



Vartak

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

**WRIT PETITION (L.) NO. 7059 OF 2023**

Bhumika Highstreet Pvt. Ltd.

..Petitioner

Vs.

Assistant Commissioner, GST, Division

VI, Mumbai Central Commissionerate

..Respondent

Mr. Bharat Raichandani with Mr. Mayur Jain i/b. UBR Legal Advocates  
for Petitioner.

Mr. M. P. Sharma with Ms. Mamta Omle for Respondent.

**CORAM : G. S. KULKARNI &  
JITENDRA JAIN, JJ.**

**DATE : OCTOBER 03, 2023.**

**P.C.:**

1. By this petition filed under Article 226 of the Constitution of India,  
the petitioner has prayed for the following reliefs:-

“a. To issue Writ of Certiorari or any other appropriate Writ, Order or Direction quashing the Refund Rejection Order No. MC/DIV-VI/RFD-06/AC/BHUMIKA/77/2022-23 dated 03.02.2023 passed by the Respondent herein;

b To issue Writ of Certiorari or any other appropriate Writ, Order or Direction quashing the Show Cause Notice No. ZI2701230219637 dated 18.01.2023 issued by the Respondent herein.

c. To issue Writ of Mandamus or any other appropriate Writ, Order or Direction directing the Respondent to grant refund of INR 97,04,185/- claimed by the Petitioner under Section 54 of the Central Goods and Services Tax Act, 2017;

d. To issue order(s), direction(s), writ(s) or any other relief(s) as this Hon'ble Court deems fit and proper in the facts and circumstances of the case and in the interest of justice;

e. To award Costs of and incidental to this application be paid by the Respondents.”

2. The basic issue raised for our consideration is as to whether the Assistant Commissioner of CGST Division VI, Mumbai Central Commissionerate is correct in law, in passing the impugned order dated 03 February, 2023 rejecting the refund application as filed by the petitioner.

3. We note that the show cause notice was issued on 18 January, 2023 calling upon the petitioner to show cause as to why the petitioner's refund application be not rejected on the grounds as set out in the show cause notice. The petitioner was also called upon to appear before the said officer on 31 January, 2023. The petitioner had a serious quarrel on the grounds as set out in the show cause notice. It appears that the petitioner submitted its reply to the show cause notice on 02 February, 2023, and the impugned order was immediately passed on 03 February, 2023. It does not appear that a fresh notice was issued to the petitioner to appear for hearing.

4. The grievance of the petitioner is that none of the contentions as urged by the petitioner in its reply filed to the show cause notice are addressed in passing the impugned order. In such context, our attention is drawn to paragraph 5 of the impugned order, contents of which according to Mr. Raichandani, can hardly be called to be any reasons to reject, any of

the contentions as urged by the petitioner, as also without considering the documents which were placed on record of the Assistant Commissioner.

5. Learned counsel for the revenue, considering the contentions as urged on behalf of the petitioner, fairly accepting that the impugned order fails to consider materials, makes a statement that the respondents be permitted to withdraw the impugned order with liberty to issue a fresh show cause notice, on the refund application, to be adjudicated in accordance with law, after considering the reply of the petitioner as also after granting an opportunity of hearing to the petitioner.

6. In view of such stand as taken on behalf of the respondents, in our opinion, further adjudication of the petition on the issues as urged in the petition would not arise. We accordingly dispose of the present petition by the following order:-

### **ORDER**

- i. The impugned order dated 03 February, 2023 stands withdrawn as per statement as made on behalf of the respondents and accordingly stands set aside as withdrawn.
- ii. The respondents are directed to issue a fresh show cause notice to the petitioner within a period of two weeks from today.

- iii. Reply to the show cause notice be placed on record of the Designated Officer within two weeks thereafter.
- iv. An appropriate date to hear the petitioner on the show cause notice be communicated to the petitioner, and the petitioner be heard on all materials/documents.
- v. A reasoned order be passed by the Designated Officer within a period of two weeks from the date of hearing.
- vi. All contentions of the parties are expressly kept open.
- vii. The petition is disposed of in the aforesaid terms. No costs.

[JITENDRA JAIN, J.]

[G. S. KULKARNI, J.]