IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4916 OF 2025

Ajinkyatara Sahakari Sakhar Karkhana
Ltd & Anr .. Petitioners

Versus

Union of India & Ors .. Respondents

Mr. Darius Shroff, Senior Advocate, *with Mr. Rahul P. Jain i/b Alpha Chambers, Advocates for the Petitioners.*

Mr. Satyaprakash Sharma*, with Mr. Abhishek Mishra, Advocates for Respondent No.2.*

Mr. Aditya Deolekar, AGP, for the State/Respondent Nos.3 & 4.

CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.

DATE: APRIL 15, 2025

P. C.

1. The above Writ Petition challenges the order dated 22nd January 2025 passed by Respondent No.2 (Exhibit-M) to the Petition. By the impugned order, demand of Rs. 6,41,31,908/-, and an equal amount of penalty, is imposed upon the Petitioners by the impugned order. This demand is basically levied on the basis that under Section 15 (4) of the Central Goods and Services Tax Act, 2017 ("***CGST Act***"), the transaction value is not ascertainable, and therefore, the provisions of Rule 27 (c) of the

Central Goods & Services Tax Rules, 2017 (***"CGST Rules"***) are attracted. According to the Petitioners, the transaction value was the sole value for the consideration of supply as stipulated in Section 15 (1) of the CGST Act, and therefore, Respondent No.2 could not have taken recourse to the provisions of Section 15 (4) of the CGST Act read with Rule 27 (c) of the CGST Rules to come to the finding that he did. According to the Petitioners, the transaction value has been fixed by the State Government as per its Policy formulated in the decision taken in the meeting held on 18th October 2008 by the Committee of Ministers. The Policy basically was that Co-operative Sugar Factories have to take prior permission from the Government for establishing a co-generation project for the generation of electricity and steam in collaboration with the private companies. This co-generation project with private companies would be on the basis of Build, Own, Operate and Transfer (***for short "BOOT"***) basis.

2. Under this policy, the Sugar Factory has to supply Bagasse free of cost to Shree Renuka Sugars Limited, who in turn then generate electricity and steam, and 50% of that electricity and steam would be supplied to the Sugar Factory free of cost. There was also a condition that Shree Renuka Sugars Limited would pay Rs. 60/- per ton as sugarcane crushing royalty for first 9 years and thereafter pay Rs. 70/- per ton for next 9 years. According to

the Petitioners, this was the transaction value on which the Petitioners have been paying VAT when it was in force and thereafter service tax which came into effect from 2012 and thereafter even GST from 2017. It is only now that the authorities have decided to come to the conclusion that this is not the transaction value and have taken into consideration also the free supply of electricity and steam to the Sugar Factory. This is the basic gist of the present Writ Petition.

3. The learned advocate appearing on behalf of Respondent No.2, and who is the main contesting Respondent, seeks eight weeks time to file an affidavit in reply to the above Writ Petition. Acceding to his request, we direct that the affidavit in reply , if any, shall be filed on or before 10th June 2025.

4. Mr. Deolekar, the learned AGP, on our request, has agreed to appear on behalf of Respondent No.4 who is the Sugar Commissioner, Maharashtra State, Pune. Respondent No.4 shall also file their affidavit in reply on or before 10th June 2025.

5. If the Petitioners want to file any affidavit in rejoinder, they may do so on or before 17th June 2025 and serve a copy of the same on the advocates for Respondent No.2 and Respondent No.4 respectively.

6. We now place the above matter on Board on 23rd June 2025.

7. As far as interim relief is concerned, atleast prima facie, we find some substance in the argument canvassed on behalf of the Petitioners. In these circumstances, and without prejudice to the rights and contentions of all parties, we direct that there shall be an ad-interim relief until further orders in terms of prayer clause [(c) (i)] which reads thus:-

> *"c For an interim order an injunction of this Hon'ble Court, pending the hearing and final disposal of this petition:*
>
> *(i) staying the operation of the order of the 2nd Respondent (Exhibit "M" hereto) hereto."*

8. This ad-interim relief is subject to the Petitioners depositing in this Court a sum of Rs. 64 Lakhs on or before 10th June 2025.

9. It is needless to clarify that if the aforesaid deposit is not made, the stay granted today shall stand automatically vacated without further reference to Court.

10. Stand over to 23^{rd} June 2025.

11. 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.]**

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