IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 5676/2019

(RAYMOND UCO DENIM PVT. LTD., YAVATMAL **VERSUS** THE UNION OF INDIA & OTHERS)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders.	Court's or Judge's order

Ms Girita Dudhane with Shri A.M. Kukday, counsel for the petitioner.
Shri N.S. Deshpande, Deputy Solicitor General of India for the R-1 to 3.
Shri S.N. Bhattad, counsel for the R-4 & 5.

CORAM : A. S. CHANDURKAR AND MRS.VRUSHALI V. JOSHI, JJ.
DATE : JANUARY 24, 2023.

The challenge raised in this writ petition is to the order dated 19.03.2019 passed by the Assistant Commissioner (GST), Amravati rejecting the application for refund that was filed by the petitioner under Section 54 of the Central Goods and Services Tax Act, 2017 (for short, 'the said Act'). In addition, challenge has also been made to the validity of Rule 89(5) of the Central Goods and Services Tax Rules, 2017 (for short, 'the said Rules').

During pendency of the writ petition, the Hon'ble Supreme Court in *Union of India & Others Versus VKC Footsteps India Pvt. Ltd.* [**(2022) 2 SCC 603**] has considered the challenge to the validity of Rule 89(5) of the said Rules. While holding that the said Rule was *intra vires* it has been observed by the Hon'ble Supreme Court that there being some anomalies in the formula as the basis for seeking refund, the GST Council could re-consider the same and take a policy decision regarding the same. Pursuant thereto, on 05.07.2022 an amendment has been made in Rule 89(5) of the said Rules inserting the requisite formula therein. By a Circular dated 10.11.2022 it has been clarified that the said amendment to Rule 89(5) would apply prospectively since 05.07.2022.

In the aforesaid backdrop, the learned counsel for the petitioner initially sought leave to amend the writ petition and to bring all these facts on record and also raise a challenge to the provisions of Rule 89(5) as amended. It is urged that by applying the said amendment prospectively legal prejudice is caused to the petitioner.

We find that the principal challenge in this writ petition was to Rule 89(5) of the said Rules alongwith the challenge to the order passed by the Assistant Commissioner on 19.03.2019. In view of the decision in *VKC Footsteps India Pvt. Ltd.* (supra) that challenge now cannot be considered. The grievance that now survives is with regard to the prospective applicability of the amended provision of Rule 89(5) of the said Rules.

We find that the interests of justice would be served by permitting the petitioner to raise a fresh challenge to the Rules as amended in the light of the aforesaid decision of the Hon'ble Supreme Court. Instead of amending the writ petition substantially leave can be granted to the petitioner to file fresh proceedings.

Accordingly, by keeping the challenges raised in this writ petition open to the extent of the formula for seeking refund, the petitioner is permitted to raise a challenge to the order dated 19.03.2019 by initiating fresh proceedings in accordance with law. The objection raised by the learned counsel for the respondent nos.4 and 5 to the availability of a statutory remedy for challenging that order is also kept open.

In the light of aforesaid, this writ petition stands disposed of with aforesaid liberty. No costs.

(MRS. VRUSHALI V. JOSHI, J.) **(A. S. CHANDURKAR, J.)**

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