IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10583 OF 2024

FIS Payment Solutions and Services
India Pvt. Ltd. ....Petitioner

V/s.
Union of India
Through Its Secretary and Ors. ...Respondents

Mr. Rafique A. Dada, Senior Advocate a/w Mr. Shashank Shekhar, Mr.Tushar Joshi and Mr. Ishant Sharma for Petitioner.
Mr. Advait M. Sethna a/w Mr. Ashutosh Mishra and Mr. Sandeep Raman for Respondent No.1.
Mr. J.B. Mishra a/w Mr. Abhishek R. Mishra for Respondent Nos. 2 to 4.

CORAM : K.R. SHRIRAM &
JITENDRA JAIN, JJ.
DATED : 9th SEPTEMBER 2024

P.C. :

1. Since the pleadings in the petition are completed, we decided, with the consent of the counsel, to decide the matter finally.

2. Petitioner is impugning an order in original dated 30th April 2024 passed by Respondent No.3. By the impugned order there is demand and order for recovery of inadmissible input tax credit of Rs.65,53,85,976/- under Sub Section (9) of Section 73 of the Central Goods and Service Tax Act, 2017 (the CGST Act). Interest has also been demanded and also a penalty of Rs.6,55,38,597/- in terms of Section 122(2)(a) of the CGST Act read with Section 73 of the CGST Act has been imposed.

3. One of the grounds raised in the petition is that in the impugned order Respondent No.3 has relied upon some Verification Report which was not referred to in the show cause notice and which was not even furnished to petitioner. According to Mr. Dada non furnishing of the Verification Report which forms the very basis of the impugned order amounts to violation of principles of natural justice and also indicates premeditated mind set of Respondent No.3. Mr. Dada submitted that on this ground alone the impugned order dated 30th April 2024 has to be quashed and set aside.

4. In the affidavit in reply filed through one Mr. P. Rana Sthuthi affirmed on 26th August 2024 the stand taken is that the Assistant Commissioner has submitted the reconciliation report based on the available records and documents and therefore the question of providing copy of the reconciliation report does not arise. It is also stated that the findings are not just based on the reconciliation report but also on the adjudicating authority's own findings vis-a-vis the laws related to the case.

5. We are unable to accept the stand taken by respondents. This is because once it is admitted that the Verification Report formed the basis of passing the impugned order, even if we accept respondents case as not entirely, still petitioner ought to have have been given an opportunity to respond and controvert the same. In our view, failure on the part of Respondent No.3 in

sharing such vital document tantamounts to gross violation of principles of natural justice. In fact, if only the Verification Report was made available to petitioner, perhaps petitioner would have been able to correlate invoice to invoice or make further submissions by providing further documents and explanation.

6. We should also note that in the impugned order there is reference to Divisional Office Verification Report dated 10th April 2023 where it says there is no invoice to invoice co-relation pertaining to payment made against deemed supplies whereas the show cause notice is dated 30th January 2024. In another place there is reference to Verification Report dated 10th April 2024. Therefore, the Verification Reports which were available before the show cause notice was issued ought to have been released alongwith the show cause notice so that petitioner would have been able to effectively deal with the allegations in the show cause notice and if the report has been prepared after issuance of the show cause notice, then certainly before passing the impugned order Respondent No.3 was duty bound to make available the same alongwith either supplementary show cause notice or a query memo. Respondent having failed to do so, in our view, the impugned order dated 30th April 2024 cannot be sustained. The same is hereby quashed and set aside.

7. Respondent No.3 shall on or before 30th September 2024 make available to petitioner all the Verification Reports relied upon in the impugned order that we have set aside. On or before 30th October 2024 petitioner shall respond with further submissions. Thereafter, Respondent No.3 may pass an order on or before 31st December 2024 after giving personal hearing to petitioner, notice whereof shall be communicated atleast seven working days in advance.

8. All other grounds which we have not gone into this petition are kept open.

9. Petition disposed.

10. We clarify that we have not gone into the merits of the matter.

11. All rights and contentions are kept open.

(JITENDRA JAIN, J.) **(K.R. SHRIRAM, J.)**