

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

WRIT PETITION NO.2424 OF 2024

Zoetis Pharmaceutical Research Pvt.Ltd.
Office at 31, 3rd floor, Kalpataru Synergy,
Opp.Grand Hayat, Santacruz East,
Mumbai-400 055.

Petitioner

versus

1. The State of Maharashtra,
2. The Deputy Commissioner of State Tax
(E-911) (Bandra-West-502), GST Bhavan,
Mazgaon, Mumbai.

Respondents

Mr.Rohan Shah, Senior Advocate, with Mr.Gopal Mundhra, Mr.Milan Soni,
Mr.Nishant Shah, Mr.Rishi Raj, Mr.Niraj Hande, Mr.Mohammed Anajwalla i/by
Economic Laws Practice for Petitioner.
Mr.H.B.Takke, AGP, for State.

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

DATE: 22nd April 2026

P.C.

1. This petition under Article 226 of the Constitution of India has been
filed praying for the following substantive reliefs :

“i. Be pleased to issue a writ of Certiorari or a writ in the nature of Certiorari or any other appropriate writ under Article 226 of the Constitution of India, calling for records pertaining to the Impugned Order issued u/s.54 of the MGST Act by Respondent no.2 for period October 2022 to March 2023 (being Exhibits hereto) and after going into the validity and legality thereof to quash and set aside the same;

ii Be pleased to issue a writ of Certiorari or a writ in the nature of Certiorari or any other appropriate writ under Article 226 of the Constitution of India, calling for records pertaining to the Impugned Past Period SCNs issued u/s.73 of the MGST Act by Respondent no.2 for FYs 2018-19 and 2019-20 (being Exhibits hereto) and after going into the validity and legality thereof to quash and set aside the same being passed without jurisdiction;

iii. Be pleased to issue a writ of Mandamus or a writ in the nature of Mandamus or any other appropriate writ under Article 226 of the Constitution of India, restraining the Respondents, their subordinates, servants and agents from in any manner whatsoever pursuing demands or raising fresh demands or taking any action, directly or indirectly from giving effect to or acting in pursuance of the Impugned Order dated 11.12.2023 and Impugned Past Period SCNs dated 29.01.2024, in any manner;

iv. Be pleased to issue any writ, direction or order under Article 226 of the Constitution of India, staying the operation of the Impugned Order and Impugned Past Period, pending the hearing and final disposal of the present petition and grant an injunction restraining the Respondents, their subordinates, servants and agents from taking any steps in furtherance or in implementation of the Impugned Order and Impugned Past Period SCNs.”

2. The facts lie in a narrow compass. The Petitioner is, *inter alia*, engaged in providing research and development services to its group entities located outside India, for which consideration is charged on cost plus markup basis. For the aforesaid services, the Petitioner has entered into a research and development agreement with Zoetis Services LLC ('ZSL' for short). The Petitioner is registered with the Goods and Services Tax (GST) Laws in the State of Maharashtra. It is the Petitioner's contention that its services are zero rated supplies, and hence it had applied for refund of Input Tax Credit ('ITC'). The said refund claims were sanctioned for the period July-2017 to September-2022, however, for the period October-2022 to March-2023, Respondent No.2 rejected the refund application of the Petitioner.

3. On 26th September 2023, the Petitioner filed a refund application for the unutilized ITC in form RFD-01 for the period October-2022 to March-2023, along with relevant documents. The said refund application was acknowledged on 10th October 2023 by issuance of Form RFD-01. On 6th November 2023 Respondent No.2 issued a show cause notice No.DC/BANDRA-WEST_502/RFD 22-23/Zoitus Pharma/B-348 ('impugned show cause notice') alleging that the

Petitioner is an agent of ZSL. In response to the aforesaid show cause notice, the Petitioner filed a reply dated 20th November 2023, submitting that the show cause notice is vague, and also submitted that the Petitioner is not an agent of ZSL and therefore the provisions of Section 2(6)(v) of Integrated Goods and Services Tax Act, 2017 (IGST Act) are not applicable to the facts of the present case. The Petitioner also requested to keep the said refund application in abeyance until 31st December 2023, and gave up its right to claim interest on delayed refunds until 31st December 2023. Subsequently, on 24th November 2023 and 5th December 2023 the Petitioner made additional submissions to substantiate that it was not an agent of ZSL, and sought to place reliance on Circular No.161/17/2021-GST dated 20th September 2021, wherein it has been categorically clarified that separately incorporated entities cannot be treated as establishments of distinct person. The Petitioner also submitted that the Respondents have tacitly agreed that the Petitioner and ZSL are separately incorporated entities, thereby giving credence to the fact that the Petitioner is not an agent of ZSL.

4. However, it is the contention of the Petitioner that Respondent No.2, without taking into consideration the submissions made by the Petitioner, passed the order dated 11th December 2023 ('impugned order'), rejecting the refund application filed by the Petitioner. It is the Petitioner's contention that the impugned order is in violation of the principles of natural justice and also is *de hors* the allegations levelled in the impugned show cause notice dated 6th November 2023. Thereafter, Respondent No.2, by a communication/ corrigendum dated 22nd December 2023 ('impugned corrigendum') amended the impugned order to

contend that the Petitioner's services are exempted under the GST Laws. It is the Petitioner's contention that the aforesaid allegations were never raised in the impugned show cause notice, and also the said allegation was in excess of jurisdiction conferred upon Respondent No.2 under Section 54 of the Maharashtra Goods and Service Tax Act, 2017 ('MGST Act').

