IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 4374 OF 2025

Saifee Hospital Trust ...Petitioner
Versus
The State of Maharashtra ...Respondents

Shri. Prakash Shah, Senior Advocate a/w. Mr. Mihir Mehta, i/b
Shri. Monarch Bhatt, for Petitioner.

Ms. Jyoti Chavan, Addl. G.P. with Mr. Himanshu Takke, AGP
for Respondent – State.

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

DATE: 13th MARCH 2026

ORDER(Per : Ms. Aarti Sathe, J)

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

> (a) this Hon'ble Court be pleased to declare the Notification No. 56/2023-CT dated 28.12.2023 issued by Respondent no. 4 and Notification No. 56/2023-State Tax dated 16.1.2024 issued by Respondent No. 1 as illegal, unconstitutional and ultra vires (Exhibit "A1" and "A2");
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> (b) this Hon'ble Court be pleased to issue 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 Notification No. 56/2023-CT dated 28.12.2023 issued by Respondent nos. 4 and Notification No. 56/2023-State Tax dated 16.01.2024 issued by Respondent No. 1 and quash the same as being as illegal, unconstitutional and ultra vires (Exhibit "A1" and "A2");
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> (c) This Hon'ble Court be pleased to issue Writ of Certiorari or any other appropriate writs, orders and direction under Article 226 of the Constitution of India calling for the records of the case and after examining the legality and validity be thereof be pleased to quash and set aside the (i) Order-in-Appeal No. JC/APP-IV/Appeal Rejection/M/s Saifee Hospital Trust/2024-25/B-1303 dated 23.10.2024 passed by Respondent no. 3; (ii) Order in Original No. DCST-E-646/LTU-547/GST Audit (2018-19)/Saifee Hospital Trust/2024-25/B-452 dated 25.04.2024 passed by the Respondent No. 4 (Exhibit A4 and A5) and Notice dated 20.03.2025 issued in

Mane This order is corrected vide speaking to the minutes order dtd,10/4/2026.

Form DRC-13 by Respondent no. 4 to Respondent no. 7.e. HDFC Bank (Exhibit A6);

(d) this Hon'ble Court be pleased to issue Writ of Mandamus or any other appropriate writs, orders or directions under Article 226 of the Constitution of India ordering and directing the Respondents their subordinates, servants and agents to forthwith refund the amount of Rs. 1,53,71,436/- along with applicable interest, appropriated against the dues confirmed against the Petitioner vide Order dated 25.04.2024, which is not accepted by the Petitioner;

(e) In the alternative to prayer at clause (c) above, in case this Hon'ble Court holds that the aforesaid Order in Original No. DCST-E-646/LTU-547/GST Audit (2018-19)/Saifee Hospital Trust/2024-25/B-452 dated 25.04.2024 is legal and proper, then Hon'ble Court be pleased to issue Writ of Mandanus or any other appropriate writs, orders or directions under Article 226 of the Constitution of India ordering and directing the Respondent no. 3 and his subordinates, servants and agents to forthwith cancel annul/withdraw the Order-in-Appeal No. JC/APP-IV/Appeal Rejection/M/s Saifee Hospital Trust/2024-25/B-1303 dated 23.10.2024 and restore the appeal no. AD270824032385Y filed by the Petitioner on 27.08.2024 against Order in Original No. DCST-E-646/LTU-547/GST Audit (2018-19)/Saifee Hospital Trust/2024-25/B-452 dated 25.04.2024 to its original file for deciding on merits of the case.

(f) Pending the hearing and disposal of the present Petition, the Respondents be directed by an interim order of this Hon'ble Court to forthwith deposit an amount of Rs. 1,53,71,436 in this Hon'ble Court with a liberty to the Petitioner to withdraw the same, without prejudice to the Petitioner's right of refund of the actual amount along with appropriate interest;

2. The primary challenge in the aforesaid Petition is to Notification No. 56/2023–Central Tax dated 28th December 2023 issued by Respondent No. 5, read with Notification No. 56/2023–State Tax dated 16th January 2024 issued by Respondent No. 1 (hereinafter referred to as the "impugned notifications"), purporting to extend the time limit to determine the amount of tax, interest and penalty under Section 73(10) of the Central Goods and Services Tax Act, 2017 (CGST Act) and the Maharashtra Goods and Services Tax Act, 2017 (MGST Act) for the financial year 2018–19 till 30th April 2024, in purported exercise of powers under Section 168A of the CGST Act and the MGST Act. It is the Petitioner's contention that the impugned notifications are illegal, ex facie arbitrary, perverse,

without or in excess of jurisdiction, issued contrary to the provisions of law and amount to an abuse of the process of law.

