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

WRIT PETITION (L) NO. 38052 OF 2025

IBM India Pvt. Ltd.
32nd Floor, Unit No. 3201,
One Lodha Place, Senapati Bapat Marg,
Lower Parel, Mumbai,
Maharashtra-400 013. … Petitioner

Versus

1. Union of India
Through the Secretary,
Department of Revenue,
Ministry of Finance,
North Block, New Delhi-110 001.

2. State of Maharashtra
Through the Secretary,
Finance Department, Mantralaya,
Madam Cama Road, Nariman Point,
Mumbai-400 032.

3. Deputy Commissioner of State Tax
(Kalbadevi_501), Cabin No. H-1,
5th Floor, New Building,
GST Bhavan, Mazgaon,
Mumbai-400 010. ... Respondents

Mr. Mahir Chablani a/w. Mr. Prathamesh Gargate and Ms. Dimpal Jangid i/b Mr. Mahir Chablani for the Petitioner.

Smt. Anjali Helekar, Govt. Pleader a/w. Mr. Himanshu Takke, AGP for Respondent Nos.2 & 3-State.

CORAM : M. S. KARNIK AND SANDESH D. PATIL, JJ.

DATED : 28th AUGUST, 2026.

JUDGMENT (PER M. S. KARNIK, J.)

1. Heard learned counsel for the parties.

2. The challenge in this petition under Article 226 of the Constitution of India is to the impugned order dated 26th August, 2025 rejecting the application for refund of pre-deposit paid under Form GST RFD-01. Thus, the issue that arises in the present writ petition concerns the denial of refund of the pre-deposit despite partial allowance of the petitioner's appeal.

3. The Adjudicating Authority by the Order dated 21st February, 2024 assessed the tax that is required by the petitioner to be paid to the tune of Rs.48,96,54,949/-. The order of the Adjudicating Authority was challenged before the First Appellate Authority (Joint Commissioner of State Tax (Appeal-1), Mumbai) under Section 112 of the Maharashtra Goods and Services Tax Act, 2017 ('MGST Act' for short). The First Appellate Authority partly allowed the appeal on 17th March, 2025 and dropped 64% of the demand as held by the Adjudicating Authority.

4. The petitioner M/s. IBM India Pvt. Ltd. therefore filed a refund application under Form GST RFD-01 on 9th July, 2025 seeking refund of Rs.3,14,58,422/- towards the pre-deposit paid at the time of filing First Appeal under Section 107 of the MGST Act, 2017, to the extent of demand dropped vide Order in Appeal dated 17th March, 2025. In pursuance of the

said refund application, a show cause notice dated 22nd July, 2025 was issued to the petitioner proposing rejection of the refund claim on the ground that the said appellate proceedings have not attained finality and the petitioner has declared its intention to challenge the same before the GST Appellate Tribunal under Section 112 of the MGST Act, 2017.

5. In response to the said show cause notice, the petitioner has filed a reply dated 5th August, 2025 along with supporting documents. The petitioner contended that the refund claim pertains only to the portion of demand dropped and not the portion under dispute. The petitioner relied upon the Circular dated 16th September, 2014 as well as the decisions in **Brij Mohan Mangla Vs. Union of India,** 2023 (3) TMI 327 Delhi High Court, **M/s. G. S. Industries Vs. Commissioner of CGST, Delhi West & Anr.** 2023 (4) TMI 404 Delhi High Court as well as **M/s. Bla Infrastructure Pvt. Ltd. Vs. The State of Jharkhand, Commissioner, State Goods & Services Tax & Ors.** 2025 (2) TMI 352 Jharkhand High Court.

6. The application for refund was rejected by the Deputy Commissioner of State Tax for the following reasons, the relevant portion which reproduced reads thus:-

> *"4. I have gone through the contentions putforth by the taxpayer in support of the refund claim. I have also gone through the submissions, documents and records pertaining to the present refund application. On verification of the same, it is found that the Order In Appeal No. ZD2703250747065 dated 17.03.2025 has*

partially modified the adjudication order and dropped the demand of Rs. 31.45 crores approx. and confirmed the demand of Rs. 17.50 crores, against which the taxpayer intends to file an appeal further.

5. The taxpayer, vide its email dated 03.07.2025 has categorically stated their intent to challenge the Order-in-Appeal before the GST Appellate Tribunal and has accordingly paid a pre-deposit under Section 112(8) of the MGST Act, 2017, on the disputed portion. Further Circular No. 125/44/2019-GST dated 18.11.2019 stipulates that refund of pre-deposit under Section 107(6) shall be allowed only when the appellate proceedings attain finality, i.e., no further appeal is pending or contemplated. Therefore, the Circular No. 984/08/2014-CX dated 16.09.2014 issued by Ministry of Finance, Department of Revenue (Central Board of Excise & Customs) is of no help to the taxpayer.

6. The taxpayer has placed reliance on the decisions of Brij Mohan Mangla vs. Union of India (W.P. (C) No. 14234 of 2022] and M/s. G.S. Industries vs. Commr. of CGST [W. P. (C) 14719/2022], wherein the issue before the Hon'ble High Court was non-implementation of the appellate order and withholding of refund solely on the ground that the Department contemplated filing an appeal against the said order. The Hon'ble High Court, in that context, held that refund cannot be withheld merely on account of the Department's intention to prefer an appeal.

7. The taxpayer has also relied upon the judgment in case of M/s. Bla Infrastructure Private Limited vs. The State of Jharkhand, Commissioner, & Ors., wherein the Hon'ble High Court observed that once refund is in the nature of statutory pre-deposit, the same cannot be indefinitely retained either by the State or the Centre, and that such pre-deposit refund is a vested right accruing to the assessee upon the appeal being decided in its favour.

