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

WRIT PETITION NO. 6533 OF 2015
WITH
WRIT PETITION NO. 6534 OF 2015

Thyssenkrupp Electrical Steel India Pvt. Ltd.	}	**Petitioner**
versus		
The State of Maharashtra and Anr.	}	**Respondents**

Mr. V. Sridharan with Mr. Sanghavi with Mr.Puneeth Ganapathy with Ms. Niyati Hakani i/b. M/s. PDS Legal for the Petitioner.

Mr. P. G. Sawant-AGP for the Respondents.

CORAM :- S. C. DHARMADHIKARI &
G. S. KULKARNI, JJ.

DATED :- JULY 21, 2015

P.C. :-

These Petitions are directed against the orders passed by the Maharashtra Sales Tax Tribunal. Though these orders are passed on the applications for stay, considering the ambit and scope of the powers under section 18A of the Central Sales Tax Act, 1956 (for short “the CST Act”), we are of the opinion that the Writ Petitions raise arguable questions.

2) Hence, we grant Rule in each of these Petitions.

3) The Respondents were given time earlier to file an affidavit or response but Mr. Sawant appearing on their behalf states that beyond supporting the reasoning in the orders of the Tribunal, the Respondents

do not wish to add anything and on factual matters. Therefore, with the consent of both sides, we dispose of these Petitions finally.

4) It would be convenient only to refer to the facts in Writ Petition No. 6533 of 2015. The Petitioner therein is a registered dealer. It is a private limited company engaged in the business of manufacturing and sale of electrical steel and operates from its factory in District Nashik in the State of Maharashtra. The second Respondent to this Writ Petition has passed an order of assessment. The claim of the Petitioner is that it has numerous depots outside the State of Maharashtra. The goods manufactured by the Petitioner were stock transferred to such depots. The goods were further sold to customers within such States. That is an intra-state sale based on the customers' demand. The claim of the Petitioner is that it has discharged the liability to pay Value Added Tax (VAT) in the States where the sales have been effected locally. On such local sales in the transferee States in terms of the statutes prevailing there, the tax liability has been cleared. The Petitioners produced the evidence with regard to those payments in the respective depots. The second Respondent has treated these sales as predetermined sales and therefore inter-state sales liable to Central Sales Tax in the State of Maharashtra. That is how a demand was raised by the second Respondent in the sum of Rs.11,56,46,969/-. That is in pursuance of the assessment order dated 27th June, 2013.

5) Being aggrieved by such demand, the Petitioner approached the Maharashtra Sales Tax Tribunal under section 18A of the CST Act, as the matter was pertaining to section 6A(2) of the CST Act. The Petitioner applied for stay of recovery pending the disposal of the Appeal. However, the Tribunal has directed the Petitioner to deposit a sum of Rs.3,53,12,000/- towards part payment of the demand for granting stay and admission of the Appeal. This order was passed under section 18A(5) of the CST Act. The Petitioner was first advised to appeal before the Central Sales Tax Appellate Authority under section 20(1) of the CST Act but having found that the Appeal thereunder was incompetent and not maintainable, it was dismissed on 2nd July, 2014.

6) It is in the above circumstances that the Petitioner has approached this Court in its Writ Jurisdiction.

7) Mr. Sridharan-learned Senior Counsel appearing for the petitioner would submit that the Tribunal will have to determine as to whether the conclusion reached by the Assessing Officer is accurate and correct. That question is yet to be decided. The Appeal is pending. However, sub section (5) of section 18A requires the highest appellate authority in the State to consider relevant facts. Section 18A(5) is couched in a peculiar language, wherein, even the discretion, while granting interim stay, has to be exercised by taking into consideration

relevant facts including the deposit of any amount towards local or Central Sales Tax in other States on the same goods. The Petitioner has contended before the Tribunal that in the present case, the relevant facts, as noted in the section, would be indeed relevant. The Petitioner has discharged the VAT liability in the transferee State by treating such sale as local sale and of the same goods. In the circumstances, this factual assertion of the Petitioner not being disputed, there was no necessity of calling upon the Petitioner to deposit a sum of Rs.3,53,12,000/-. To that extent, the impugned order is illegal and erroneous.

