. Alekshendra Sharma i/b. PDS Legal for Petitioner.
Mr. Jitendra B. Mishra with Mr. Dhananjay Deshmukh for Respondents.

CORAM : G. S. KULKARNI &
JITENDRA JAIN, JJ.
DATE : NOVEMBER 28, 2023.

<u>**P.C.:**</u>

1. We had taken up this petition for hearing on the earlier occasion. The proceedings were adjourned as "part heard" for today, however, awaiting the orders to be passed by the adjudicating officer which, in our opinion, were to have a bearing on the issues as involved in the present proceedings.

2. Today, we are informed by Mr. Mishra, learned counsel for the revenue that the adjudicating officer has passed an order-in-original dated 17 November, 2023. A copy of the same is also placed before us by Mr. Shah, learned counsel for the petitioner. In such order, the demand as raised against the petitioner on account of inadmissible input tax credit amounting to Rs.20,63,46,994/- made under Section 74 of the Central Goods and Services Tax Act, 2017 (for short, "CGST Act") has been dropped. Also interest under Section 50 of the CGST Act was consequently dropped. The penalty as sought to be imposed under Section 74 of the CGST Act is also dropped. However, a penalty of Rs.20,63,46,994/- under the provisions of Section 122(1)(vii) of the CGST Act for the reasons as set out in paragraph 32 of the order has been imposed on the petitioner, with a further direction that the said amount is being appropriated out of an amount of Rs.24,51,26,555/- being the total amount paid by the petitioner. The operative portion of the order passed by the adjudicating officer/Additional Commissioner, CGST & CEX, Mumbai Central reads thus:-

> " **<u>ORDER</u>**
>
> i) I drop the demand of Inadmissible Input Tax Credit amounting to Rs.20,63,46,994/- (Twenty Crores Sixty Three Lakhs Forty-Six Thousand Nine Hundred and Ninety-Four Only) made under Section 74 of the CGST Act, 2017, as per discussions made in para 32 above and in terms of CBIC Circular No. 171/03/2022-GST dated 06.07.2022.
>
> ii) Since the demand under Section 74 of the CGST Act, 2017, as mentioned in Para 33(i) above, is dropped. I drop the demand of interest under Section 50 of the CGST Act, 2017 read with Section 74 of the CGST Act, 2017.
>
> iii) Since the demand under Section 74 of the CGST Act, 2017, as mentioned in Para 33(i) above, is dropped, I refrain from imposing penalty under Section 74 of the CGST Act, 2017.
>
> iv) I impose penalty of Rs.20,63,46,994/- (Twenty Crores Sixty Three Lakhs Forty-Six Thousand Nine Hundred and Ninety-Four

> Only) under the provisions of Section 122(1)(vii) of the CGST Act, 2017 as per discussions made in para 32 above.
>
> v) I appropriate the amount of Rs.20,63,46,994/- paid in cash out of Rs. 24,51,26,555/- total paid by the taxpayer noticee during the course of investigation towards penalty imposed at para 33(iv) supra."

3. Learned counsel for the parties are ad-idem that a statutory remedy of an appeal is available to the petitioner to assail the aforesaid order passed by the adjudicating officer, as provided under Section 107 of the CGST Act. Mr. Shah, learned counsel for the petitioner would submit that the effect of the order-in-original is that the amounts would be now required to be refunded to the petitioner being the amount of input tax credit paid by the petitioner. Mr. Mishra would not dispute such consequences which would fall from the order passed by the adjudicating officer. It is stated by Mr. Shah that the petitioner intends to challenge the penalty of Rs.20,63,46,994/- imposed by the said order passed by the adjudicating officer.

4. In the aforesaid circumstances, we are of the opinion that considering the subsequent developments as noted by us, further adjudication of the present proceedings is not called for. The petition can be disposed of by permitting the petitioner to avail the alternate remedy of an appeal to assail the order-in-original dated 17 November, 2023. We accordingly pass the following order:-

ORDER

i. We accept the statement as made on behalf of the petitioner that the petitioner intends to file an appeal within a period of four weeks from today assailing the order-in-original dated 17 November, 2023 passed by the Assistant Commissioner of Central Excise, Mumbai Central.

ii. To enable the petitioner to avail of the statutory remedy, the respondents are directed not to take any coercive action for a period of four weeks from today, on the basis of the order dated 17 November, 2023 passed by the adjudicating officer.

iii. As a consequence of the order-in-original dated 17 November, 2023, the respondents are also directed to refund to the petitioner appropriate amounts after retaining 10% of Rs.20,63,46,994/- towards pre-deposit for filing the statutory appeal.

iv. In view of such amount being retained by the respondents for the appeal to be maintainable, no further deposit would be required to be made by the petitioner. This shall also be subject to any appropriate order the Additional Commissioner can pass on such issue of deposit.

v. The amounts as refundable to the petitioner as per the order-in-original be refunded to the petitioner within a period of four weeks from today.

vi. It is appropriate that the refund to the petitioner be granted by the respondents in the manner the amounts were deposited.

vii. All contentions of the parties on the appellate proceedings are expressly kept open.

5. At this stage, Mr. Shah, learned counsel for the petitioner states that the petitioner would intend to assert his claim for interest on the deposit of input tax credit. Needless to observe that the petitioner is permitted to urge such claim in the appellate proceedings.

6. Disposed of in the above terms. No costs.

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