

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

WRIT PETITION NO.3097 OF 2022
WITH
WRIT PETITION NO. 3092 OF 2022
WITH
WRIT PETITION NO. 3096 OF 2022

Gulf Oil Lubricants India Ltd.
Having its registered office,
IN Center, 49/50,
12th Road, MIDC.,
Andheri (E), Mumbai-400093.

...Petitioner

vs.

1. Joint Commissioner of State Tax
Appeal-V, Bandra
GST Bhavan, Bandra Kurla Complex
Road, E Block BKC, Bandra (East),
Mumbai-400 051.

2. Deputy Commissioner of State Tax
(E-632), LTU-III,
GST Bhavan, Mazgaon,
Mumbai-400 010.

... Respondents

Mr. Ishan Patkar with Ms. Chaitali Raul i/b Alaksha Legal for
Petitioners.

Ms. Jyoti Chavan, AGP for Respondents in WP 3097/2022.

Mr. Himanshu Takke, AGP for Respondents in WP 3092/2022.

Mr. Manish Upadhyay, AGP for Respondents in WP 3096/2022.

AND
WRIT PETITION NO. 3517 OF 2022
WITH
WRIT PETITION NO. 3789 OF 2022

1. Dinesh Engineers Limited
A company incorporated under the
Companies Act, 1956 and having its
Registered office at 0-2, 2nd Floor,
Neighbourhood Shopping Complex,
Sector-4, Nerul West, Raigad,
Maharashtra-400 706.

2. Dinesh K. Kargal
of Mumbai, Indian Inhabitant,
Residing at G 702, Jay Balaji CHS.,
Plot No. 26, Sector-6, Nerul West,
Navi Mumbai-400 706.

...Petitioners

vs.

1. The Union of India
Department of Revenue
Ministry of Finance,
having its office at 128-A,
North Block, New Delhi.

2. The Joint Commissioner of Sales Tax
(Appeals), RAI-APP-F-001,
Raigad Division, Navi Mumbai,
Kendriya Utpad Shulk Bhavan,
Plot No.1, Sector-17,
Khandeshwar, Navi Mumbai-4105.

3. The Assistant Commissioner of Sales Tax,
Investigation-A, C-7, 2nd Floor, Old Building,
GST Bhavan, Mazgaon, Mumbai-400 010.

... Respondents

Mr. Kazam Shroff with Mr. Mihir Mody and Mr. Dhaval Patil i/b K. Ashar & Co. for Petitioners.
Mr. Ram Ochani for Respondents.

**CORAM : NITIN JAMDAR AND
ABHAY AHUJA, JJ.
DATE : 8 FEBRUARY 2023**

Oral Judgement: (Per Nitin Jamdar, J)

Rule. Rule made returnable forthwith. Taken up for disposal.

2. In these Petitions, the Petitioners have challenged the Order-in-Appeal passed by the State Tax Authorities. The Petitioners have received show cause notices, which were adjudicated and Order-in-Original was passed. The Petitioners have filed appeals before the Appellate Authority and the appeals were dismissed.

3 The Petitioners have filed these Writ Petitions invoking Article 226 of the Constitution of India on the ground that though the statute provides an appeal to a Appellate Tribunal under Section 112 of the State Good and Services Tax Act (“State GST Act”), the Appellate Tribunal is not constituted. A challenge is also raised to the validity of statutory provisions.

4 The relevant Sections 109, 110 and 112 of the Maharashtra Goods & Services Tax Act provide as under:-

“109. (1) Subject to the provisions of this Chapter, the Goods and Services Tax Tribunal constituted under the Central Goods and Services Tax Act shall be the Appellate Tribunal for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority under this Act.

(2) The constitution and jurisdiction of the State Bench and the Area Benches located in the State shall be in accordance with the provisions of section 109 of the Central Goods and Services Tax Act or the rules made thereunder.

110. The qualifications, appointment, salary and allowances, terms of office, resignation and removal of the President and Members of the State Bench and Area Benches shall be in accordance with the provisions of section 110 of the Central Goods and Services Tax Act.

112. (1) Any person aggrieved by an order passed against him under section 107 or section 108 of this Act or the Central Goods and Services Tax Act may appeal to the Appellate Tribunal against such order within three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal.

(2) The Appellate Tribunal may, in its discretion, refuse to admit any such appeal where the tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined by such order, does not exceed fifty thousand rupees.

(3) The Commissioner may, on his own motion, or upon request from the Commissioner of central tax, call for and examine the record of any order passed by the Appellate Authority or the Revisional Authority under this Act or under the Central Goods and Services Tax Act for the purpose of satisfying himself as to the legality or propriety of the said order and may, by order, direct any officer

subordinate to him to apply to the Appellate Tribunal within six months from the date on which the said order has been passed for determination of such points arising out of the said order as may be specified by the Commissioner in his order.

(4) Where in pursuance of an order under sub-section (3) the authorised officer makes an application to the Appellate Tribunal, such application shall be dealt with by the Appellate Tribunal as if it were an appeal made against the order under sub-section (11) of section 107 or under sub-section (1) of section 108 and the provisions of this Act shall apply to such application, as they apply in relation to appeals filed under sub-section (1).

(5) On receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such order or any part thereof, file, within forty-five days of the receipt of notice, a memorandum of cross-objections, verified in the prescribed manner, against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal, as if it were an appeal presented within the time specified in sub-section (1).

