



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 1345 of 2021

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BIREN VAISHNAV
and
HONOURABLE MR. JUSTICE DEVAN M. DESAI

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

M/S VODAFONE MOBILE SERVICES LIMITED

Versus

UNION OF INDIA

Appearance:

MR BHARAT RAICHANDANI, ADVOCATE assisted by MR ANSHUL JAIN & MR ADITYA R PARIKH(8769) for the Petitioner(s) No. 1

MR RAJ TANNA, AGP for the Respondent(s) No. 2

NOTICE SERVED for the Respondent(s) No. 4

PRIYANK P LODHA(7852) for the Respondent(s) No. 1,2,3

CORAM: HONOURABLE MR. JUSTICE BIREN VAISHNAV

and

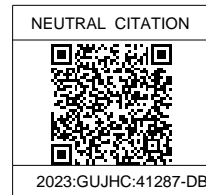
HONOURABLE MR. JUSTICE DEVAN M. DESAI

Date : 10/08/2023

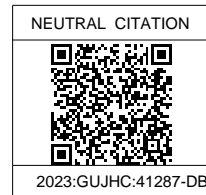
ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE BIREN VAISHNAV)

1. Draft amendment is granted. It is to be carried out.



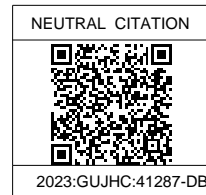
2. **Rule** returnable forthwith. Mr. Priyank Lodha, learned Senior Standing Counsel waives service of notice of Rule for and on behalf of the respondent No.1, while Mr. Raj Tanna, learned AGP waives service of notice of Rule for and on behalf of the respondent Nos.2 to 4.
3. With consent of the learned advocates for the respective parties, the matter is taken up for final hearing today as the issue is now settled by several decisions of the Coordinate Benches of several High Courts.
4. Heard Mr. Bharat Raichandani, learned counsel assisted by Mr. Aditya Parikh, learned advocate for the petitioner, Mr. Priyank Lodha, learned Senior Standing Counsel for and on behalf of the respondent No.1 and Mr. Raj Tanna, learned Assistant Government Pleader for and on behalf of the respondent Nos.2 to 4.
5. Challenge in this petition is to the legality and validity of the order No.13990 dated 27.2.2020 passed by the



respondent authorities.

6. The facts in brief would indicate that the petitioner who was engaged in providing telecommunication services across India was merged with the Idea Cellular Limited vide order dated 30.8.2018 passed by the National Company Law Tribunal. With the introduction of the Goods and Services Tax, the petitioner migrated to GST regime and was registered under the provisions of the CGST / GGST Act, 2017. On having so migrated with effect from August, 2017, taxes were paid in respective States wherever liability was supposed to be discharged and compliances including filing of GSTR-3B & GSTR-1 were streamlined. There were instances where, excess payment of tax was made in the State of Gujarat. The petitioner applied for refund of excess tax after having made good the short payment of tax through the annual returns. Applications for refund were made.

7. By the impugned order, as is evident from the text of the



order itself the order rejecting the claim for refund under Section 54(5) of the CGST Act, 2017 is without any reasons.

8. Mr. Bharat Raichandani, learned counsel for the petitioner would rely on orders passed by the High Court of Madhya Pradesh, the High Court of Calcutta and the High Court of Telangana in the case of the petitioner itself. Reading the orders passed by several High Courts, it is clear that the Court shall quash the orders under challenge and observed that if the petitioner makes a fresh application for refund of excess tax paid by the petitioner, the same shall be dealt with, in accordance with law, afresh.
9. Mr. Raj Tanna, learned Assistant Government Pleader for the respondent - State would contend that rather than entertaining the present petition, the petitioner ought to be relegated to an alternative remedy of filing an appeal under Section 107 of the CGST Act.
10. Considering the various orders passed by this Court in the



case of the petitioner itself, the petitioner is directed to make a fresh application for refund in terms of Circular No.125/44/2019-GST dated 18.11.2019 issued by the Government of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs, GST Policy Wing, within a period of three weeks from today. On such application being made, the authorities shall dispose of the same on merits in accordance with law as early as possible, preferably within a period of *four weeks* thereafter.

11. In view of above, the impugned order dated 27.2.2020 is hereby quashed and set aside. The petition stands allowed, accordingly. Rule is made absolute to the aforesaid extent. Direct Service is permitted. No order as to costs.

(BIREN VAISHNAV, J)

(D. M. DESAI, J)

VATSAL