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

MVX APPEAL NO.1 OF 2014

M/s. Ankita Impex ..Appellant
-Versus-
The State of Maharashtra through
The Commissioner of Sales Tax ..Respondent

....
Mr. Sandeep Ghaterao i/b. N. V. Tapare for the Appellant.
Ms. Naira JeJeebhoy, Special Counsel, for the Respondent-State.
....

CORAM: S.C. DHARMADHIKARI
AND
SUNIL P. DESHMUKH, JJ.

DATE :- 23rd JANUARY, 2015.

P.C.:

This Appeal challenges the order passed by the Maharashtra Sales Tax Tribunal in VAT Appeal Nos.336 and 337 of 2013. By that order delivered on 21st April, 2014, the Tribunal has proceeded to dismiss these VAT Appeals.

2] These Appeals were directed against common order dated 20th June, 2013 of the Joint Commissioner of Sales Tax (Appeals-I) Mumbai City Division, Mumbai, whereby the registration certificate of the Appellant was cancelled from the inception, namely, with effect from 14th August, 2006.

3] We have heard Mr. Sandeep Ghaterao, learned counsel, appearing for the Appellant and Ms. Naira Jejeebhoy, learned counsel, appearing for the Respondents. With their assistance, we have perused the memo of Appeal and the annexures thereto. We find that the present Appeal raises substantial question of law. That is formulated as under:-

> "On the facts and in the circumstances whether the Tribunal is correct in holding that the Appellant has not done any genuine business of buying and/or selling goods but issued only bogus bills without considering and examining the facts of the transactions of sale and purchase of goods brought to the notice of the Tribunal?"

4] With the consent of the learned advocates and bearing in mind the order we propose to pass, we dispose of this Appeal finally.

5] The Appeal invokes sub-section (2) of section 27 of the Maharashtra Value Added Tax Act, 2002 and sub-section(2) of section 9 of the Central Sales Tax Act, 1956.

6] The Appellant claims to be a proprietor carrying on business in electronic goods in the name and style as M/s. Ankita Impex. The

Appellant was registered as a dealer under the provisions of the Maharashtra Value Added Tax Act, 2002 (for short 'MVAT Act') and the Central Sales Tax Act, 1956. The details of the two registration certificates have been set out and it is claimed that both were effective from 14th August, 2006. The Appellant carried on the regular business of buying and selling goods. He claimed to have filed returns as per the requirement of section 20 of the MVAT Act read with Rule 17 of the MVAT Rules and paid taxes accordingly.

7] The Appellant claims to have discontinued the business with effect from 1st April, 2009 and, hence, he made an application in Form 103 prescribed under the MVAT Rules for cancellation of registration certificate as per section 16(6)(a) of the MVAT Act. Upon such an application and after due enquiry, it is claimed that the Sales Tax Officer made an order on 11th June, 2009 (copy of which is at annexure-B and B-1) cancelling the registration certificates under the above Acts.

8] However, it is stated that the order passed by the Sales Tax Officer cancelled the certificate with effect from 1st April, 2009 but on the official website of the Sales Tax Department against these certificates, an entry was made that they have been cancelled with effect from 14th August,

2006. The Appellant claimed that he did not have any notice nor was he aware of any order subsequently passed by which there is any modification or change in the order of the Sales Tax Officer. On inquiries being made with the department, the Appellant was supplied a copy of the order dated 4th December, 2012. That is an order of the Deputy Commissioner of Sales Tax (Registration) 1 Mumbai passed under section 25 of the MVAT Act. The Appellant obtained the certified copy of this order and challenged it before the Joint Commissioner of Sales Tax (Appeals)-I Mumbai.

9] The Appellate Authority held that there is no substance in the Appeal and that order is passed by it on 20th June, 2013. Thus, the order of the Deputy Commissioner of Sales Tax (Registration) 1, Mumbai, was upheld. The Appellant being dissatisfied with this order, approached the Tribunal by filing an Appeal which has been dismissed by this impugned order.

10] The principle contention of the Appellant before us is that the Appellant had made an application in the requisite form requesting cancellation of registration certificate. That was cancelled with effect from 1st April, 2009. Subsequently, the powers of review of this order came to be exercised without the knowledge of the Appellant. The order of the Sales Tax Officer was reviewed and substituted with an endorsement that the certificate of the Appellant is cancelled from inception, namely, from 14th August, 2006. The appellant complains that this finding is rendered and by holding that throughout the Appellant has not carried on any genuine business. His registration and subsequent activities were all bogus and to facilitate Hawala transactions. Thus, he in collusion with some hawala operators perpetrated a fraud on the revenue and that is how such certificate obtained deserves to be cancelled. It is void ab initio. Reliance was also placed upon an alleged affidavit or deposition before the Investigating Officer and stated to have been given by the appellant before us.

11] Mr. Ghaterao has submitted that such being the nature of proceedings, it was incumbent on the Tribunal to have considered the Appellants grievance seriously and carefully. The contentions in this behalf have been noted in para-7. The lack of notice and it being stated to be allegedly pasted on the business premises was another argument canvassed and noted. However, the Tribunal in para 14 of the order under challenge relied upon the application moved by the Applicant-Appellant dealer for cancellation of the registration. It is stated that he had given a statement to the effect that he is not having any knowledge of sales tax. He had registered the firm M/s. Ankita Impex at the instance of Shri K. N. Rawal (Sales Tax Practitioner), who has accompanied him in the sales tax office for registration. He is, thereafter, admitted to have not signed or issued any tax invoice or bill in the name of M/s. Ankita Impex. He had never given any letter of authority to anyone to conduct the business in the name of M/s. Ankita Impex.

