

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

WRIT PETITION NO. 5131 OF 2022

C.P. Ravindranath Menon & Another ... Petitioners

vs.

Deputy Commissioner of State Tax & Ors. ... Respondents

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Mr.Subit Chakrabarti with Ms.Khushnumah Banerjee i/b. Vidhi
Partners for the Petitioners.

Mr. Vinay Sonpal, Special Counsel with Mr.Himanshu Takke, AGP
for Respondent No.1.

Ms. Sangeeta Yadav for Respondent Nos. 2 to 5.

Mr. Abhijeet Mangade for Respondent No.6.

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**CORAM : NITIN JAMDAR &
ABHAY AHUJA, JJ.**

DATE : 21 APRIL 2023

P.C.:

Heard the learned Counsel for the parties.

2. In light of the stand taken by learned Counsel for Respondent
No.1, it is not necessary to set out the facts of the case in detail.

3. The brief facts of the case are that the Petitioners had entered
into an agreement for sale of a residential flat with Respondent
No. 6. According to the Petitioners, pursuant to further proceedings

that took place under the said agreement, the Petitioners became entitled to claim refund of the Goods and Services Tax (GST). Accordingly, the Petitioners applied for refund to Respondent No.1 under the provisions of section 54 of the Goods and Services Tax (GST) Act, 2017. By the impugned order, Respondent No.1 rejected the prayer of the Petitioners stating that persons such as the Petitioners are not entitled for refund of the GST in respect of such transactions.

4. The Petitioners have filed this Petition without availing the remedy of appeal as, according to the Petitioners, the order is passed in a breach of principles of natural justice. The grounds on which the breach of principles of natural justice are alleged are stated in the memo of Petition. The learned Special Counsel for Respondent No.1 has drawn our attention to the policy document issued by the Central Board of Indirect Taxes and Customs on 27 December 2022 annexed to the reply. The learned Special Counsel for Respondent No.1 points out that there have been substantial changes in the procedure governing the application for refund by unregistered persons such as the Petitioners. The learned Special Counsel for Respondent No.1 states that this position was not in existence when the impugned order was passed.

5. Therefore, if the Petitioners succeed in demonstrating that there has been breach of principles of natural justice, the

consequence will be to remand the proceedings to the authority for reconsideration. Considering the fact that the Petitioners are flat purchasers and unregistered persons and that the policy now has been evolved governing the application for refund by unregistered person subsequent to passing of the impugned order rejecting the refund, we are of the opinion that an opportunity needs to be given to the Petitioners for reconsideration of their claim for refund.

6. Needless to state that how the policy would apply to the Petitioners on facts and whether the Petitioners are entitled to refund or otherwise, will have to be decided by Respondent No.1 on its own merits after giving adequate opportunity to the Petitioners as envisaged under the statutory provision.

7. Accordingly, the impugned order dated 8 September 2022 is quashed and set aside. The application of the Petitioners dated 4 September 2020 is restored to the file of Respondent No.1- Deputy Commissioner of State Tax. Subject to earlier time bound commitment, the application be decided within twelve weeks from the date order is uploaded.

8. Writ Petition is accordingly disposed of.

ABHAY AHUJA, J.

NITIN JAMDAR, J.