



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3674 OF 2025

Digitally signed by
TRUSHA TUSHAR
MOHITE
Date: 2025.04.04
11:28:13 +0530

Hindustan Coca-Cola Beverages
Pvt. Ltd.

.. Petitioner

Versus

Union of India & Ors.

.. Respondents

Mr. S. Ganesh (Senior Adv.), Adv. Ajay Aggarwal, Adv. Jitendra Motwani, Adv. Rinkey Jasnja, Adv. Diva Devarsha i/b Economic Laws Practice for Petitioner.

Adv. Maya Mazumdar a/w Adv. Suman Kumar Das for Respondent No. 3.

CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.

DATE: APRIL 1st, 2025

P. C.

1. The above Writ Petition is filed *inter alia* challenging the impugned Order-in-Original dated 23rd January, 2025 read with the impugned corrigendum dated 30th January, 2025. Preceding this order, there is also a Show Cause Notice dated 4th August, 2024 and the same is also challenged on the ground of being time barred and beyond the mandate of Section 74 of the CGST Act.

2. Additionally, the Petitioner has also challenged the constitutional validity of Section 15(3) (a) of the CGST Act, on the basis that if the revenue's interpretation of the said Section is accepted than the same would be *ultra vires* Section 15 (1) of the very same Act.

3. It appears that the Show Cause Notice dated 04.08.2024 impugned in the present Writ Petition was initially challenged by the Petitioner by filing the Writ Petition (L) No. 37417 of 2024 (finally Numbered as Writ Petition No. 659 of 2025). That Writ Petition had come up on board on 20th January, 2025 and which was adjourned to 27th January, 2025 due to paucity of time. At that time, counsels on both sides were present. Despite the matter being adjourned for a week Respondent No. 3 passed the impugned order on 23rd January, 2025. In these circumstances, the Petitioner's herein withdrew Writ Petition No. 659 of 2025 with liberty to file a fresh Petition not only impugning the order dated 23rd January 2025, but also the Show Cause Notice of 4th August, 2024. It is in these circumstances that the present Writ Petition is filed.

4. The fundamental point raised in the present Writ Petition is that the Revenue have completely misconstrued the provisions of Section 15(3)(a) of the CGST Act. According to the Petitioner, the way Section 15(3)(a) is

being interrupted by the Revenue, not only runs counter to its express language, but if accepted, would run counter to the provisions of Section 15(1), which basically stipulates that the value of supply of goods or services or both shall be at the transaction value.

5. According to the Petitioner, by the impugned order, the Revenue Authorities came to the erroneous conclusion that the Petitioner's distributor first extended the discount to the retailers and then the Petitioner, in turn, has given sales discount to the distributor in subsequent supplies on the basis of the discount passed on by him, and which is duly recorded in the Distributor Management System of the Petitioner.

6. According to the Revenue Authorities, the procedure adopted for offering a discount on the basis of past transactions is to circumvent, the provisions of the Act GST, thereby under valuing the current supplies and evading the payment of GST.

7. *Prima facie*, we do not find this reasoning to be correct. Be that as it may, the learned Advocate appearing on behalf of the Respondent No.3 sought time to file an Affidavit-in-Reply to the above Writ Petition. Acceding to her request, we direct that the Affidavit-in-Reply shall be filed on or before

15th April, 2025 and a copy of the same shall be served on the Advocates for the Petitioners. If the Petitioner wants to file any Affidavit-in-Rejoinder, they may do so on or before 22nd April, 2025 and serve a copy of the same on the Advocate for Respondent No. 3. We now place the above matter on 29th April, 2025 under the caption for admission.

8. As far as the interim relief is concerned, we find that the strong prima facie case is made out for staying the effect and implementation of the impugned order. We say this because as recorded earlier, we do not find at least *prima facie* that the reasoning employed by the 3rd Respondent is correct. In these circumstances, there will be ad-interim relief in terms of prayer clause (f) until further orders, which reads thus :-

f) Pending hearing and disposal of the instant Writ Petition, restrain the Respondents, their agents, their servants and anyone acting on their behalf or at their behest by an Order of Stay / Injunction / interim relief to take any action against the Petitioner, whether coercive or otherwise, whether directly or indirectly, pursuant to the impugned proceedings that is the impugned Show Cause Notice dated 04.08.2024 and the impugned Order-in-Original dated 23.01.2025 read with impugned Corrigendum dated 30.01.2025, during the pendency of the instant Writ Petition; and

9. Stand over to 29th April, 2025 for admission. It is made clear to the parties that we may dispose of the Writ Petition at that stage itself, time permitting.

10. This order will be digitally signed by the Private Secretary/
Personal Assistant of this Court. All concerned will act on production by fax
or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.]

[B. P. COLABAWALLA, J.]