**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3586 OF 2026

BMC Software India Private Limited ...Petitioner
Vs
The State of Maharashtra & Ors. ...Respondents

Mr. Prakash Shah, Senior Advocate with Mr. Mihir Mehta i/b. PDS Legal for Petitioner.
Ms. Shruti Vyas, Addl. G. P. for State.

**CORAM: G. S. KULKARNI &
AARTI SATHE, JJ.
DATE: 18 MARCH 2026.**

P.C.

1. This petition under Article 226 of the Constitution of India is filed praying for the following reliefs:-

> "a. this Hon'ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the Petitioners' case and after going into the validity and legality thereof, to quash and set aside the impugned (i) Notice No. DCST(Kothrud_501)/Scrutiny/ BMC/2025 -26/ B -692 Pune and (ii) Notice No. DCST(Kothrud_501)/Audit / BMC/2025 -26/ B -693 Pune both dated 05.03.2026 issued by the Respondent No. 2 for FY 2017-18 and FY 2018-19 (Exhibit 'A 1' & `A2');
>
> b. this Hon'ble Court be pleased to issue a Writ of Prohibition or a writ in the nature of Prohibition or any other appropriate writ, order or direction under Article 226 of the Constitution of India prohibiting the Respondents by themselves, their subordinate, servants and agents from acting upon or taking any further proceedings in pursuance of and/or in furtherance of the impugned (i) Notice No. DCST(Kothrud 501)/Scrutiny! BMC/2025 -26/ B -692 Pune and (ii) Notice No. DCST(Kothrud_501)/Audit / BMC/2025 -26/ B -693 Pune both dated 05.03.2026 issued by the Respondent No. 2 for FY 2017-18 and FY 2018-19 (Exhibit `A1' & `A2');
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> c. that pending the hearing and final disposal of this petition, this Hon'ble Court be pleased to direct the Respondents by themselves, their officers, subordinates, servants and agents by an interim order and injunction, to refrain from taking any coercive action/acting upon or

taking any further steps or proceedings in pursuance of and/or in furtherance of the impugned (i) Notice No. DCST (Kothrud_501)/ Scrutiny/ BMC/2025 -26/ B -692 Pune and (ii) Notice No. DCST(Kothrud_501)/Audit / BMC/2025 -26/ B - 693 Pune both dated 05.03.2026 issued by the Respondent No. 2 for FY 2017-18 and FY 2018-19 (Exhibit `A1 ' & `A2');

d. in the alternative this Hon'ble Court, be pleased to grant interim protection to the Petitioner, so as to enable the Petitioner to approach the Ld. GST Appellate Tribunal challenging the Order-in-Appeals dated 28.10.2025 & 16.01.2026 passed the Ld. Appellant Authority.

e. ad-interim reliefs in terms of prayer (c) above."

2. At the outset, we may observe that the grievance of the petitioner is in regard to the communication dated 05 March 2025 issued by the Deputy Commissioner of State Tax Kothrud_501, Nodal-2, Pune, whereby the said officer called upon the petitioner to appear for a personal hearing. It is noted that the requisite amount paid by the petitioner, along with Annexure-I, is allegedly short paid, and the condition of filing appeal in GST Appellate Tribunal has not been fulfilled and the demand confirmed in the appellate order has become payable. Accordingly, a hearing was scheduled on 12 March 2026 at 11.00 a.m. We are informed that the said hearing was scheduled for yesterday, and the order to be passed by the said officer is presently awaited. For the sake of convenience, the impugned communication is required to be noted, which reads thus:-

"No. DCST(Kothrud_501)/Scrutiny / BMC/2025 -26/ B -692 Pune dt.05/03/2025

To,
M/s BMC SOFTWARE INDIA PRIVATE LIMITED
GSTIN- 27AABCB6110E1Z9
Address - 9th Floor, Wing 1, Tower B, Business Bay,
Tower B, 9th Floor, Airport Road, S No 103, Hissa No 2,
Yerwada, Pune, Maharashtra, 411006
Email- eshachavan@bmc.com
Mobile No- 9545696633

Subject: Non payment of requisite amount alongwith Annex I

(declaration regarding proposed appeal before GST appellate Tribunal)

Reference : (i) Appeal order passed by Hon. Joint Commissioner of State Tax (APP-F- 002) dated 28/10/2025.

(ii) Annexure-I submitted by you dtd 09/01/2026.

Dear Taxpayer,

With reference to above subject it is hereby informed that the appeal order in case of M/S. BMC SOFTWARE INDIA PRIVATE LIMITED, GSTN- 27AABCB6110E1Z9 was passed by Hon. Joint Commissioner of State Tax (JCST-APP-F-002) dated 28/10/2025 for the period 2018-19 wherein the tax demand of Rs- 9,98,284/- and interest demand under section 50(1) Rs. 2,61,97,644/- is confirmed.

You have submitted Annexure-I -declaration regarding proposed appeal before GST appellate Tribunal and debited Rs. 1,00,959/- as payment of requisite amount under section 112 of CGST Act. However, it is observed that the principle amount on which interest payable related to RCM on import of service is already accepted and paid by you in GSTR-3B. Hence, the consequential interest also become part of requisite amount as per Section 112 and section 107 MGST/CGST Act, 2017.

