

2023:BHC-OS:12609-DB

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (LODG) NO. 28880 OF 2023

M/s.Yash Alloys India through Yashpal B. Picholiya ..Petitioner
v/s.
Union of India & Ors. ..Respondents

and

WRIT PETITION (LODG) NO. 29186 OF 2023

Yash Metal Impex Pvt. Ltd. through Yashpal B. Picholiya ..Petitioner
v/s.
Union of India & Ors. ..Respondents

Mr. Kevic Setalvad, Senior Advocate with Mr. Jehan Lalkaka i/b. Rahul Kadam, for the Petitioner.

Mr. Jitendra B. Mishra with Mr. Styaprakash Sharma, for Respondent Nos.1 and 2.

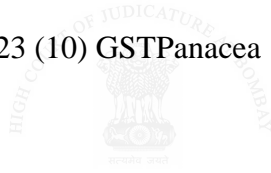
Ms. Jyoti Chavan, Addl. Govt. Pleader, for the State.

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

DATE : OCTOBER 23, 2023.

P.C.:

1. We have heard Mr. Setalvad, learned Senior Counsel for the petitioner on both these petitions, Mr. Mishra, learned Counsel for respondent Nos.1 and 2 and Ms. Chavan, learned Additional Government Pleader, for the State - respondent Nos.3 and 4.
2. Although the petitioners in these petitions are two different entities, the cause of action being pursued and the prayers as made, are common.



Illustratively, we note the prayers as made in the Writ Petition no.29186 of 2023 which read thus:-

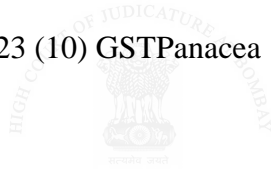
A) That this Hon'ble Court under Article 226 of the Constitution of India, 1950 be pleased to issue a writ of Mandamus or any other appropriate Writ, Order, Direction to respondent no. 3 Authority that is Assistant Commissioner of State Tax (Investigation-A) Mumbai under MGST Act, 2017 that the proceeding initiated pursuant to summons and panchanama dated 04.10.2023 against the petitioner and the investigation, audit may be stayed/stopped by the State GST with further direction that not to take any coercive steps, since the proceeding is already going under CGST Act, 2017.

B) That this Hon'ble Court under Article 226 of the Constitution of India, 1950 may be pleased to issue a Writ of Mandamus or any appropriate order or direction and thereby direct the respondent no. 3 Authority that the present petitioner may not be arrested or no coercive action to be taken against the present petitioner in view of the summons under Section 70 of the MGST Act and so also the investigation going under the MGST Act against the present petitioner.

C) Interim/AD-interim relief in terms of prayer clause (A) and (B) be awarded in favour of the petitioner.

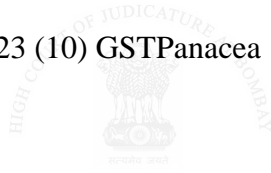
D) That the costs of this Writ petition be awarded in favour of petitioner against respondents, by this Hon'ble Court.”

3. The primary grievance as argued by Mr. Setalvad is to the effect that respondent Nos.3 and 4 have undertaken investigation, on the subject matter, which is already under the investigation under the Central Goods and Services Tax Act, 2017 (for short '**CGST Act**'). It is his submission that in such a situation, the provisions of Section 6(2)(b) of the Maharashtra Goods and Services Tax Act, 2017 (for short '**MGST Act**') are clearly applicable, which provides that where a proper officer under the



Central Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under the MGST Act on the same subject matter.

4. To consider such contention as raised on behalf of the petitioners, with the assistance of Mr. Setalvad, we have perused the paper book of both these petitions. We find that under the CGST Act proceedings are initiated against the petitioner, however, it clearly appears that the subject matter of such investigation is in respect of the period from 1 July 2017 till 31 March 2021. As informed by Mr. Mishra, learned Counsel for respondent Nos. 1 and 2, such investigation is in regard to the fraudulent ITC. Insofar as the investigation being resorted under the MGST Act by respondent Nos.3 and 4 is concerned, it is in respect of the period from 1 April 2021 to 4 October 2023. This has been clarified by the Assistant Commissioner of State Tax (INV-02), Investigation-A, Mumbai, vide letter dated 7 October 2023 as addressed to the petitioners. It appears that although the petitioners were asked to furnish documents for the period from 1 July 2017 till 31 March 2021, the investigation, as informed to the petitioners, under the MGST Act would be for the period from 1 April 2021 to 4 October 2023. In such context, the petitioners themselves have taken a fair stand that the petitioners by requesting the State Authorities to investigate from 1 April 2021 till the date of such



letter to avoid duplication of the proceedings. The contents of the said letter read thus:-

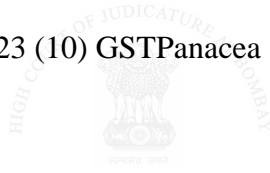
“ We M/s. Yash Metal Impex Pvt. Ltd. having GST No.27AAAACY4362Q1ZO registered. We would like to inform you that we have been already under investigation from CGST Investigation Department, Mumbai from 01.07.2017 to 31.03.2021 which documents has been submitted as per supporting letter herewith attached, the letter copy for your goodself reference. So please we would like to humble request you to please investigate from 01.04.2021 to till today to avoid duplication of proceeding.”

(emphasis supplied)

5. At this stage, Ms. Chavan, learned Additional Government Pleader has stated that the scope of investigation as has been undertaken under the MGST Act is in respect of illegal refunds as sought by the petitioners.

6. Thus, considering the documents on record and the contentions as raised, we are unable to accept Mr.Setalvad’s contention that the provisions of Section 6(2)(b) of the MGST Act, in any manner, are attracted in the facts of the present case.

7. In so far as Mr. Setalvad’s contention that under the MGST Act invoking the provisions of Section 69, there is a likelihood of arrest of the proprietor of the petitioner under Section 69 of the MGST Act. In our opinion, in this regard, the petitioners are not remediless as the petitioners can invoke provisions of Code of Criminal Procedure, as in the present proceedings no criminal cause of action can be subject matter of



adjudication.

8. In so far as the attachment of the property of the petitioners is concerned, which is by a letter dated 17 October 2023, we may observe that the petitioners have a remedy of invoking Rule 159(5) of the MGST Rules, as and when the petitioners have a cause of action to raise such contentions against the attachment. Thus, such remedy being available to the petitioners, it would be premature for the petitioners to raise any such contention in the present proceedings. We accordingly, keep open all contentions of the parties on such issue.

9. The petitions are accordingly disposed of in terms of the above observations.

10. We clarify that all contentions of the parties under the CGST Act and the MGST Act, are expressly kept open.

[JITENDRA JAIN, J.]

[G. S. KULKARNI, J.]