

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

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WRIT PETITION NO.13840 OF 2024

ICICI Bank Limited
BKC Road, Bandra Kurla Complex,
Mumbai, Mumbai Suburban,
Maharashtra – 400 051.

...Petitioner

Versus

1. Union of India,
through the Secretary
Ministry of Finance
Udyog Bhavan, New Delhi.
2. Principal Commissioner CGST
and Central Excise, Division-IV,
Mumbai East, Group B, 9th Floor,
Lotus Info Centre, Parel,
Mumbai – 400 012.
3. Assistant Commissioner of CGST
& Central Excise, 110, Ganges
Ink Building LBS Marg, Vikhroli
West, Mumbai – 400 083.

...Respondents

Mr. Darius Shroff, Senior Advocate a/w Mr. Prasad Paranjape
& Mr. Kumar Harshvardhan i/b. Lumiere Law Partners for Petitioner.
Mr. Ram Ochani a/w Mr. Saket Ketkar for Respondents Nos.2 and 3.

CORAM : M. S. Sonak &
Jitendra Jain, JJ.

RESERVED ON : 11 December 2024

PRONOUNCED ON : 13 December 2024

JUDGMENT (Per Jitendra Jain J):-

1. Heard learned counsel for the parties.

2. Rule. Rule is made returnable immediately at the request and with the consent of the learned counsel for the parties.

3. By this petition under Article 226 of the Constitution of India, the Petitioner has sought a writ of mandamus against the respondents for a refund of Rs.333.08 crore being deposit made 'under protest' for the period April 2007 to June 2017 with respect to the Service Tax Liability on 'Interchange Fees.' The petitioner further seeks a writ of mandamus directing the respondents to process the refund applications filed for refund of the said amount of Rs.333.08 crore and seeks quashing of show cause notice dated 11 May 2015 issued by the respondents seeking to recover the service tax amounting to Rs.82.26 crore on the interchange fees and why the said demand should not be adjusted against amount paid 'under protest.'

Brief facts :-

4. The petitioner is a Bank and was registered under the provisions of Chapter V of the Finance Act, 1994 for levy and collection of service tax. In the course of its business, the petitioner is also engaged in issuing credit cards. There was a difference of opinion between the Bank and the respondents on whether the service tax is required to be paid on interchange fees earned by the issuing Bank. The said issue was a matter of discussion between the Association of the bankers and the respondents. Pending the said resolution of the debate,

the petitioner from October 2012 to June 2017 made various payments 'under protest' for the period 2007 to 2017 aggregating to Rs.333.08 crore. On 5 November 2019, the petitioner made two applications for refund of the said amount of Rs.333.08 crore.

5. Meanwhile, on 11 May 2015, a show cause notice was issued by the respondents to the petitioner to show cause why the service tax amounting to Rs.82.26 crore should not be demanded and recovered on 'interchange fees' and why the said demand should not be adjusted against the amount paid 'under protest.' The respondents issued various notices, including for personal hearing on this issue vide letters dated 18 January 2016, 30 October 2018, 24 December 2019 and 17 June 2021 for adjudication of the said show cause notice. The respondents also requested the petitioner to file their submissions in response to the show cause notice. The petitioner replied to the above show cause notices vide letters dated 20 April 2021, 11 May 2021, 31 May 2021 and 12 April 2023 and raised various contentions and prayed for adjudication of the show cause notice since non-adjudication of the show cause notice and the refund applications was impacting its working capital requirements. It is on this backdrop, the present petition is filed seeking relief stated above.

6. Mr. Shroff, learned Senior Advocate for the petitioner submitted that the show cause notice dated 11 May 2015 having not been

adjudicated till today has become stale and on account of delayed adjudication, the said show cause notice should be quashed and set aside. Learned Senior Advocate further submitted that in light of the decision of the Supreme Court in the case of ***Commissioner of GST and Central Excise Vs. M/s. Citi Bank***¹, the issue of service tax on 'interchange fees' is no more *res integra* and therefore, no purpose would be served on adjudication of the show cause notice. Learned Senior Advocate further submitted that the Coordinate Bench of this Court in the case of ***Hongkong and Shanghai Banking Corporation Ltd. Vs. Union of India***² has on similar circumstances directed the respondents-revenue to refund the amount paid 'under protest.' He submitted that similar order can be passed in the present case by directing the respondents to refund the amount of Rs.333.08 crore.

7. Mr. Ochani, learned counsel for the respondents submitted that the petitioner vide various letters has himself requested for adjudication of the show cause notice and, therefore today, the petitioner cannot seek prayer for quashing of the show cause notice. He further submitted that the petitioner was informed vide letter dated 17 June 2021 that the case is transferred to 'call book' since the issue was pending before the Supreme Court in the petitioner's own case in an SLP filed by the Department. Learned counsel for the respondents submitted that they

1 2021 (12) TMI 483

2 2024 (80) G.S. T. L. 134 (Bom.)

would adjudicate the show cause notice and the refund applications within four weeks but however, strongly opposed quashing of the show cause notice and the prayer for grant of refund in the present petition.

8. We have heard learned Senior Advocate for the petitioner and the learned counsel for respondent nos. 2 and 3.

9. At the outset, we strongly deprecate the respondents' practice in not adjudicating upon the refund applications and the show cause notice for years. This practice severely affects the working capital requirements of any business entity, particularly if it is a bank. The respondents cannot sit over the refund applications or the show cause notice and not adjudicate the same. This sends a wrong signal to the business community and foreign investors and works against the slogan 'Ease of Doing Business.' It is in the interest of the revenue themselves to adjudicate the proceedings as early as possible, and if there is a delay and at the end of the day, any refund becomes eligible to an assessee, then huge amount of interest is also required to be paid, and the said interest would be paid from the tax offers of the citizens who contribute to the nations exchequer. Early disposal would save the State exchequer from paying interest. In our view, sitting over the refund applications and the show cause notice for years not only works against the interest of the revenue but also against our country's economic environment and image of our country in the international business arena, which is very

competitive. We must make our country's image business-friendly with these steps.