8) Mr. Sridharan would submit that section 18A has been brought in the CST Act with a specific object and purpose. In every case where the argument was that a sale has been effected in some other State and the tax demand in that State has been met and satisfied, then, the same sale being subject to the tax under the Central Sales Tax Act, 1956, raises a peculiar problem and issue. In the event any party succeeding and in the cases similar to us, the other state would not be required to meet any tax demand in the State where the Central Sales Tax Act is sought to be invoked. However, in the event it being held that the CST Act was applicable and attracted, then, it would be very difficult for the State in which such adjudication is concluded to recover

the tax from other State where it is already paid. Mr. Sridharan submits that to meet such an eventuality, section 18A was brought in the statute and upon determination of the issues then it will be open for the authority to make appropriate orders so that the amounts would be brought back. It is not as if there is any serious loss or prejudice because the Petitioner has indeed discharged the liability of local sales tax in the other States. In that regard, our attention was invited to section 22A of the CST Act, whereunder the law constitutes and establishes the Central Sales Tax Authority and when that authority, namely, the Central Sales Tax Appellate Authority settles the dispute, it must, while granting the stay, consider whether the Assessee has made deposit of the tax under the general Sales Tax Law of the State concerned.

9) Even prior to this legal position, Mr. Sridharan would submit that the Judgments of the Hon'ble Supreme Court in the case of *Oil India Ltd. vs. The Superintendent of Taxes and Ors.* reported in **(1975) 1 SCC 733**, *Union of India vs. K. G. Khosla and Co. Ltd.* reported in **(1979) 43 STC 457** and *Shriram Refrigeration Industries Ltd. and Anr. vs. Commercial Tax Officer and Ors.* reported in **(1994) 95 STC 488** clinch this issue.

10) On the other hand, Mr. Sawant would submit that in the present case the order of the Assessing Officer is clear. The Assessing Officer has referred to the books of account produced, sales/purchase register, tax invoices, debit and credit notes, ledger and P&L accounts. In the case where the assessment is of 1st April, 2008 to 31st March, 2009 what the Assessing Officer has found is that the gross turnover of sales is determined at Rs.858,37,68,170/-. Out of this, interstate sales under section 8(1) are allowed at Rs.647,62,19,099/-. The assessment order refers to the input tax and what he has determined, according to the assessment order, is that there is a claim that there is a transfer to branches in other States. However, as far as that is concerned, the assessment order records that during the verification and interaction with dealer, it was revealed that potential customers of the dealer place purchase orders in advance and then confirmation is given to customers, which is generated from the system and then sales/marketing officer at Head Office punches the purchase order in the system, which results into the stock transfer order. Goods are dispatched to concerned depots/directly to customers along with system generated stock transfer invoice or sale invoice and all this does not fulfill the pre-condition and that the goods transferred should have no nexus with the ultimate sales effected by the concerned branch/agent, transfer should not be in exact quantities of sales effected by agent to

indivisible customer and transfer should be on ad-hoc basis in anticipation of orders. Thus, the co-relation of ultimate sale qua the transfer should be absent. The sales should have been effected by branch with least intervention of Head Office. It is applying these tests that Mr. Sawant would submit that the Assessing Officer has levied and assessed the tax liability. The order of the Assessing Officer is challenged in Appeal but the factual conclusion reached is that the stock transfer do not qualify for exemption under section 6A of the CST Act. The sale is treated as inter-state sale under section 3(a) of the CST Act and tax is levied at 4% under section 8(2) of the CST Act in absence of declaration in Form 'C'. The Tribunal has found that so long as this aspect of the matter is under consideration of the Tribunal, it cannot be held that the Appellant/Petitioner before it is entitled to unconditional stay. Having regard to these findings and further that in the absence of requisite details, the Assessing Officer concluding the matter in terms of the CST Act that the Tribunal's orders deserve to be upheld. It is an interim and tentative conclusion and which must not be disturbed in Writ Jurisdiction unless it is found to be patently illegal and erroneous.

