



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

WRIT PETITION (L) NO.1799 OF 2024

Openwave India Private Ltd
A Private Company, incorporated
Under the Companies Act, 1956
Having its office at
Office No.201/202,
Supreme Headquarters, Baner
Baner, Mumbai-Bangalore Highway
Pune-411 045

... Petitioner

Versus

1. Union of India,
Represented by the Secretary,
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi – 110 001
2. State of Maharashtra,
Ministry of Finance,
Government of Maharashtra
Madam Kama Road,
Hutatma Rajguru Square,
Nariman Point,
Mumbai – 400 032
3. Deputy Commissioner of
State Tax, Cabin No. 331
Third Floor, GST Bhavan,
Airport Road, Yerwada,
Pune – 411 006
4. Joint Commissioner of
State Tax, Appeals 1,
Vikrikar Bhavan, 3rd Floor,
Yerwada, Pune – 411 006

... Respondents

Mr.Anil Bezwada a/w Mr.Shrey Bhardwaj for the Petitioner
Mr.L.T.Satelkar, A.G.P. for the State

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.
DATED: 18 January, 2024

ORAL JUDGMENT: (PER FIRDOSH P. POONIWALLA, J.)

1. Rule. Rule made returnable forthwith.
2. Heard finally by consent of the parties.
3. This Petition has been filed under Article 226 of the Constitution of India for the following reliefs:

“a) This Hon’ble Court be pleased to issue a writ of mandamus or a writ in the nature of certiorari or any other writ, order or direction under Article 226 of the Constitution of India directing the Respondent No.4 i.e. Joint Commissioner of State Tax Appeals to provide a fair and reasonable opportunity of personal hearing in appeal filed against Order-in-Original No.PUN-VAT-E-802/B-377, B-338, B-339, B-340 dated 31.12.2018, appeal filed against Order-in-Original No.DC-E-802/B-1031 AND DCE-802-1032 dated 18.12.2019, appeal filed against Order-in-Original No.ZD270421019620U DCST/E-802/GST-RFD06 and ZD270421019641Q DCST/E-802/GST-RFD06 dated 29.04.2022, appeal filed against Order-in-Original No.ZD270521006281X DCST/E-802/GST-RFD06 dated 10.05.2021.

b) This Hon’ble Court be pleased to issue a writ of mandamus or a writ in the nature of certiorari or any other writ, order or direction under Article 226 of the Constitution of India directing the Respondent no.4 to expeditiously pass a reasoned order the appeals filed against Order-in-Original No.PUN-VAT-E-802/B-337, B-338, B-339, B-340 dated 31.12.2018, appeal filed against Order-in-Original No.DC-E-802/B-1031 AND DCE-802-1032 dated 18.12.2019, appeal filed against Order-in-Original No.ZD270421019620U DCST/E-802/GST-RFD06 and ZD270421019641Q DCST/E-802/GST-RFD06 dated 29.04.2022, appeal filed against Order-in-Original

*No.ZD270521006281X DCST/E-802/GST-RFD06 dated
10.05.2021.”*

4. The Petitioner had entered into a Service Agreement dated 1st April 2020 with Openwave Mobility Inc. For the period prior to April 2020, the Petitioner was providing services to Openwave Mobility Inc. under an Agreement dated 4th June 2012. In terms of the above Agreements, the Petitioner was providing technical consultancy services and software development services to Openwave Mobility Inc.

5. It is the case of the Petitioner that, as per Section 2(6) of the Integrated Goods and Service Tax Act, 2017 (“IGST Act”), the transaction which was the subject matter of the said Agreements qualified as a transaction for export of services. Further, it is also the case of the Petitioner that, as per Section 16 of the IGST Act, export of goods or services or both is terms as “Zero rated supply”. Accordingly, as per the provisions of Section 54 of the Central Goods and Services Tax Act (“CGST Act”), the Petitioner filed applications for refund of unutilised IGST credit on such export of services without payment of tax and refund of tax paid on such export of goods in case of export of services with payment of tax.

6. Out of the above refund claims, the refund claimed for the periods July 2017, September 2017 to March 2018 and April 2020 to December 2021 were sanctioned by Deputy Commissioner of Sales Tax i.e. Respondent No.3. For the remaining refund claims, show cause notices were issued rejecting the refund claims.