10. Coming to the issue in hand, insofar as the show cause notice dated 11 May 2015 is concerned, the petitioners themselves vide various letters from April 2021, and last being April 2023, have requested the respondents to adjudicate upon the show cause notice. In our view, after having called upon the respondents for adjudication of the show cause notice as late as April 2023, today, it is not appropriate for the petitioner to seek prayer for quashing the same. The request for adjudication of the show cause notice was made vide various letters by the petitioner from April 2021 to April 2023, moreso even after the decision of the Supreme Court in the case of *Citi Bank (supra)* which, according to the petitioner, covers the issue raised in the show cause notice. Therefore, to seek quashing of the show cause notice on the ground of delay today, after having prayed for adjudication of the show cause notice as late as April 2023, cannot be accepted. We, therefore, reject the petitioner's prayer. However, the issue of alleged delay in adjudication of the show cause notice is kept open for the petitioner to be raised before the adjudicating authority, in addition to any other ground which the petitioner may raise on the merits of the case.

11. Now, coming to the prayer relating to the refund applications, at this stage, it would not be appropriate for the Court to direct the

respondents to grant a refund as that would require examining the facts recorded in the refund applications and the contention raised by the petitioner that the issue is covered by the decision of the Supreme Court in the case of *Citi Bank (supra)*. The respondents must examine these refund applications expeditiously, where the petitioner can make out its case as to how they are entitled to the refund of the deposit made 'under protest.' This issue is also connected with the proceedings initiated by the show cause notice dated 11 May 2015. Since the petitioners themselves have prayed by various letters for adjudication of the show cause notice, in our view, it would be in the interest of justice that the refund applications and the show cause notice are adjudicated by the respondents together rather than this Court getting into this arena of the controversy. Therefore, the petitioner's prayer to direct the respondents to grant a refund cannot be accepted.

12. However, we believe that the show cause notice and the refund applications ought to be adjudicated within eight weeks from the date of uploading the present order, which also is the statement made by the respondents at the bar. The respondents, while adjudicating the show cause notice and the refund applications, should bear in mind that the tax proceedings are not adversarial, and if the petitioner's case is squarely covered by the decision of the Supreme Court in the case of *Citi Bank (supra)*, then merely for the sake of rejecting the refund or

raising the demand, no adverse order ought to be passed but the correct order granting refund, if eligible, should be considered. We say so because our experience is that the respondents are reluctant to pass a favourable order on some or the other pretext in matters where the stakes are high. This is not the correct approach. The stakes should not determine the legality of the action.

13. Now we come to the decision of the Coordinate Bench in the case of *HSBC (supra)* and the petitioner's contention that this Court should direct refund of deposit made 'under protest.' The case of *HSBC (supra)* relied upon by the petitioner was a case where the refund application was processed. Order-in-original was passed denying the refund, which was set aside by the appellate authority. No further proceedings were taken, and it was in these circumstances that the petitioner was deprived of the refund, although the order was in its favour. In the facts and circumstances of this case, we are at the stage of the show cause notice and the petitioner themselves having prayed for adjudication of the show cause notice, the facts are distinguishable from the decision relied upon in the case of *HSBC (supra)* by the petitioner. In the case of *HSBC (supra)*, no show cause notice was issued after the remand order of the appellate authority, and in the absence of such steps, the Court passed an order.

14. In the instant case, the show cause notice is pending adjudication. The decision in the case of *HSBC (supra)* was rendered on these facts and the facts being distinguishable from the facts of the petitioner; in our view, the same cannot be relied upon for seeking the prayer of mandamus directing the respondents to refund the amount in the present petition. In our view, if we grant such a prayer, the adjudication of the show cause notice would become infructuous moreso the petitioners themselves have prayed for adjudication of the show cause notice. Even on this count, such prayer of granting a refund by way of writ of mandamus cannot be accepted.

15. Even otherwise, except in some exceptional circumstances, where a clear case is made out or where the law and facts admit of no other course and authority is acting stubborn, a mandamus to act in a particular way or to exercise powers in a specific manner is not typically issued. Here, there was failure to expeditiously discharge the duty of disposing of the refund applications. Therefore, a mandamus must be issued to direct the expeditious disposal of the refund applications. But, in this case, we cannot issue a mandamus to directly refund the amount claimed, thereby denying the authorities an opportunity to examine the petitioner's refund claim following the law and on its merits. The position in the *HSBC* case relied by Mr. Shroff was different in the sense that there was a clear determination of the refund dues by the appellate

authority. Yet, without challenge to such determination, the authorities were sitting on the refund application without any good reason. The mandamus was, therefore, to implement the appellate authority's order, which had attained finality.

16. In view of the above, we pass the following order: -

O R D E R

(i) The respondents are directed to adjudicate the show cause notice dated 11 May 2015 along with the Corrigendum dated 3 June 2015 within eight weeks from the date of uploading of the present order;

(ii) The respondents to process two refund applications filed on 5 November 2019 within eight weeks from the date of uploading of the present order.

(iii) If on the adjudication of the show cause notice and the refund applications, the petitioner is found to be eligible for any refund, then the same must be granted within two weeks from the adjudication of the above two proceedings, i.e., show cause notice and refund applications along with interest, if any.

17. The rule is made absolute in the above terms. No order as to costs.

(Jitendra S. Jain, J.)

(M. S. Sonak, J.)