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

WRIT PETITION NO. 1745 OF 2024

Gunjan Surgical and Scientific Co.

...Petitioner

Versus

The State of Maharashtra & Ors.

...Respondents

Mr. Rahul Takar a/w Yash Dethe i/b. C. B. Thakar for Petitioner.

Ms. Jyoti Chavan, Addl.G.P. a/w H. B. Takke, AGP for Respondent-State.

CORAM: G. S. KULKARNI &
AARTI SATHE, JJ.

DATE: 23 APRIL 2026

P.C.

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

“a) that this Hon’ble Court be pleased to issue a writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ or order or direction under Article 226 of the Constitution of India ordering the deletion of liability retained in the appeal order dated 25.01.2023 (Ex.G) and directing to refund the amount paid for filing appeal.

b) that this Hon'ble Court be pleased to issue a writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ or order or direction under Article 226 of the Constitution of India and to set aside appeal order for fresh decision after following principles of natural justice.

c) that this Hon'ble Court be pleased to issue a writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ or order or direction under Article 226 of the Constitution of India and set aside and quash adjudication order dated 23.9.2019 (Ex.C).

d) that pending the hearing and final disposal of this Writ Petition, stay against recovery be granted till the disposal of this Writ Petition.”

2. We have heard learned Counsel for the parties.
3. The Petitioner is primarily aggrieved by the order dated 25 January 2023 passed by the Joint Commissioner of State Tax, whereby the Petitioner's claim for Transitional Input Tax Credit has been denied, while the appeal has been partly allowed based on the observations recorded therein, which are as under:-

"By aggrieved to this dues appellant has filed an appeal, In this regard C.B. Thakar advocate attended and filed affidavit where in it is stated that the firm states on oath that it has not claimed any refund of above amount under VAT. The firm further declares that it will not claim said amount in future also as refund under VAT.

Considering the above fact of case and affidavit filed by the appellant trans1 credit claimed by the appellant seems to be admissible but before granting the whole credit it needs to see match mismatch statement on which appellant has claimed the ITC cum refund for the said period. After going through the match mismatch statement through system, it is noticed that there is mismatch in j2xj1 for the said period at Rs. 6,53,341/- (List Enclosed) which needs to be deducted from total refund claimed by appellant in trans 1. Hence figures are modified as under.

Particular	As per order 73	As per Appeal	Relief
Total taxes payable	9,30,110	6,53,341	2,76,769
Interest	3,76,695	2,64,603	1,12,092
Penalty	93,011	65,334	27,677
Total dues payable	13,99,816	9,83,278	4,16,538
PP in appeal		93, 011 Through DRC 03, Credit Ledger	
NET payable	11,39,816	8,90,267	

After modifying the order figures appellant gets the relief in tax, interest and penalty at Rs. 4,16,538/-. Now appellant has to pay Rs. 8,90,267/- after considering the Part Payment at Rs. 93,011/- as per provisions of law."

4. Learned Counsel for the Petitioner submitted that the Petitioner's grievance in respect of the aforesaid finding is twofold. Firstly, it is contended that

such finding could not have been recorded by the Appellate Authority, as its jurisdiction was confined to adjudication under the provisions of the MGST Act, 2017. It is submitted that such finding, in fact, travels beyond its jurisdiction and pertains to an inquiry or assessment under the Maharashtra Value Added Tax Act, 2005. It is further submitted that it was incumbent upon the authority to confine its consideration strictly to the provisions of Section 140(1)(i), (ii), and (iii), read with sub-section (2). The learned Counsel for the Petitioner submits that the finding recorded by the Appellate Authority, to the effect that there was a system-generated mismatch indicating that an amount of Rs. 6,53,343/- was liable to be deducted from the Petitioner's total claim in TRAN-1, could not have been arrived, without applying the parameters laid down under Section 140 of the CGST Act.

5. Learned Counsel for the Petitioner has placed reliance on the decisions of the **Usha Martin Ltd. Vs. Additional Commissioner, CGST & Cex, Jamshedpur and Others**¹ and **Tripati Ispat Udyog Vs. State of Jharkhand**² which accordingly to the Petitioner, are squarely applicable to the facts of the present case.

6. Learned counsel for the Respondent has opposed this Petition and has supported the impugned orders.

7. Having heard learned counsel for the parties and having perused the record, we are of the clear opinion that the observations as made by the Appellate Authority, as noted by us hereinabove, lack clarity and are vague. We find substance in the contentions as urged on behalf of the petitioner as to whether such

1 2022-VIL-779-JHR

2 2025-VIL-102-JHR

findings could have at all been recorded, whereby, as rightly contended on behalf of the petitioner could at all within the scope of Section 140 of the MGST Act, which pertains to the availability of transitional credit. The Appellate Authority would be required to consider that the jurisdiction under Section 140 of the MGST Act, in relation to the transitional credit, is quite compartmentalized, and that there is no scope for any issues which fall within the realm of the jurisdiction of the authority under the MVAT Act which could be taken into consideration, accordingly, an appropriate view of the matter would be required to be taken. Thus, in our opinion, the appeal filed by the petitioner requires an independent and appropriate consideration, keeping in view the scope and ambit of the jurisdiction which would be vested in the proper officer under Section 140 of the MGST Act.

8. In this view of the matter, and on this limited issue, we are inclined to partly allow this petition in terms of the following orders:-

ORDER

- a. The impugned order dated 25th January 2023 passed by the Joint Commissioner is quashed and set aside.
- b. The proceedings are restored to the file of the Appellate Authority, to the aforesaid limited extent with a direction that the Appellate Authority shall consider the issue pertaining to the transitional credit and pass a fresh order in accordance with law, after affording an opportunity of hearing to the parties.

- c. Let a fresh order be passed within a period of eight weeks from the date this order is made available to it.
- d. All contentions of the parties are expressly kept open.
- e. The Writ Petition stands disposed of in the aforesaid terms. No costs.

(AARTI SATHE, J.)

(G. S. KULKARNI, J.)