IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH AT NAGPUR

WRIT PETITION No.1653/2025

1. M/s Oam Industries India Pvt. Limited, a private limited company, incorporated under the Companies Act, 1956 having its registered Office at 601, Indira Apartment, Tejpal Scheme Road, Ville Parle (East), Mumbai 400 057 through its Director Neeraj Rajendra Agrawal. : **APPELLANT**
2. Karria Food & Snacks Pvt. Limited, having its administrative office at 145/146, Old Pardi Naka, Bhandara Road, Nagpur through its authorized representative Shri Neeraj s/o Rajendra Agrawal

Vs.

Maharashtra Airport Development Company Limited, a company, incorporated under the Companies Act, 1956 and now Governed by The Companies Act, 2013 having its registered address at 8th Floor, Centre-1, Word Trade Centre, Cuffe Parade, Mumbai 400 005 and Project Office at 1st Floor, Central Facility Building, MIHAN, Near Khapri Railway Station, Nagpur – 441 108 : **RESPONDENT**

Mr. R.R. Shrivasatava, Advocate for the Petitioners

Mr. C.S. Samudra, Advocate for Respondent

CORAM: ANIL L. PANSARE AND
NIVEDITA P. MEHTA, JJ.

DATED : 23rd JANUARY, 2026

ORAL JUDGMENT (PER : ANIL L. PANSARE, J.)

1. Issue Rule, returnable forthwith. Mr. C.S. Samudra, learned Counsel waives service of Rule on behalf of the respondent. With consent of learned Counsels for the parties, the petition is taken up for final hearing.

2. On 25th March, 2021, the respondent entered into agreement of lease of plot No. 777, bearing Survey Nos. 178(P), 179(P), 182(P), 183(P), Tah. Nagpur (Rural), District Nagpur admeasuring 39504.718 Sq.Mtr. (9.76 Acres), situated in MIHAN notified area, Nagpur for agreed lease premium of Rs. 40,37,77,723/-. On 29.11.2024 the respondent, acting upon the request of the petitioners to transfer the lease to M/s MVH Habitates LLP, Nagpur, entered into fresh lease with M/s MVH Habitates LLP, Nagpur having received from the petitioners the transfer and other charges amounting to Rs. 11,45,09,691/-. The petitioners, however, paid the amount under protest.

3. The aforesaid amount consist of GST and interest on delay in payment of GST. The petitioners are seeking direction against the respondent to refund an amount of Rs. 3,94,98,383/- levied towards interest on the delayed payment of GST amounting to Rs. 7,26,80,530/-.

4. The argument of the petitioners is that the amount of interest so levied is contrary to the provisions of law. He submits that the service provider-respondent was under obligation to pay GST within 30 days of providing service in terms of Section 39(1) of the Central Goods and Services Act, 2017 (In short Act, of 2017) read with Sub Rule 1 of Rule 61 of the Central Goods and Services Tax Rules, 2017 (In short Rules of 2017), which provides for submitting monthly return, includes payment of taxes by 20th day of succeeding month. The respondent has not paid GST. It has instead by an innovative method shifted the burden on the petitioners. He has invited our attention to Section 31(2) of the Act of 2017, which provides that the registered person supplying taxable services (in the present case respondent) shall within prescribed period, issue tax invoice showing description, value, tax charges thereon and such other particulars as may be prescribed. The counsel for the petitioners submits that the tax invoice was issued by the respondent for the first time on 11th July, 2024. He submits that, the payment of GST along with interest was however paid on 11th June, 2024 pursuant to the letter dated 4th March, 2024 issued to that effect by the respondent. He submits that unless the invoice is raised, the petitioners could not have paid the GST, being unaware of the payable amount. In turn, he cannot be blamed for the delay, if any, in payment of GST.

5. He has then referred to Rule 46 of Rules of 2017. It provides for particulars to be mentioned in the tax invoice raised by the registered person. Clause “m” of Rule 46 provides that these particulars should

include the amount of tax charged in respect of taxable goods or services (Central Tax, State Tax, integrated tax, Union Territory Tax or Cess). He then referred to Rule 47 of the said Rules, which provides that invoice referred to in Rule 46, in case of the taxable supply of services, shall be issued within a period of thirty days from the date of supply of service. Accordingly, he argued that the respondent was under obligation to issue invoice within one month from 25th March, 2021 in terms of Rule 46. The same, however, has been issued on 11th July, 2024.

6. We have perused the record. The respondent upon receiving the request by the petitioner to transfer the property to M/s MVH Habitates LLP, Nagpur, issued a letter dated 4th March, 2024, calling upon the petitioners to pay transfer charges and along with the transfer charges to pay outstanding GST with interest amounting to Rs. 11,21,78,913/-. As such, the amount of GST payable on lease premium was Rs. 7,26,80,530/-, which was due and payable by 20th day of succeeding month from the date of executing the lease deed i.e. from 25th March, 2021. The respondent levied interest of Rs.3,94,98,383/- for the period from 25th March, 2021 to 31st March, 2024.

7. Considering the provisions of law referred to by the petitioners, we are of the view that the responsibility was upon the respondent to pay the GST in terms of Section 39 of the Act of 2017 read with Rule 61 of the Rules of 2017. Secondly, the respondent was duty bound to issue invoice within thirty days in terms of the provisions quoted above. Having not done so, the expectation of the respondent that the petitioner ought to

have paid GST voluntarily in terms of the agreement of lease appears to us to be a plea taken contrary to law.

8. The aforesaid plea has been taken by the respondent on the basis of Clause 4.23 of the tender document inviting bids, provides that the intending lessee shall bear all existing and future taxes payable over the plot. Reference is also made to Clause 7.11.2 of lease agreement to contend that the lessee i.e. the petitioners agreed to pay applicable goods and service taxes and any other taxes as levied by the statutory authority on the transaction of any amount between the lessee (petitioners) and lessor (respondent).

9. We do not find from both the provisions that the petitioners were under obligation to pay GST or any other tax, without invoice of tax raised by the respondent in terms of the provisions of the Act of 2017 read with Rules of 2017. We may note here that Section 122 of the Act of 2017, provides for penalty for certain offences Clause (i) of Subsection 1 of Act of 2017, provided that where a taxable person who supplies any goods or services or both without issuance of any invoice or issues an incorrect or false invoice with regard to any such supply shall be liable to pay the penalty of Rs.10,000/- or an amount equivalent to the tax evaded or not paid, etc., whichever is higher.

10. This provisions would highlight importance of issuance of tax invoice by the taxable person like the respondent, who supplied the service. The non-compliance invites penalty. Further, Section 50 of the Act of 2017,

provides that every person who is liable to pay tax in accordance with the provisions of this Act or Rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remained unpaid, pay, on his own, interest at such rate, not exceeding 18%.

11. Thus it is the respondent, who is liable to pay interest. It has however transferred the burden on the petitioners for no valid reason. Such action is apparently illegal and thus unsustainable in law.

12. Accordingly, we allow the petition and direct the respondent to refund the amount of Rs. 3,94,98,383/-, recovered from the petitioners towards interest. The respondent shall refund the amount to the petitioners within six weeks from today, failing which the respondent shall pay interest @18% p.a. from the date the amount was recovered, till it is paid to the petitioners. The respondent is at liberty to recover the amount of interest from the erring official. No order as to costs.

Rule is made absolute in the above terms.

(NIVEDITA P. MEHTA, J.) **(ANIL L. PANSARE, J.)**

MP Deshpande