(6) The Appellate Tribunal may admit an appeal within three months after the expiry of the period referred to in sub-section (1), or permit the filing of a memorandum of cross-objections within forty-five days after the expiry of the period referred to in sub-section (5), if it is satisfied that there was sufficient cause for not presenting it within that period.

(7) An appeal to the Appellate Tribunal shall be in such form, verified in such manner and shall be accompanied by such fee, as may be prescribed. (8) No appeal shall be filed 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, and (b) a sum equal to twenty per cent. of the remaining

amount of tax in dispute, in addition to the amount paid under sub-section (6) of the section 107, arising from the said order, in relation to which the appeal has been filed.

(9) Where the appellant has paid the amount as per sub-section (8), the recovery proceedings for the balance amount shall be deemed to be stayed till the disposal of the appeal.

(10) Every application made before the Appellate Tribunal,

*—
(a) in an appeal for rectification of error or for any other purpose ; or*

(b) for restoration of an appeal or an application, shall be accompanied by such fees as may be prescribed.”

5 Learned Assistant Government Pleader has placed on record a Circular No. JC (HQ)-1/GST/2020/Appeal/ADM-8 dated 26 May 2020 issued by the office of Commissioner of State Tax, Maharashtra State, giving clarification in respect of non-constitution of Appellate Tribunal. The Circular refers to various representations received since the Appellate Tribunal is not constituted and thereafter refers to the procedure to be adopted. The Circular states as under:-

“4.3 Hence, as of now, the prescribed time limit to make application to appellate tribunal will be counted from the date on which President or the State President enters office. The appellate authority while passing order may mention in the preamble that appeal may be made to the appellate tribunal whenever it is constituted within three months from the President or the State President enters office. Accordingly, it is advised that the appellate authorities may dispose all pending appeals expeditiously without waiting

for the constitution of the appellate tribunal.

5. Recovery of dues after disposal of appeal.

After disposal of pending appeal u/s 107, if any demand is confirmed or appellate authority has created the additional demand then in such cases tax payer shall submit a declaration in Annexure-I before the jurisdictional tax officer stating that he is proposing to file an appeal u/s 112(1) against the appeal order. If such declaration is not submitted within fifteen days from the communication of the said order, then it will be presumed that tax payer is not willing to file appeal against the order and recovery proceedings may be initiated as per the provisions of law.

6. This Trade Circular is clarificatory in nature and cannot be made use of for interpretation of provisions of the law. Difficulty if any, in the implementation of this Circular may be brought to the notice of the office of the Commissioner of State Tax, Maharashtra.”

(emphasis supplied)

An identical Circular extending the period of limitation to file an appeal to the GST tribunal, with some modifications, has been issued by the Central Authorities.

6 Therefore, as clarified in the Circular dated 26 May 2020, the time to file appeals/application to the Appellate Tribunal would be counted from the date the President or the State President enters the office.

7 A large number of petitions are being filed in this Court on the ground that the GST Tribunal is not functional. Almost in all cases,

protective orders are being passed. It is stated in Clause 5 of the Circular as above that a declaration in Annexure-I has to be filed before the jurisdictional tax officer stating that an appeal is proposed to be filed. If such declaration is not filed, then it would be presumed that taxpayer is not willing to file an appeal and recovery proceedings would be initiated. Therefore, the sequitur is that if such a declaration is filed, recovery proceedings will not be initiated until the prescribed time limit as specified in Clause 4.3 of the Circular. Therefore, as of today there is no prejudice to the Petitioners or any similarly situated taxpayers on the ground of the non-availability of the State GST Tribunal.

8. Reverting to the present Petitions, the Petitioners have already filed such a declaration under Clause 4.3 of the Circular. If the Petitioners have not filed declarations, we permit the Petitioners to submit the same within 15 days from today. Since the Petitioners have raised various other challenges, such a declaration would be considered as without prejudice. As and when the contingency in the clause 4.3 of the Circular dated 26 May 2020 occurs, the petitioners can file an appeal or writ petition as the case may be. In light of this position, we do not deem it necessary to keep these Petitions pending on the file of this court.

9 Clarifying that the prescribed time limit has been extended as per Clause 4.3 and protective orders are incorporated in Clause 5 of the Circular, we dispose of the writ petitions.

10 Respondent State will consider two measures to reduce the inflow of writ petitions in this Court due to non-constitution of the GST Tribunal. First, to incorporate a stipulation contained in Clause 4.3 and Clause 5 of the Trade Circular dated 26 May 2020 in the order passed by the First Appellate Authority. This will put the tax payer to notice that the time limit for filing the appeal is extended and if a declaration is filed in terms of Annexure-I within the stipulated period, the protective measure would automatically come into force. Second, if recovery is being undertaken in terms of Clause 5 for failure to file a declaration within the time limit, by way of indulgence, to give 15 days period to make such a declaration. These two measures, according to us, will substantially reduce the litigation which has arisen due to the non-constitution of the GST Tribunal.

11 Learned AGP states that these suggestions will be placed before the State Commissioner of State Tax for taking necessary steps.

12 Keeping all contentions of the parties open, we dispose of the Writ Petitions as above.

(ABHAY AHUJA, J.)

(NITIN JAMDAR, J.)

Digitally
signed by
NIKITA
YOGESH
GADGIL
Date:
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