Your attention is drawn towards section 107 of MGST/CGST Act, 2017:

Section 107. Appeals to Appellate Authority.-

(6) No appeal shall be Med under sub-section (1), unless the appellant has paid-

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him;

Relevant extract of appeal order are reproduced below:

6.15 The appellant had option to challenge the levy of tax. The appellant has chosen to deposit the tax in the government treasury. The tax has been paid in the month of July 2023. The self-assessment in the form of returns (u/s 53- Every registered person shall self-assess the taxes payable under this Act and furnish a return for each tax period as specified under section 39), have been filed reflecting the said tax liability. The input tax credit of the tax payment has been claimed in the returns. Thereafter, the appellant has claimed the refund of the said input tax credit.

Therefore, the appellant has voluntarily chosen to accept this tax liability instead of challenging the same by way of filing appeal. In this appeal proceedings, the appellant has only challenged the levy of interest. The whole argument of the appellant is focused around the contention that the tax was not leviable and hence the interest should not be levied. There is no explanation given by the appellant as to why the basic tax has been paid by way of self assessment: the appellant is unable to justify as to why ITC of such tax has been claimed. There is no justification as to why refund has been claimed of such ITC. Therefore, the conduct of the appellant is not bona-fide. It is nothing but waiver by choice.

6.16 It is also observed that the appellant has not relinquished the benefits in the form of input tax credit and refund in case of tax paid by way of RCM in case of Import of services. The appellant is silent regarding these aspects as he is the beneficiary of the refund. Here, the principle of approbate and reprobate is applicable. The appellant has accepted the tax liability because he was sure of benefits such as ITC and refund of such tax payment but he is contesting the levy of interest due to delayed payment of tax. The acceptance of part of a transaction in the form of benefit and rejection of part of the same transaction in the form of negative consequences is amounting to inviting the application of approbate and reprobate.

In view of above, the requisite amount paid by you alongwith Annexure-I is short paid and condition of filing appeal in Hon. GST Appellate Tribunal is not fulfilled and the demand confirmed in appeal order becomes payable.

You are requested to kindly attend for personal hearing in this matter and represent your say on 12/03/2026 at 11 a.m."

3. Mr. Shah would submit that the approach on the part of the said officer is not correct, particularly in the light of the admitted position that the petitioner had deposited the principal amount during the course of the investigation. Accordingly, he submits that, as reflected in Annexure-I, the petitioner has made a further deposit of Rs.1,00,959/- towards the proposed appeal to be filed before the GST Appellate Tribunal, being the requisite amount under Section 112 of the CGST Act.

4. Mr. Shah has also drawn our attention to the orders passed by this Court in case of **The Hongkong and Shanghai Banking Corporation Ltd. v/s. State of Maharashtra through the Secretary to the Government Revenue Department & Ors.** [Writ Petition (L.) No. 4698 of 2026] in regard to the tribunal being conferred with the jurisdiction and authority to entertain interim applications, including the power to grant a stay.

5. Mr. Shah further submits that the petitioner intends to pursue the statutory remedy of appeal, and in such context, as mandated under Section 112, has made the requisite pre-deposit. It is, therefore, his submission that the instructions contained in the impugned communication, alleging short payment towards consequential interest, are erroneous, particularly in view of the provisions of Section 112.

6. On the other hand, Ms. Vyas has opposed this petition. She has submitted that the petition itself is premature. The said concerned officer was already seized of the proceedings, and a hearing had been granted to the petitioner for passing an appropriate order in accordance with law.

7. Having heard learned counsel for the parties and having perused the record, we are of the opinion that it would be in the fitness of things that the Deputy Commissioner of State Tax Kothrud_501, NODAL-2, Pune, passes an appropriate order on the notice dated 05 March 2025 (supra) on which a hearing has already been concluded.

8. We also note that the petitioner intends to file a stay application before the GST Tribunal as in pursuance of an order passed by this Court in **The Hongkong and Shanghai Banking Corporation Ltd. v/s. State of Maharashtra** (supra), to enable filing of interim applications, a portal is now available. We are accordingly inclined to dispose of this petition in terms of the following order:-

ORDER

i. The Deputy Commissioner of State Tax, Kothrud_501, Nodal-2, Pune, is directed to pass an order on the impugned notice dated 05 March 2025 within a period of one week from today.

ii. The petitioner is, at the same time, directed to file an interim application for stay before the Tribunal which shall be without prejudice to the rights and contentions of the petitioner insofar as the order passed by the Deputy Commissioner of State Tax Kothrud_501, Nodal-2, Pune, on the impugned notice is concerned.

iii. If any recovery is contemplated, a prior notice of 10 days shall be issued to the petitioner.

iii. All contentions of the parties in that regard are expressly kept open.

iv. The petition is disposed of in the aforesaid terms. No costs.

(AARTI SATHE, J.) **(G. S. KULKARNI, J.)**