7. The Petitioner filed a detailed reply to each show cause notice. It is the case of the Petitioner that, without appreciating the submissions made by the Petitioner, Respondent No.3 passed Orders rejecting the refund.

8. The Petitioner challenged the said Orders by filing Appeals before the Appellate Authority i.e. the Joint Commissioner of Sales Tax (Respondent No.4). The first Appeal for refund pertaining to August 2017 was filed on 6th February 2019 before Respondent No.4. Thereafter, Appeals were filed in respect of rejection of subsequent refund claims.

9. Since there was no communication from Respondent No.4 regarding the adjudication of the Appeals, the Petitioner, by a letter dated 14th June 2019, sought a personal hearing and also inquired about the status of the Appeals. Thereafter, the Petitioner filed a letter on 4th July 2019, seeking a personal hearing. In the light of repeated reminders by the Petitioner, the Petitioner was called upon to attend personal hearings through various personal hearing notices. The Petitioner attended the hearings on 3rd September 2021, 14th September 2021 and 27th September 2021. However, it is the case of the Petitioner that, in all the above instances, a record of hearing was not provided to the Petitioner, and, further, the hearing was conducted by an assistant of Respondent No.4 and not by Respondent No.4 himself.

10. Thereafter, by a letter dated 25th September 2021, the Petitioner filed additional submissions in respect of all refund periods in the back drop of a Circular issued by the Department.

11. The Petitioner did not receive any order post-hearing. Hence, by a letter dated 16th February 2022, the Petitioner enquired about the status of the matter and as to whether any orders had been passed in the Appeals.

12. It is the case of the Petitioner that, in the following Appeals, the Petitioner has not been given any personal hearing by Respondent No.4 nor has any order been passed therein:

(i) Appeal filed against Order-in-Original No.PUN-VAT-E-802/B-377, B-338, B-339, B-340 dated 31.12.2018;

(ii) Appeal filed against Order-in-Original No.DC-E-802/B-1031 AND DCE-802-1032 dated 18.12.2019;

(iii) Appeal filed against Order-in-Original No.ZD270421019620U DCST/E-802/GST-RFD06 and ZD270421019641Q DCST/E-802/GST-RFD06 dated 29.04.2022;

(iv) Appeal filed against Order-in-Original No.ZD270521006281X DCST/E-802/GST-RFD06 dated 10.05.2021.

The above Appeals are hereinafter collectively referred to as “the said Appeals”.

13. In the aforesaid circumstances, the Petitioner has filed the present Petition seeking a personal hearing from Respondent No.4 in the said Appeals and also seeking that Respondent No.4 should pass reasoned Orders in the said Appeals in a time bound manner.

14. We have heard the learned counsel for the parties and perused the documents on record.

15. In our view, the principles of natural justice would require that Respondent No.4, which is the Appellate Authority which has to decide the said Appeals and pass orders therein, must give a personal hearing to the Petitioner in the said Appeals. In these circumstances, since the Petitioner has

not been given a personal hearing in the said Appeals by Respondent No.4, it is necessary that Respondent No.4 should be directed to give a personal hearing to the Petitioner before passing any Order in the said Appeals.

16. Further, even if a statute does not prescribe the time within which the Order is required to be passed by the Appellate Authority, such an Order must be passed within a reasonable period of time. In the present case, the said Appeals have been filed by the Petitioner in 2019, 2020 and 2021. Even considering the disruption caused by the COVID-19 Pandemic, Respondent No.4 ought to have passed Orders in the said Appeals by now. Failure of the Respondent No.4 to pass orders in the said Appeals within a reasonable period of time would cause prejudice to the Petitioner. Further, it would also affect the right of the Petitioner to carry on business, which is guaranteed to it under Article 19(1)(g) of the Constitution of India. For these reasons, as sought by the Petitioner, Respondent No.4 will have to be directed to decide the said Appeals within a fixed period of time.

17. In the aforesaid circumstances, and for the aforesaid reasons, the following Orders are passed:

- a. Respondent No.4 is ordered and directed to pass orders in the said Appeals within a period of six weeks from the date this Order is intimated to Respondent No.4 after giving the Petitioner an opportunity of personal hearing in each of the said Appeals.
- b. Rule is made absolute in the aforesaid terms.
- c. In the facts and circumstances of the case, there will be no order as to costs.

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI, J.)