3. The facts pertaining to the present petition lie in a narrow compass. Form ADT-01 was issued to the Petitioner for conducting an audit for the financial year 2018–19. In response thereto, from 22nd November 2023, the Petitioner submitted the required information and details, including soft copies in a pen drive, as and when called upon to do so.

4. On 24th November 2023, an Audit Observation Report was issued to the Petitioner raising a Goods and Services Tax (GST) demand of Rs. 5,54,73,892/- along with interest of Rs. 5,66,01,608/-. By communications dated 11th December 2023 and 13th December 2023, the Petitioner denied all the allegations and submitted further details in a pen drive.

5. On 20th December 2023, an intimation in Form DRC-01A came to be issued to the Petitioner under Section 73(5) of the MGST Act read with Rule 142(1A) of the MGST Rules, inter alia calling upon the Petitioner to pay GST of Rs. 5,53,52,067/- along with interest of Rs. 5,73,23,512/- and a penalty of Rs. 55,42,088/-. It is the Petitioner's contention that they did not receive and/or notice the aforesaid intimation and were therefore unable to respond to the same.

6. On 28th December 2023, a show-cause notice was issued to the Petitioner covering the period from April 2018 to March 2019, calling upon the Petitioner to show cause as to why GST of Rs. 6,41,69,676/-, along with interest of Rs. 6,74,36,176/- and penalty of Rs. 64,71,180/-, should not be demanded from them.

On 13th February 2024, the Petitioner submitted a detailed reply to the said show-cause notice, *inter alia* denying all the allegations contained therein.

7. Thereafter, on 25th April 2024, an Order-in-Original came to be passed by Respondent No. 4, partially dropping certain demands and partially confirming the demand raised in the show-cause notice dated 28th December 2023. By the said order, an amount of Rs. 74,73,399/-, along with interest of Rs. 81,67,094/- and penalty of Rs. 7,56,221/-, came to be confirmed against the Petitioner.

8. Between 20th July 2024 and 17th August 2024, Mr. AbuAli Darukhanawala, the Treasurer of the Petitioner, who was looking after the taxation matters of the Petitioner, was unwell. It is the Petitioner's case that he had been unwell since May 2024 and his condition deteriorated further. He was accordingly under the treatment of Dr. Shabbir Suterwala, Consultant Orthopedic Surgeon at Saifee Hospital, from 20th July 2024 to 17th August 2024. Mr. Darukhanawala was hence not regularly attending office during the said period, and thus matters relating to taxation could not be attended to in a timely manner in the said period.

9. Being aggrieved by the Order-in-Original dated 25th April 2024, the Petitioner filed an Appeal on 27th August 2024 before Respondent No. 3. However, by an Order dated 23rd October 2024, Respondent No. 3 passed the impugned Order-in-Appeal, *inter alia* rejecting the appeal on the ground of delay in filing the same. It is the Petitioner's contention that the delay in filing the appeal was only of one day.

10. Pursuant thereto, on 20th March 2025, Respondent No. 4 issued a notice in Form DRC-13 under Section 79(1)(c)(i) of the MGST Act, being a garnishee

notice, to HDFC Bank (Respondent No. 7), where the Petitioner holds Account No. 03462320000242, directing the bank to remit a sum of Rs. 1,53,71,436/- to the Respondent-Department. In pursuance thereof, HDFC Bank debited the aforesaid amount from the Petitioner's account and remitted the same to Respondent Nos. 1 to 4.

11. It is in the backdrop of the aforesaid facts that the Petitioner has filed the present Petition, contending that the action on the part of the Respondent-Department is arbitrary and illegal.