12] Mr. Ghaterao has complained that such findings have been rendered without adverting to any of the matters and noted in the order passed cancelling the certificate delivered on 11th June, 2009. That records that there was a registration certificate dated 14th August, 2006 granted to M/s. Ankita Impex.

13] We see some substance in these contentions that if there was no genuine business transaction and carried on in the name of this entity, then, how the registration certificate was issued and on whose application and in relation to what business transaction is not adverted to, at all. We find that the Tribunal solely relied on order copy of which is at annexure-C delivered on 29th November, 2012 by Deputy Commissioner of Sales Tax. That order referred to firstly a Hawala Beneficiaries Review Meeting dated

1st October, 2011. It relies upon an e-mail dt 29th November, 2011 from Deputy Commissioner of Sales Tax (Vigilance). It relies upon letter from the Joint Commissioner (Registration) dated 1st December, 2011. It also relies upon the order passed of cancelling the registration certificate. If the notice in Form No.309 is relied upon and the order recites that it was issued, then, the further finding that it was duly served by affixing a copy thereof on 3rd October, 2012 appears to be contradictory. It was issued and stated to have been reversed, then, why it came to be affixed has not been clarified at all. If the affixation has been done because none was found in the premises on whom personal service could have been effected, then, a clear endorsement in that behalf was required. If the act envisages a request being made by the dealer for cancellation of the Registration certificate and order in that behalf is capable of being reviewed, then, that is to precede by serving the concerned dealer a notice in the prescribed form. We do not see how the pasting was necessitated. If Rule 87 of the MVAT Rules, 2005 are referred to, then, that demands service of orders and notices by delivery by hand of a copy of the order or notice to the addressee or to a person declared by him in Form 105 or to his agent duly authorized in this behalf by him, or to a person for the time being employed by him in connection with the business in respect of which he is registered as a dealer, or to any adult member of his family residing with the dealer. Therefore, one of the modes has to be adopted and in terms of Rule 87(1)(a)(b)(c)(d) and (e) all these are either hand delivery or by post or by email or by sending a copy of the order or notice by a courier agency appointed by the Commissioner. If upon an attempt having been made to serve any order or notice by the above stated modes, does not result in the person being duly served and the sales tax authorities are of the opinion that the order or notice cannot be served by any of the above, then, he can resort to other more prescribed and which, inter alia, is affixing of such notice on the premises or office of the dealer.

14] In such circumstances, the authorities including the Tribunal ought to have been satisfied that the notice could not be served by the modes set out under rule 87(1) and, therefore, affixing was necessitated. Secondly, if the reliance is placed by the Tribunal on a statement being recorded during the course of investigation and that of the Appellant, then, the Appellant should have been put to notice of any such statement given by him. The Appellant ought to have been given an opportunity to inspect the record and which was before the Deputy Commissioner of Sales Tax when he passed the order dated 29th November, 2012. Thus, if there was evidence and material to indicate that the Appellant in collusion with the hawala operators perpetrated a fraud on the department by obtaining a bogus registration, then, all such documents and materials should have been disclosed to the appellant much in advance so that he could have dealt with them. This indeed a serious issue. If a statement of one Amarjeet R. Yadav, Proprietor of M/s. Ankita Impex was recorded under section 14 of the MVAT Act on 6^{th} June, 2012 and affidavit of the Proprietor was also obtained voluntarily on 6^{th} June, 2012, then, both contained incriminating material. They state that the Appellant has not done any genuine business of selling or purchasing of goods nor he has supplied any goods to anyone but bogus bills were issued at the instance of one Shri Rawal.

15] It is for this precise reason that we requested Ms. Jejeebhoy, to take instructions as to why the Tribunal should not render a fresh decision on the merits of the Appeal and by giving the Appellant the aforestated opportunities. To be fair to Ms.Jejeebhoy, she placed on record the dates and events which contains a reference to the above material. However we did not deem it proper to allow her to place on record any documents nor have we heard Mr. Ghaterao on these issues. We requested Ms.Jejeebhoy to take instructions as to whether the Respondent is agreeable to the rehearing of the Appeal.

16] The matter was kept back and to enable her to take instructions. Upon instructions, she states that the Respondent is ready and agreeable to the order passed by the Tribunal dated 21st April, 2014 being quashed and set aside and Appeal being restored to the file of the Tribunal for hearing afresh on merits and in accordance with law or the course as directed by this Court.

17] In view of our above conclusions, that there was a necessity of giving a proper and complete opportunity to the Appellant to contest the factual materials we quash and set aside the order of the Tribunal and restore the VAT Appeal on the file of the Tribunal for rehearing and decision afresh on merits and in accordance with law. We clarify that we have not expressed any opinion on the rival contentions. We have not held that the Appellant carried on any genuine business or otherwise. All contentions of both sides on the merits of the Appeal are kept open. The Tribunal should endeavor to dispose of the Appeal expeditiously. Since the impugned order of the Tribunal is quashed and set aside and the Appeals are restored to its file, before the Appeals are argued, the Tribunal shall summon all the records from the Sales Tax Officer, the office of the Deputy Commissioner of Sales Tax and Joint Commissioner and give an inspection thereof to the Appellant. The Appellant can also obtain copy of such documents as he may desire on payment of usual copying charges. After the record is inspected, by the Appellant, and with prior appointment, Tribunal can take up the Appeal and dispose it of on merits and in accordance with law. If the Tribunal gives an opportunity to the Appellant to inspect the record, but he fails to avail of the same, then, the Tribunal shall not be bound to adjourn the Appeal on this ground but proceed to hear it on merits and in accordance with law. In that event, all the materials which are highlighted before us by the Revenue and Ms.Jejeebhoy can be taken into consideration by the Tribunal. The Appeal is disposed off in the above terms. No costs.

(SUNIL P. DESHMUKH, J.) **(S.C. DHARMADHIKARI, J.)**

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