IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3406 OF 2024

Foodlink F and B Holdings India Private Limited … Petitioner

Versus

Union of India and Ors. …Respondents

Mr.Vikram Nankani, Senior Advocate, Mr.Prakash Shah, Mr.Mihir Mehta, Mr.Jas Sanghavi and Mr.Yash Prakash i/b M/s.PDS Legal for the Petitioner
Mr.Jitendra Mishra a/w Ms.Sangeeta Yadav a/w Mr.Ashutosh Mishra for the Respondents

CORAM: G. S. KULKARNI & FIRDOSH P. POONIWALLA, JJ.
DATED: 28th March, 2024

P.C.

1. In the backdrop of our order dated 14th March 2024, the independent Chartered Accountant, Mr.Sagar Shah, has furnished a report dated 24th March 2024 addressed to the Commissioner CGST and Central Excise, Navi Mumbai. The same is also placed on record as annexure to the affidavit in reply dated 26th March 2024 of Mr.Gurtesh Matharu, Deputy Commissioner, CGST and Central Excise, filed on behalf of the Respondents.

2. We have heard the learned counsel for the parties on the said report. Some of the relevant issues of discussion on the findings as recorded in the said report of the Chartered Accountant can be noted from the following contents of the said report, which reads thus:

> *"2.23 Given the limited scope of work for our appointment, we have not verified transactions other than inter-bank transfers.*
>
> ***Our preliminary view with respect to "whether the amount which is***

objected by the department is the amount in the hands of the petitioner on which GST was not paid" is as under -

- *Given that there are bank accounts other than 39 Bank Accounts considered by the Department, the value of INR 722.18 Cr needs to be re-calculated.*

- *Given the inter-bank transfers within 59 bank accounts and other credits on account of FD Closures, investments received, etc. we cannot ascertain the source of funds for individual transactions. This is in consonance with the discussions with the petitioner vide para 2.21.*

- *Given that there are inter-bank transfers and other receipts in the nature of FD Closures, investments received, etc the value of INR 562.18 Cr derived as undeclared sale proceeds needs to be re-calculated in case the source of funds and examination of movement of funds from accounts outside Maharashtra can be ascertained.*

The summary of our view presented above is as under: -

- ***Whether INR 512 Crores represent inter-bank transfers*** - *Basis the bank statements reviewed and our detailed comments provided in para 2.1 to para 2.14, we believe that inter-bank transfers as mentioned by the petitioner are reflected in the bank statements and INR 512 represents inter-bank transfer of funds which are transferred from such different accounts belonging to the petitioner. It is imperative to note that individual source of funds for such inter-bank transfers could not be ascertained;*

- ***Whether disclosure of said inter-bank transfers is made in GST Returns*** - *Basis our detailed comments provided in para 2.15 and 2.16, we believe that said inter-bank transfers of INR 512 Crores are not disclosed in GST returns; and*

- ***Whether the amount which is objected by the department is the amount in the hands of the petitioner on which GST was not paid*** - *Basis our detailed comments provided in para 2.17 to para 2.23, we believe the amount to be taxed in the hands of the petitioner needs to be re-calculated after considering the additional bank accounts and such other subtractions as may be deem fit in case the source of funds can be ascertained which in the given case has not be ascertained and is in consonance with the comments of the petitioner vide para 2.21."*

3. Considering such apprehension as expressed in the report, Mr.Nankani, learned Senior Counsel for the petitioner, on instructions, would fairly submit

that the petitioner is willing to show its *bona fides* and the said Chartered Accountant, Mr.Sagar Shah, himself can undertake the exercise to check the credibility and authenticity of the inter-bank transactions, which according to the petitioner are amounts which are accounted for GST and which are the basis on which the department has apprehension that the GST has been evaded.

4. We do not intend to dwell on such issues as it is agreeable to the parties that this exercise could be undertaken by the same Chartered Accountant. Let the petitioner furnish the materials to justify the inter-bank transactions.

5. We accordingly adjourn the proceedings for a period of four weeks. By such time, the entire exercise can be undertaken by the Chartered Accountant. The petitioner shall cooperate in providing every information which the Chartered Accountant would require to ascertain such claim being made by the petitioner. The proceedings before the Chartered Accountant shall be held in co-operation by both the sides. Let the report of the Chartered Accountant be placed on record, so that further appropriate orders can be passed on the adjourned date of hearing.

6. Accordingly, stand over to **29th April 2024.**

7. Needless to observe that the petitioner shall, in the meantime, cooperate in any investigation which is being undertaken by the department. In the event the department is of the opinion that the petitioners are not co-operating, they are entitled to approach this court by an appropriate application for any action, they intend to take against the petitioner and its directors etc.

(FIRDOSH P. POONIWALLA, J.) **(G. S. KULKARNI , J.)**