12. Learned Senior Counsel Mr. Prakash Shah, along with Mr. Mihir Mehta, Advocate, appeared on behalf of the Petitioner. Ms. Jyoti Chavan, learned Additional Government Pleader, along with Mr. Himanshu Takke, Assistant Government Pleader, appeared for the Respondent-Department.

13. We have heard the learned counsel for the parties and, with their assistance, perused the papers and proceedings. We now proceed to decide the present Petition.

14. At the outset, learned Counsel appearing for the Petitioner submitted that the present Petition can be conveniently disposed off by setting aside the order dated 23rd October 2024 passed on the Appeal by Respondent No.3 and the Appeal be restored to the file of the Appellate Authority for a *de novo* adjudication.

15. Learned Senior counsel for the Petitioner has pressed for the aforesaid relief on the ground that the Order-in-Appeal has rejected the appeal filed by the Petitioner solely on the ground that the appeal was filed belatedly. It is his

contention that, as per the provisions of Section 107 of the CGST Act, the appeal was filed beyond the prescribed period and the delay in filing of the Appeal was only by one day. It is therefore submitted that such delay of one day, which was beyond the period of one month from the due date for filing the appeal, could have been condoned by Respondent No. 3 and that a pedantic view ought not to have been adopted while rejecting the appeal filed by the Petitioner.

16. It is further submitted that rejection of the appeal merely on the ground of delay of one day has resulted in a substantial tax demand being fastened upon the Petitioner.

17. We are inclined to agree with the submission made on behalf of the Petitioner by learned Senior Counsel Mr. Prakash Shah that, in matters relating to condonation of delay, the Court is required to adopt a pragmatic approach and not a pedantic one while considering an application for condonation of delay. This view finds support in the decision of the Supreme Court in *Collector, Land Acquisition, Anantnag and Another v. Mst. Katiji and Others*[1], wherein it has been held as under with regard to condonation of delay by Courts:

> *"3. The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on "merits". The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice - that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy.*
>
> *And such a liberal approach is adopted on principle as it is realized that:*
>
> *"1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.*

1 (1987)2 Supreme Court Cases 107

> *2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated.*
>
> *As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.*
>
> *3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.*
>
> *4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*
>
> *5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.*
>
> *6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so*
>
> *Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the "State" which was seeking condonation and not a private party was altogether irrelevant, The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an evenhanded manner. There is no warrant for according a step-motherly treatment when the "State" is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file-pushing and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time-barred, is therefore, set aside.*
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> *Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides."*

18. Learned Additional Government Pleader Ms. Jyoti Chavan, appearing on behalf of the Respondent–Department, on instructions, submits that she has no objection if this Court restores the matter to the file of Respondent No. 3 to adjudicate and decide Appeal No. AD270824032385Y filed by the Petitioner on

27th August 2024 against Order-in-Original No. DCST-E-646/LTU-547/GST Audit (2018-19)/Saifee Hospital Trust/2024-25/B-452 dated 25th April 2024, on merits.

19. In view of the aforesaid submissions, we do not consider it necessary to dwell into any other issues raised in the present Petition. The Petition can be conveniently disposed of by passing the following order, which in our view would meet the ends of justice:

ORDER

(i) The Order-in-Appeal dated 23rd October 2024 is quashed and set aside. Appeal No. AD270824032385Y filed by the Petitioner on 27th August 2024 is restored to the file of Respondent No. 3 for affording a fresh hearing to the Petitioner, and the same to be decided on merits.

(ii) A notice of hearing shall be issued to the Petitioner within a period of one week from the date this order is made available to Respondent No. 3 by the Petitioner.

(iii) A personal hearing shall be granted to the Petitioner within a period of two weeks from the issuance of the notice of hearing by Respondent No. 3.

(iv) The Petitioner shall be at liberty to raise all contentions at the time of hearing.

(v) A reasoned and speaking order post hearing shall be passed by Respondent No. 3 as expeditiously as possible, and preferably within a period of three months from the date this order is made available to Respondent No. 3 by the Petitioner.

(vi) All contentions of the parties are expressly kept open.

(vii) The Petition is disposed of in the aforesaid terms. No costs.

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