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

WRIT PETITION (L) NO. 2543 OF 2015

Standard Chartered Bank .. Petitioners

v/s.

The State of Maharashtra & Ors. ..Respondents

Mr. V. Shreedharan, Sr. Counsel a/w Prakash Shah, Jas Sanghvi, Rahul Thakur and Puneet Ganpathy i/b PDS legal for the petitioners
Ms. Naira Jeejibhoy, Spl. Counsel a/w Ms. Uma Palsuledesai, AGP for respondent nos. 1 to 3
Mr. Arun Paricker for respondent no.4

CORAM : M.S. SANKLECHA &
G.S. KULKARNI, J.J.
DATED : 4th DECEMBER, 2015.

P.C.

1. This petition under Article 226 of the Constitution of India challenges:

(a) five orders dated 7th August, 2015 deciding interest for delayed deposit of tax for the period 2008-09 to 2012-13, passed under Section 30(2) of the Maharashtra Value Added Tax Act, 2002 (hereinafter referred to as the Act); and

(b) Consequent, five Notices of Demand also dated 7th August, 2015 under Section 32 of the Act.

2. The principal grievance of the petitioner is that the impugned orders have been passed demanding interest on the alleged delay in depositing the tax on the consideration paid to their vendor (work contractors). This without having given them an opportunity to represent their case as in the peculiar facts of this case, no interest is chargeable on any delayed deposit of the tax deducted at source (TDS) with the State.

3. Ms. Jejeebhoy, learned Counsel for the State, on instructions, states that in view of the peculiar facts of the present case, the respondent no.3 would grant a personal hearing to the petitioners to enable them to satisfy the respondent no.3 that in the peculiar facts of the present case, no interest is chargeable and / or payable on the delayed payment of TDS in respect of the payments made to their vendors (work contractors). However, it is further clarified on behalf of the State that this statement is made only in the peculiar facts of this case and should not be treated as an accepted position in law on the part of the State that an order passed for interest on account of delayed deposit of TDS,

would necessarily have to be preceded by granting a personal hearing to the defaulting assessee i.e. the person who has failed to deposit TDS with the State within the stipulated time.

4. In view of the above statement made on instructions, on account of the peculiar facts of this case, we set aside the five impugned orders dated 7th August, 2015 and the consequent five Notices of Demand dated 7th August, 2015.

5. It was contended by Mr. Shah, learned counsel for the petitioner that to enable an effective personal hearing, the respondent should broadly indicate the reasons why interest is payable by the petitioner in the present facts and communicate the same before hearing the petitioners.

6. Ms. Jejeebhoy, learned Counsel for the State submits that in view of the clear provision of law, according to the State, as and when there has been a delay in depositing the TDS with the State, the obligation to pay the interest *ipso facto* commences.

7. In the above view, it would be for the petitioner to establish their case that no interest is chargeable in the peculiar facts of the present case and / or payable by the petitioners to the State.

8. Needless to state that during the pendency of the proceedings before the respondent, consequent to this order and for a period of 30 days after the order of respondent no.3 has been communicated to the petitioner, the respondent will not adopt any coercive proceedings for the recovery of the interest if any, payable by the petitioner according to the respondent. However, it is made clear that this would not prohibit the respondent from issuing the statutory demand notices under the Act. However, no steps for the coercive recovery of the same would be taken for a period of 30 days of serving the order under Section 30(2) of the Act.

9. The Writ Petition is disposed of in the above terms. All contentions of both sides are left open.

(G.S. KULKARNI, J.) **(M.S. SANKLECHA, J.)**