IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9191 OF 2014

The Commissioner of Sales Tax ... Petitioner

Vs

M/s. Arrow Webtex Limited ... Respondent

Mr. P.G. Sawant, AGP, for the Petitioner-State.

Mr. Prakash V. Surte with Mr. Subhash Surte for the Respondent.

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

TUESDAY, 16TH JUNE, 2015

P.C. :

1. By this petition under Article 226 of the Constitution of India, the State of Maharashtra is seeking quashing of an order passed on 7th August, 2013, by the Maharashtra Sales Tax Tribunal in Rectification Application No.11 of 2013 and praying that the order passed in Second Appeal No.202 of 2012 dated 12th September, 2012, be restored.

2. The Commissioner of Sales Tax – petitioner before us states that the respondent-assessee is a registered dealer carrying on business of manufacturing and selling of printed as well as woven labels. In the year 2002-2003, labels worth Rs.65,30,291/- were sold to manufacturers of garments in the State of Tamil Nadu. The manufacturers export readymade garments to foreign buyers and the labels sold were thus stitched to these garments. The dealer claimed that the sale of labels does not attract the tax under the Bombay Sales Tax Act, 1959 and the Maharashtra Value Added Tax 2002 and, therefore, it is exempted from filing any declaration in Form H. The transaction is treated as deemed sales in the course of export. The Assessing Officer, it appears, accepted this position but on account of certain objections by the internal audit, the Joint Commissioner of Sales Tax, Pune Zone, Pune on 21st April, 2011, set aside this order and view taken by the Assessing Officer. Against the order of the Joint Commissioner, Sales Tax, Pune Zone Pune, dated 21st April, 2011, Appeal No.202 of 2011 was filed before the Tribunal by the dealer. The Tribunal, after hearing both sides, allowed the appeal partly on 12th September, 2012. It quashed the revisional order of the

Joint Commissioner and remanded the case back to the Joint Commissioner with liberty to the dealer to produce proof of export sales against Form H and expected the Joint Commissioner to verify and scrutinise it.

3. The respondent was of the view that this order of the Tribunal contains apparent mistakes and errors. They are on the face of the record and do not require any elaborate and detailed discussion. Therefore, by way of a Rectification Application No.66 of 2013, the dealer sought rectification of the order passed by the Tribunal. This application was withdrawn subsequently by the dealer.

4. Later on, he filed another application seeking rectification and this time, the Tribunal accepted it and by the impugned order, recalled the initial direction of remand passed on 12th September, 2012.

5. The Commissioner of Sales Tax is aggrieved by this course and has, therefore, invoked the writ jurisdiction of this Court.

6. We have heard Mr. Sawant in support of the writ petition and Mr. Surte appearing for the respondent on notice. We have carefully scrutinised the Memo of the petition and the grounds. We are of the view that the Commissioner ought not to have impugned the ultimate direction. Today, the position is that the Rectification Application of the dealer is allowed. The dealer had partly succeeded before the Tribunal and had pursuaded it to remand the matter to the Joint Commissioner. That initial order dated 12th September, 2012, is wholly set aside. The Tribunal has directed that the appeal will have to be heard afresh on merits and in accordance with law. Both parties will have adequate opportunity of placing their versions when the appeal is heard afresh. We do not see any prejudice to the Commissioner and rather the Department of Sales Tax. We are surprised that the Commissioner has approached this Court. The Commissioner does not impugn the initial order of remand and partial success of the respondent in the appeal. It is the dealer – respondent who approached the Tribunal and by filing Rectification Applications. In such circumstances, the Commissioner could not have instituted the present Writ Petition. Moreso, when there is

presently no loss of revenue nor is any serious prejudice caused to the Revenue. The Commissioner / Revenue will have full and complete opportunity to satisfy the Tribunal when it hears the appeal afresh that the order passed by the Joint Commissioner on 21st April, 2011 is in accordance with law. In such circumstances, this Writ Petition has no merit and is completely misconceived.

7. We have no alternative, but to dismiss this Writ Petition. While dismissing it, we clarify that it would be open for both sides to place their versions before the Tribunal when the appeal is being heard afresh. The Tribunal should decide it in accordance with law, uninfluenced by any earlier observations and conclusions.

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