

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13587 OF 2024

M/s Panacea Biotech Limited

.. Petitioner

Versus

Union of India & Ors.

.. Respondents

Mr.Abhishek Rastogi a/w Pooja, Rastogi, Meenal Songire, Arya More Advocates for the Petitioner.

Ms.S.D.Vyas, Addl.G.P. a/w Aditya Deolekar, AGP for State/Respondent Nos.2 and 3.

Ms.S.D.Vyas, Special Counsel a/w Abhishek Mishra, for Respondent No.4.

CORAM :B. P. COLABAWALLA &

FIRDOSH P. POONIWALLA, JJ.

DATE : JANUARY 21, 2025

P. C.

1. Though several reliefs are claimed in the above Writ Petition, what is seriously pressed before us is prayer clause ii(a) and ii(b) which seeks to quash the show cause notice dated 16th July 2024 issued by Respondent No.3 in FORM GST DRC-01 and the impugned order dated 19th August 2024 passed by Respondent No.3 in FORM GST DRC-07.

2. The issue involved is whether the GST Authorities can levy GST on a Deed of Assignment under which the land and the building constructed thereon is transferred by a Lessee to a 3rd party. According to the Petitioner the transaction in question would fall within Item 5 of Schedule III of the Central Goods and Services Tax Act, 2017 and not under Item 2 of Schedule II of the same Act. This was a contention that was in fact raised in the reply to the show cause notice but the same has not been dealt with at all in the impugned order passed on 19th August 2024.

3. Considering these facts, we are of the opinion that without going into the merits of the matter it would be in the fitness of things if the impugned order is set aside and the matter is remanded back to Respondent No.3 for a fresh adjudication on the show cause notice. We say this because the impugned order also clearly records that no submissions have been made by the Petitioner against the show cause notice and which is factually incorrect. There was a reply to the show cause notice filed by the Petitioner dated 22nd July 2024 and which was received by the Assistant Commissioner of State Tax on the very same day. Despite this, the impugned order records that no submissions were made in reply to the show cause notice.

4. In these circumstances, the impugned order dated 19th August 2024 is hereby quashed and set aside. The 3rd Respondent is now directed to once again adjudicate the show cause notice. The Petitioner is at liberty to file their detailed reply to the show cause notice within a period of 2 weeks from today. Once the aforesaid reply is filed, Respondent No.3 shall give a personal hearing to the Petitioner and only thereafter pass any order on the show cause notice.

5. We are informed that after the passing of the impugned order, the Gujarat High Court has in fact taken a view that transactions like the one which forms the subject matter of the show cause notice are not amenable to tax under the GST law. We have not examined the aforesaid judgment. However, it is needless to clarify that the 3rd Respondent shall also take into consideration and deal with the aforesaid decision of the Gujarat High Court whilst rendering its findings on the show cause notice.

6. The Writ Petition is disposed of in the aforesaid terms. However, there shall be no order as to costs.

7. This order will be digitally signed by the Private Secretary/
Personal Assistant of this Court. All concerned will act on production by
fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.]

[B. P. COLABAWALLA, J.]