

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3298 OF 2021

M/s. Globus Petroadditions Pvt. Ltd.]	
O/at: Plot No. C-11, MIDC Tembhurni]	
Solapur, Maharashtra – 413208]	...Petitioner
Vs.		
1. The Union of India]	
2. The Commissioner of Central Tax]	
(Appeals-II), Pune,]	
F-Wing, 2 nd Floor,]	
GST Bhavan,]	
41/A Sassoon Bhavan]	
Pune – 411 001.]	
3. The Assistant Commissioner, CGST,]	
Division – Solapur, Solapur]	
Plot No. 3, Opp. Kinara Hotel,]	
Hotgi Road, Solapur – 413 003.]	...Respondents

Mr. Anirudha Valsanskar i/by Mr. Samir A. Kumbhakoni - Advocate
for the Petitioner

Mr. Jitendra B. Mishra a/w Mr. D. B. Deshmukh - Advocate for the
Respondents

**CORAM : R. D. DHANUKA AND
 S. M. MODAK, JJ.**

**DATE : 01st FEBRUARY, 2022
 (Through Video Conference)**

ORAL JUDGMENT (PER – R. .D. DHANUKA, J.) :-

. Rule. Mr. Jitendra Mishra, the learned counsel for the

Respondents waives service. By consent of parties, the petition is heard finally.

2. By this petition filed under Article 226 of the Constitution of India, the Petitioner has prayed for writ of certiorari for quashing and setting aside the Order dated 12/02/2021 passed by the Respondent No. 3 in refund claim described in prayer clause (a) of the petition and prays for allowing the said claim in its entirety.

3. The Petitioner had applied for refund of GST on 02/02/2019 to the Respondent No. 3. On 02/05/2019, the refund application in respect of Q2 was rejected. On 01/05/2019, the refund application in respect of Q3 was rejected. Being aggrieved by Order rejecting those two applications, the Petitioner filed an appeal before the Respondent No. 2- Additional Commissioner on 02/08/2019. On 14/10/2019, the Respondent No. 2 was pleased to set aside the orders passed by the Respondent No. 3 and allowed the appeal.

4. On 04/11/2019, the Petitioner filed the refund claim before the Respondent No. 3. On 14/11/2019, the Respondent No. 3 rejected the refund claim for Q2 and Q3. On 12/03/2020, the Petitioner filed appeal before the Additional Commissioner, Pune against the said Order dated 14/11/2019.

5. On 29/10/2020, the Respondent No. 2 was pleased to set aside the Order dated 14/11/2019 rejecting the claim for Q2 and Q3 and directed to pass speaking Order. On 15/02/2020, the Petitioner filed a refund claim pursuant to the Order of the Additional Commissioner. On 12/02/2021, the Respondent No. 3 again rejected the claim for the periods of Q2 and Q3 on the ground that the Order-in-Appeal dated 14/10/2019 of the Commissioner (Appeals-II), Central Tax, Pune-II on the strength on which instant refund claim had been initially filed, has been reviewed by the Commissioner Central Tax, Pune – II Commissionerate, Pune vide his Review Order dated 13/04/2020, directing therein to file an appeal against the said Order dated 14/10/2019.

6. It is further held that upon further examination in the matter it has been held that in respect of refund claim filed under 'Any Other' category instead of category under which Nil refund claim was filed, the condition (b) under Para 3 of the Circular No. 110/29/2019-GST dated 03/10/2019, that of refund application for subsequent period did not appear to fulfilled. The applicant were not eligible to file refund under 'Any Other' category for the period July to September 2018 as they had filed the refund claim for subsequent period i.e.

October to December 2018.

7. The Assistant Commissioner further held that the Appellate Authority was found to have erred in rejecting Order No. 68/Refund/Rejection/68/19-20 dated 02/05/2019 and Order No. 140/Refund/2019-20 dated 01/05/2019 passed by the Assistant Commissioner, Division Solapur, Central Tax, Pune II allowing Assessee's appeal with the direction contained in Para 9.2 and 10.1 of the Order. The Order dated 14/10/2019 passed by the Additional Commissioner (Appeal-II), Central Tax, Pune was held as not legal, proper and needed to be set aside.

8. It is further held that the said Order in Appeal dated 14/10/2019 of the Commissioner (Appeals-II), Central Tax, Pune-II, being held erroneous is to be appealed against before the GST Tribunal as soon as it is constituted with request to set aside the said Order in Appeal dated 14/10/2019 being not legal and proper and to stay the operation of the said Order in appeal dated 14/10/2019 and to pass any other order as deemed fit in the facts and circumstance of the case. The learned Assistant Commissioner accordingly held that refund claim could not be decided for the said periods on account of inverted duty structure when appeal is to be

filed on the issue before the GST Tribunal as soon as it is constituted. Since the issue has not attained finality, the refund claim is filed prematurely.

9. When this matter appeared before this Court on 14/12/2021, the Division bench comprising of Coram : Dipankar Datta, Chief Justice and M. S. Karnik, Judge observed that the Assistant Commissioner, CGST, Solapur Division had refused to decide the matter on remand being directed by the Additional Commissioner (Appeals-II) , Central Tax, Pune because of the perception of the Assistant Commissioner that the Commissioner (Appeals-II) passed an erroneous order. This Court also observed that apart from other consequences to which the Assistant Commissioner may expose himself in terms and conditions of his service, this Court does not see any *prima-facie* reason to hold that the Assistant Commissioner has acted in accordance with law.

10. Mr. Jitendra Mishra, the learned counsel for the Respondents made a faint attempt to justify the impugned Order passed by the Assistant Commissioner on the ground that the department has taken a decision to challenge the said Order passed by the Commissioner (Appeals-II) dated 14/10/2019 before GST Tribunal

which has not been constituted till date.

11. A perusal of the Order passed by the Assistant Commissioner indicates that he has refused to comply with the Order passed by the Commissioner (Appeals-II) by recording reasons as to why the said Order cannot be complied with as if the Assistant Commissioner was sitting in appeal against the order of the Commissioner (Appeals). In our view the Assistant Commissioner could not have refused to comply with the Order passed by the Commissioner (Appeals-II) on the ground that a decision was taken to impugn the said Order dated 14/10/2019 before GST Tribunal or on other ground recorded by the Assistant Commissioner about his dissent not to follow the said Order passed by his Superior Authority i.e. Commissioner (Appeals-II).

12. We accordingly pass the following Order:-

(i) The impugned Order dated 12/02/2021 passed by the Assistant Commissioner CGST Solapur Division is quashed and set aside.

(ii) The Assistant Commissioner is directed to comply with the Orders in Appeal dated 14/10/2019 and 29/10/2020 passed by the Commissioner (Appeals-II) Central Tax Pune, within four weeks from the date of communication of this order and to pass an appropriate order in accordance with law without being influenced

by the observations made and the conclusion drawn in the said Order dated 14/10/2019.

(iii) The learned Assistant Commissioner shall pass an order after granting opportunity of being heard to the Petitioner. The Order that would be passed by the Assistant Commissioner shall be communicated to the Petitioner within one week from the date of passing of such order. We hope that the Assistant Commissioner shall not refuse to comply with the Order passed by the Assistant Commissioner (Appeals-II) on 14/10/2019 on the ground that the decision to impugn the said Order dated 14/10/2019 before the GST Tribunal is taken by the higher Authority.

13. The Writ petition is allowed in aforesaid terms.
14. Rule is made absolute. No order as to costs.
15. Parties to act on the authenticated copy of this Order.

[S. M. MODAK, J.]

[R. D. DHANUKA, J.]