5. On 23rd January 2024, Respondent no.2 issued two communications in Form DRC-01A alleging that the adjudicated refunds of financial years 2018-19 and 2019-20 are erroneous. In response to the aforesaid communications, the Petitioner sought additional time to make detailed submissions in respect of the DRC-01A issued for refunds of financial years 2018-19 and 2019-20. However, without acceding to the request of the Petitioner to allow them time to file a reply to the DRC-01A for the refund for the financial years 2018-19 and 2019-20, Respondent No.2 issued two show cause notices dated 30th January 2024 ('impugned show cause notices dated 30th January 2024'), seeking to recover the aforesaid refunds on the ground that the same were erroneously granted to the Petitioner.

6. It is in the backdrop of the above facts that the Petitioner, being aggrieved by the impugned order, impugned corrigendum, impugned show cause notice and the impugned show cause notices no.2, has filed the present petition.

7. Learned Senior Counsel Mr. Rohan Shah along with Mr. Gopal Mundhra, Mr. Milan Soni, Mr. Nishant Shah, Mr. Niraj Hande, Mr. Mohammed Anajwalla appeared on behalf of the Petitioner. Learned counsel Mr. H. B. Takke, AGP appeared on behalf of the Respondent State.

8. Heard learned counsel for the parties. We have perused the papers and proceedings with the assistance of learned counsel for the parties.

9. It is the contention of Mr. Shah, learned senior counsel for the Petitioner that the impugned order and the impugned corrigendum have been passed without dealing/ adverting to the submissions made by the Petitioner, wherein the Petitioner had categorically raised the plea that the Petitioner is not an agent of ZSL, and hence had rightfully claimed the refund of ITC. He further submitted that the impugned corrigendum has been issued without having any authority under any provisions of law and further the determination of taxability of supply is not within the ambit of Section 54 of the CGST/MGST Act. He further submitted that the impugned order was passed in a cryptic manner contradicting itself in many places, and based on surmises and conjectures, and hence the same is liable to be quashed and set aside. He submitted that in view of the fact that the impugned order is based on non-application of mind, not being a reasoned and speaking order, the consequent rejection of refund as claimed by the Petitioner is also bad in law, and a fresh hearing needs to be accorded to the Petitioner, wherein the Petitioner's refund claim has to be adjudicated afresh. He further submitted that this Court, in a series of decisions, which were based on similar facts and circumstances, and where impugned orders were passed without considering the submissions made by the assessee, has remanded the matter back to the Appellate Authority for *de novo* consideration, referring particularly to the decision rendered by the co-ordinate Bench of this Court in the case of **Sundyne Pumps and**

Compressors India Pvt. Ltd. vs. Union of India¹. Mr.Shah sought to place reliance on the following decisions :

I. Lubrizol Advance materials India Ltd. Vs Union of India and others (Writ Petition No.987 of 2026);

II. Vistex Asia Pacific Private Limited Vs. Union of India and others (Writ Petition No.4852 of 2022);

III. V.Ships India Pvt.Ltd. Vs. Union of India and others (Writ Petition No.1534 of 2025);

IV. Magna Automotive India Private Limited Vs Union of India and others (Writ Petition No.6501 of 2024).

Learned Counsel for the Petitioner also submitted that subsequent show cause notices dated 30th January 2024 seeking to deny the refund for the financial years 2018-19 and 2019-20, are also erroneous and a hearing in respect thereof needs to be granted to the Petitioner. He further pointed out that Respondent No.2, for the financial years 2023-24 and 2024-25 has granted refund to the Petitioner for export of services under the same research and development agreement which has been entered into by the Petitioner with ZSL, and therefore the Respondents are seeking to shift stances in similar facts for prior periods, and the same is arbitrary and against the established principles of consistency in taxation statutes.

10. *Per contra*, Mr.Takke, learned AGP on behalf of the State has opposed the reliefs as prayed for in the petition and submitted that the impugned order is required to be upheld as the same is a well-reasoned and speaking order.

11. Having heard the learned counsel for the parties and considering that a consistent view has been taken by this Court in the orders referred to by the

¹2025-SCC OnLine-Bom-2372

learned counsel for the Petitioner, as enumerated above, we find substance in the contention as urged on behalf of the Petitioner. We find that no specific finding has been recorded in the impugned order before rejecting the refund application, as claimed by the Petitioner, and therefore a reasoned and speaking order is required to be passed by Respondent No.2 prior to the rejection of refund. The impugned order, therefore, suffers from the vice of being a non-speaking order vis-a-vis rejection of the refund claim of the Petitioner. Further, we also find substance in the submission made by Learned Counsel for the Petitioner that the subsequent show cause notices dated 30th January 2024, denying refunds for financial years 2018-19 & 2019-20 have been issued erroneously without considering submissions of the Petitioner.

12. In light of the aforesaid discussion, we are inclined to pass the following order which will meet the ends of justice:

ORDER

- (i) The impugned order dated 11th December 2023 and the impugned corrigendum dated 22nd December 2023 are quashed and set aside;
- (ii) Respondent No.2 to issue a show cause notice to the Petitioners within a period of two weeks from the date this order is made available to the Respondent No.2 by the Petitioner post issuance of show cause notice, a personal hearing be granted within a period of two weeks. The proceedings stand remanded to the Respondent No.2 for *de novo* consideration to consider the refund claim of the Petitioner and for a fresh order to be passed in accordance with law, after an opportunity of being heard is granted to the Petitioner;

- (iii) Respondent No.2 shall also give a fresh hearing to the Petitioner in *de novo* proceedings in respect of impugned show cause notices dated 30th January 2024 issued for the financial years 2018-19 and 2019-20 and decide them in accordance with law;
- (iv) Respondent No.2 shall complete the determination within a period of three months from the date of this order;
- (v) All contentions of the parties are expressly kept open;
- (vi) The petition stands disposed of in the aforesaid terms. No costs.

(AARTI SATHE, J.)

(G. S. KULKARNI, J.)