11) With the assistance of both Counsel, we have perused the Writ Petition and all Annexures thereto. All that has influenced the Tribunal in this case is the fact that though the Petitioner/Appellant has

filed 'C' and 'F' Forms but looking at the detailed order of the Assessing Officer it is *prima facie* clear that the transfer is not branch transfer but outside Maharashtra sale. The other fact that has influenced the Tribunal is the huge outstanding tax liability. However, we do not find the Tribunal having adverted to section 18A(5) of the CST Act. Pertinently, this is not a Appeal which the Petitioner Appellant preferred after having exhausted the remedy of Appeal before the Joint commissioner of Sales Tax, which is the first appellate authority. This is an Appeal directly to the Tribunal and that is why section 18A of the CST Act was invoked and applicable. In the circumstances and if this was present to the mind of the Tribunal, as is apparent, then, the Tribunal should have been aware of sub section (5) of section 18A of the CST Act. There, the Tribunal is also obliged to consider the relevant facts. The relevant facts *inter alia* are deposit of any amount towards local or Central Sales Tax in other States on the same goods. There is a categorical averment in the Writ Petition and even in the memo of Appeal that taxes to the tune of Rs.11,79,71,864/- have been paid in other States. Therefore, whether the Assessing Officer was correct in adjudicating the matter by applying the CST Act and terming the sale in question as interstate sale is yet to be finally decided. All records of assessment are before the Tribunal. The Tribunal will have to apply its independent mind and come to a conclusion as to whether as held by the Assessing Officer placing of orders in advance and dispatching goods in order to meet the same will not qualify for the transaction being termed as an intra-state sale but an inter-state sale attracting the tax liability under the CST Act. That will have to be determined. One cannot proceed on the footing that the Assessing Officer's conclusion is the only one which can be ultimately reached. Merely because a detailed order of assessment has been passed on the basis of a purchase transaction directly by the customers with all specifications and details to the Head Office would not, to our mind, be enough. The Tribunal should not have expressed any opinion on this disputed issues. All that it was required to consider was whether the ultimate dues of the Revenue and if recoverable are secured or there is no proof of the relevant facts in terms of section 18A(5) having been satisfied. In the instant case, the relevant facts including the discharging of the tax liability under the local or general Sales Tax Law has been proved by producing the relevant records including Challans of payments. In the circumstances, we do not find that there was any warrant for imposing any further condition and deposit of a huge sum of Rs.3,53,12,000/-.

12) In these circumstances, we direct that there will be a stay of recovery of the amount assessed to tax under the assessment order and which is challenged in the Appeal before the Tribunal. Meaning

thereby, the amount as directed need not be deposited. However, this order and direction does not mean that the Tribunal is precluded from passing appropriate orders and in accordance with law at the hearing of the Appeals.

13) We are not required to express any opinion on the merits of the rival contentions. Merely because our attention is invited to section 18A(5) of the CST Act does not mean that we have determined the issue one way or the other. We have applied the very same provisions which were considered by the Tribunal to be applicable and germane. If the Tribunal was considering the matter in the light of the applicability of the CST Act, then, the provisions of that very Act are referred to. However, reference to the same does not mean that we have concluded the matter either way. All contentions of both sides including on the Assessing Officer's conclusion are kept open. In the view we have taken, it is not necessary for us to refer to the decisions brought to our notice and in further details.

14) Since the Tribunal was required by law to dispose of the Appeals within six months preferably, we direct that the Tribunal shall give priority to these Appeals of the Assessee/dealer and endeavor to dispose of the same as expeditiously as possible and within a period of three months from the date of receipt of copy of this order. The Writ

Petitions are allowed accordingly. Rule is made absolute in the aforesaid terms. This order is passed in the facts and circumstances peculiar to this case and should not be taken as precedent either way in future cases.

(G.S.KULKARNI, J.) **(S.C.DHARMADHIKARI, J.)**