TRUSHA TUSHAR MOHITE
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 5138 OF 2024

TLG India Pvt. Ltd. .. Petitioner

Versus

Union of India & Ors. .. Respondents

Senior Counsel, Darius Shroff, i/b Adv. Sushanth Shreepad Murthy for the Petitioner.

Adv. Amar Mishra, A.G.P. for Respondent Nos. 2 to 4.

Adv. Ashutosh Mishra for Respondent No. 1, UOI.

CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.
DATE: APRIL 29, 2025

P. C.

1. Heard learned counsel for the parties.

2. ***Rule***. Rule is made returnable forthwith at the request of and with the consent of the learned counsel for the parties and heard finally.

3. The Petitioner challenges the Order-in-Original dated 26th August 2024. Though an appeal lies against this order, considering the order already made by us on 11th December 2024 in Writ Petition (L) No. 33734 of 2024, and considering the CBIC Circular No. 230/24/2024-GST dated 10th September 2024 and No. 199/11/2023-GST, dated 17th July 2023 read with Circular No. 210/4/2024-GST, dated 26th June 2024, we propose to remand the matter to the 2nd respondent for a fresh adjudication of the show cause notice issued to the petitioner. Accordingly, there is no point in relegating the petitioner to the alternate remedy.

4. Mr. Darius Shroff, the learned Senior Advocate for the Petitioner, has submitted that while the Impugned Order raises five (5) distinct issues upon which the demand has been confirmed against the Petitioner, the Petitioner's primary challenge pertains to two (2) issues. They are (i) a demand in respect of export transactions (tax demand -Rs. 18,91,89,054); and (ii) tax liability on Employee stock option plan (tax demand -Rs. 87,91,435); which constitutes a majority of the demand. The Petitioner has also sought liberty of this Court to challenge the other remaining issues in case the need arises.

5. Mr. Shroff submits that insofar as the demand for the export transaction is concerned, the issue stands clarified by the CBIC Circular No. 230/24/2024- GST dated 10th September 2024, which was not available when the Order-in-Original was passed. He points out that for the subsequent period, the proper officer has dropped the demand on this count. He also points out that this Court, in Writ Petition (L) No. 33734 of 2024, by order dated 11th December 2024, quashed a similar order and remanded the matter for reconsideration in light of the Circular dated 10 September 2024. A similar relief is sought here.

6. Mr. Shroff further submits that insofar as the demand on Employee Stock Option Plan is concerned, although the Petitioner's claim of paying only the value of allotted shares without any additional consideration is recorded at page 37 of the Impugned Order, it was disregarded on the ground that the taxpayer had not submitted any supporting documents which would reflect that there is no additional consideration paid to the foreign entity. Further, these services pertain to the State of Haryana and not the State of Maharashtra. The Petitioner also contends that in case any specific documents were required, it was incumbent upon the Respondent to have put the Petitioner to notice which has not been done in the instant case thereby resulting in breach of the principles of natural justice.

7. Mr. Shroff further submits that the Petitioner's plea claiming eligibility for full ITC and deeming the supply value as 'Nil' under Rule 28 of

Central Goods and Services Tax Rules, 2017 and Circular No. 199/11/2023-GST dated 17th July 2023, was not considered or addressed by Respondent No. 3.

8. Having heard the learned counsel, we must mention that at this stage we are not deciding the rival contentions on merits. However, noting this Court order dated 11th December 2024 in Writ Petition (L) No. 33734 of 2024, and having regard to CBIC Circular No. 30/24/2024-GST dated 10th September 2024, and the violation of the principles of natural justice in respect of the Employee Stock Option Plan issue, we find it appropriate to set aside the Impugned Order, and remand the case for a de-novo consideration.

9. Suffice to state that the Petitioner should have an opportunity to place the Circular dated 10th September 2024, and the subsequent period order which drops the demand on the very same issue, amongst other submissions, before the 2nd Respondent and persuade him regarding its applicability. A similar opportunity will also be available to the respondents to contend otherwise.

10. Accordingly, the impugned order dated 26th August 2024 is quashed and set aside. The matter is remanded to the 2nd Respondent for fresh consideration. The 2nd Respondent should give all parties the opportunity of a hearing and consider the material they produce in the proceedings. The 2nd Respondent will decide the matter as expeditiously as possible by passing a reasoned order.

11. All parties' contentions on merits are explicitly left open as this Court has not examined such rival contentions.

12. Rule is made absolute in the above terms and the Writ Petition is also disposed of in terms thereof. However there shall be no order as to costs.

13. 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.]**

Mansi shelke