Amol

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 4616 OF 2024

CMP Euro Technoplast Pvt Ltd thr.
Mr Chetan Joshi …Petitioner

Versus

Union of India thr.
The Secretary, Department of Revenue …Respondent

Mr Bharat Raichandani, *through VC, with Ms Dhanistha Kawale, i/b, UBR Legal, for the Petitioner.*

Ms Neeta Masurkar, *for the Respondent Nos. 1, 3, 4, 5.*

Mr Milind More, **Addl GP**, *with Mr Himanshu Takke, AGP, for the Respondent No. 2-State.*

CORAM M.S. Sonak &
Jitendra Jain, JJ.
DATED: 01 JULY 2025

ORAL JUDGMENT (*Per M S Sonak, J)*

1. Heard Mr Raichandani along with Ms Dhanistha Kawale for the Petitioner, Ms Neeta Masurkar for the Respondents 1, 3, 4 and 5 and Mr Milind More, learned Additional Government Pleader along with Mr Himanshu Takke, learned AGP for the Respondent-State.

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

3. The challenge in this Petition is to the order dated 24 February 2023 made by the Commissioner (Appeals) dismissing the Petitioner's Appeal against orders dated 15 September 2022.

4. Mr Ramchandani, the learned Counsel for the Petitioner, submitted that as against this order, an Appeal lies to the GST Tribunal. However, the GST Tribunal is not functional, and therefore, the impugned order is challenged by filing this Petition. He further submitted that though the Petitioner has raised several grounds in the Appeal memo, which have been transcribed in the impugned order, still the Commissioner (Appeals), by adverting to only one of the grounds, has dismissed the Petitioner’s Appeal. He submitted that the rest of the grounds have not even been considered, and such non-consideration amounts to non-application of mind.

5. Ms Masurkar submitted that the Petitioner has an alternate remedy before the GST Tribunal. She submitted that the Petitioner had relied upon the Advance Ruling Authority and the Commissioner (Appeals) had correctly held that such advance ruling shall be binding only on the persons referred to in Section 103 of the Central Goods and Service Tax Act, 2017 and not generally as a precedent. She submitted that there is no error in this view and therefore, no interference is warranted.

6. The rival contentions now fall for our determination.

7. The impugned order at paragraph 4 lists out the main grounds urged by the Petitioner in support of the relief of refund. These are contained in sub-paragraphs 4.1 to 4.7. From the perusal of the same, it is apparent that the decision of the Advance Ruling Authority was only one of the grounds raised by the Petitioner in support of the plea for refund.

Apart from this ground, several grounds on merits were raised by the Petitioner, and these grounds have been transcribed in the impugned order from paragraphs 4.1 to 4.7.

8. However, upon referring to the discussion in paragraphs 7.1 to 7.4, it is apparent that the Commissioner (Appeals) has addressed only one of the grounds, namely the ground based on the decision of the Advance Ruling Authority. None of the other grounds on merits have even been adverted to, much less considered or evaluated. This omission does suggest non-application of mind or, in any event, indicates that the Petitioner's Appeal has not been properly evaluated. On this short ground, the impugned order warrants interference.

9. Accordingly, we set aside the impugned order dated 24 February 2023 and remand the matter to the Additional Commissioner (Appeals) (Respondent No. 4) for a fresh decision on the Petitioner's Appeal against the orders dated 15 September 2022. The Additional Commissioner (Appeals) should endeavour to dispose of this Appeal within three months of the uploading of this order.

10. All contentions of all parties on merits are left open to be decided by the appellate authority.

11. The Rule is made absolute in the above terms. No costs.

12. All concerned must act on an authenticated copy of this order.

(Jitendra Jain, J) **(M.S. Sonak, J)**