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

MAHARASHTRA VALUE ADDED TAX APPEAL NO. 19 OF 2015

M/s. Net West Trading Co. Pvt. Ltd.	}	**Appellant**
versus		
State of Maharashtra	}	**Respondent**

Mr. Nikita Badheka for the Appellant.
Mr. B. B. Sharma – AGP for the Respondent.

CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.

DATED :- SEPTEMBER 8, 2015

P.C. :-

We have heard Ms. Badheka appearing for the Appellant. She submits that the Appellant dealer is aggrieved and dissatisfied with that part of the order of the second Appellant Authority, whereunder the condition of deposit of Rs.62,43,410/- has been imposed for consideration of the First Appeal. This deposit is for the period from 2009 to 2010. Ms. Badheka submits that this amount is enormous and would lead to closure of the business of the Appellant. The Appellant has not indulged in any dubious transaction, much less in Hawala deal. She submits that for this period, she has pointed out the cancellation of registration of M/s. Arham Exims Private Limited and the restoration of the registration certificate issued by the Deputy Commissioner of Sales

Tax (Registration) has been filed. If the copy was filed and if the registration certificate was restored, then, the Tribunal found that there is some substance in the argument so far as this period is concerned.

2) However, in the other suppliers' case, though, *prima facie* proof was pointed out of the payment of taxes by these dealers into Government Treasury and they are entitled to set off, then, their deposition and documents based thereon should have been taken into consideration. That having not been considered and sweeping observations having been made, now nothing remains to be argued in Appeal and the issue is foreclosed.

3) After having perused the Appeal memo and all Annexures thereto, we are of the view that there is no substance in these arguments. First of all the Tribunal found that the first appellate authority, for 2009-10 assessment period, imposed condition of deposit of Rs.1,19,99,281/-. That amount has been brought down to Rs.62,43,410/-. That is also on the footing that it is the basic tax liability. The Tribunal has not concluded that the transactions with two suppliers, namely M/s. Macos Iron and Steel Pvt. Ltd. and M/s. Duralloy Cutters Ltd. are not genuine but dubious or tainted. It has not concluded that the transactions are of Hawala in nature. These are only *prima facie* and tentative conclusions based on the reasoning and to be

found in paras 11 and 12 of the impugned order. Despite this, the Tribunal has brought the amount down and the deposit is now of Rs.62,43,410/-. We do not think that imposition of such a condition and in the facts and circumstances of the present case is either arbitrary, unreasonable or unfair and completely takes away the remedy of an Appeal. In these circumstances, we do not find that the present Appeal raises any substantial question of law. The Appeal is therefore dismissed.

4) By the impugned order, the Tribunal had given three months' time and from 10th February, 2015 to deposit this sum. In the facts and circumstances of the case, we extend that time and if the amount is brought in within a period of eight weeks from today, the first appellate authority shall entertain the Appeal and decide it on merits and in accordance with law uninfluenced by any tentative and *prima facie* findings in the impugned order.

(B.P.COLABAWALLA, J.) **(S.C.DHARMADHIKARI, J.)**