8. It is respectfully submitted that both the above decisions are *clearly distinguishable on facts and do not advance the case of the taxpayer. In both cases relied upon by the taxpayer, the appellate proceedings had attained finality, and no further appeal was pending or contemplated by the Department. However, in the present case, the taxpayer itself has expressed intention to challenge the Order-in-Appeal before the Hon'ble GST Appellate Tribunal. Accordingly, the appellate proceedings in the present matter have not attained finality.*

9. It is further submitted that as per Circular No. 125/44/2019-GST dated 18.11.2019, refund of pre-deposit made under Section 107(6) of the CGST/MGST Act is admissible only once the appellate proceedings have attained finality, i.e., where no further appeal is pending or contemplated. Thus, unless and until the proceedings reach finality, the refund claim of the taxpayer is premature and not maintainable.

10. Therefore, the case laws relied upon by the taxpayer are factually distinguishable and are of no assistance in the present matter. In the present case, the appellate proceedings have not attained finality, as the taxpayer has voluntarily expressed its intention to challenge the Order-in-Appeal before the GST Appellate Tribunal and has accordingly made the pre-deposit as mandated under Section 112(8) of the MGST Act, 2017. This intention is July evidenced by the electronic liability ledger entries and the taxpayer's communication dated 03.07.2025. Accordingly, the refund claim is premature and not maintainable at this stage.

11. In view of the above, the refund claim of Rs. 3,14,58,422/- filed by M/s. IBM India Pvt. Ltd. under ARN: AA270725043170G is liable to be rejected. In exercise of the powers conferred under Section 54 of the MGST Act, 2017 read with Rule 92(3) of the MGST Rules, 2017, I hereby reject the refund claim of Rs. 3,14,58,422/- filed by M/s. IBM India Pvt. Ltd. under ARN:

AA270725043170G."

7. Suffice it to observe that the gross tax demand at the stage of adjudication confirmed as per Order in original dated 21st February, 2024 was Rs.48,96,54,949/-. The amount of tax demand confirmed in the order in appeal dated 17th March, 2025 by the First Appellate Authority is Rs.17,50,70,729/-. Therefore, the Appeal came to be partly allowed by dropping the demand to the extent 64%.

8. What the petitioner wanted was a refund of 10% of the pre-deposit made as against the demand of Rs.31,45,84,219/- that was dropped. It is pertinent to note that the department did not file any appeal against the dropping of the demand to the extent of Rs.31,45,84,219/-. Hence, according to us, to the extent the petitioner has succeeded in appeal, the petitioner would be entitled to the proportionate refund of the pre-deposit made i.e. to the extent of 10% of Rs.31,45,84,219/-.

9. The reasoning in the impugned order is that there is no finality to the proceedings as the petitioner has expressed an intention to challenge the appellate order before the GST Appellate Tribunal and hence till the proceedings attained finality, the petitioner's refund application cannot be entertained. This is where the impugned order proceeds on an erroneous footing. The authority ought to have kept in mind that what the petitioner proposes to challenge was only that part of the order which has gone

against it in appeal and to the extent of Rs.17,50,70,729/-. To the extent of Rs.31,45,84,219/- the proceedings have attained finality. The reasoning of the authority that the proceedings have not attained the finality only because the petitioner proposes to challenge that part of the order which has gone against it is fallacious.

10. The petitioner would be squarely covered by Circular dated 18th November, 2019 in as much as the refund of pre-deposit made under Section 107(6) of the MGST Act is admissible in the present case as the appellate proceedings to the extent of Rs.31,45,84,219/- has attained finality. To the extent of Rs.17,50,70,729/- the petitioner obviously will have to pay the pre-deposit of 10% of the amount in the event of an appeal is preferred against that part of the order of the Appellate Authority in respect of which the petitioner is aggrieved.

11. It is pertinent to note that under the erstwhile indirect tax regime, the amount paid as a condition precedent for hearing an appeal, did not bear the character of duty but bears the character only of a security deposit, being a statutory condition precedent for hearing of the appeal. Such an amount needs to be returned to the concerned appellant, whether the appellant succeeds fully or partly. If any authority is needed in support of this proposition, we may refer to **Nelco Limited Vs. UoI** (2002 (144) E.L.T. 56 (Bom.)] maintained in 2002 (144) E.L.T. A104 (S.C.)].

12. Once the demand of INR 31,45,84,219/- stood set aside, a statutory right accrued in favour of the Petitioner to receive a refund of the amount paid towards pre-deposit i.e. INR 3,14,58,422/- along with interest. The continued retention of such an amount is wholly unauthorized and offends Article 265 of the Constitution.

13. The Order in Appeal dated 17.03.2025, to the extent it set aside the demand of INR 31,45,84,219/-, was binding on the Respondent No.3 under Section 107(16) of the CGST Act. Therefore, the Respondent No.3 could not refuse consequential refund of the pre-deposit attributable to the demand so set aside.

14. A request is made by the learned counsel for the petitioner for payment of statutory interest under Section 115 of the CGST Act. However, we had requested the learned counsel for the petitioner in the facts of the present case, if the petitioner could give up the claim for amount of interest. Learned counsel for the petitioner on instructions graciously submitted that since the petitioner is satisfied with the principal amount being refunded, the petitioner does not press for interest. We appreciate the gesture on the part of the petitioner.

15. Hence, the following Order:-

(i) The writ petition is allowed.

(ii) The impugned Order is quashed and set aside.

(iii) The application for refund to the extent of Rs.3,14,58,422/- Crores be processed expeditiously and accordingly be refunded to the petitioner in any case within a period of six weeks from the date of communication of this Order.

(SANDESH D. PATIL, J.) **(M. S. KARNIK, J.)**