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

MAHARASHTRA VALUE ADDED TAX APPEAL NO.4 2015

IN

VAT SECOND APPEAL NO.252 OF 2013

The Addl. Commissioner of Sales Tax,
VAT, III Mumbai,
8th floor, Vikrikar Bhavan,
Sardar Balwant Singh Dhodi Marg,
Mazgaon, Mumbai-400 010 .. Appellant

Versus

Indo Count Industries Ltd.
D-1, M.I.D.C.,
Gokul Shirgaon,
Kolhapur-416234 ..Respondent

WITH

MAHARASHTRA VALUE ADDED TAX APPEAL NO.5 2015

IN

VAT SECOND APPEAL NO.253 OF 2013

The Addl. Commissioner of Sales Tax,
VAT, III Mumbai,
8th floor, Vikrikar Bhavan,
Sardar Balwant Singh Dhodi Marg,
Mazgaon, Mumbai-400 010 .. Appellant

Versus

Indo Count Industries Ltd.
D-1, M.I.D.C.,
Gokul Shirgaon,
Kolhapur-416234 ..Respondent

WITH
MAHARASHTRA VALUE ADDED TAX APPEAL NO.6 2015
IN
VAT SECOND APPEAL NO.254 OF 2013

The Addl. Commissioner of Sales Tax,
VAT, III Mumbai,
8th floor, Vikrikar Bhavan,
Sardar Balwant Singh Dhodi Marg,
Mazgaon, Mumbai-400 010 .. Appellant

Versus

Indo Count Industries Ltd.
D-1, M.I.D.C.,
Gokul Shirgaon,
Kolhapur-416234 ..Respondent

Shri. Vinay Sonpal, AGP for the Appellant.
Shri. P. V. Surte a/w S. P. Surte, for the Respondent.

CORAM : B. R. GAVAI, J.
A.S. GADKARI, J.

DATE : 24.03.2015

P.C.(A. S. GADKARI, J)

1. The present Appeals under Section 27 of the Maharashtra Value Added Tax Act, 2002 are decided by the following common order as they are between the same parties and the present Appeals also involve the common question of law and have impugned the common judgment and order dated 01.07.2014 passed by the Maharashtra Sales Tribunal, 3rd Bench, Mumbai arising out of respective Appeals therein.

2. Heard Shri. Vinay Sonpal, Learned AGP for the Appellant and Shri. P. V. Surte along with Shri. S. P. Surte for the Respondent at length. We have also perused record produced before us.

3. The Respondent is a manufacturer in Cotton Yarn, Hosiery Fabrics, Electronic Goods i.e. TV, Air Conditioners, made up articles of Fabric i.e. Bedsheets etc. The Respondent holds Certificate of Entitlement during the period of assessment. The Respondent submitted assessment statements before the Deputy Commissioner of Sales Tax, Kolhapur for the assessment period for 2005-2006 to 2007-2008, precisely for the period 01.04.2005 to 31.01.2008. The Deputy Commissioner of Sales Tax by its assessment order dated 31.03.2011 allowed refund to the Respondent, however rejected the claim of the Respondent for grant of interest under Section 53 on the delayed provisional refund.

4. The Respondent thereafter preferred Appeals under Section 26 of the Maharashtra Value Added Tax Act, 2002 before the Joint Commissioner of Sales Tax (Appeals), Kolhapur Division, Kolhapur, who by its order dated 25.10.2013 confirmed the order passed by the Deputy Commissioner of Sales Tax dated 31.03.2011 holding thereby that, since there is no delay in grant of refund, action of non-allowance of interest under Section 53 of Maharashtra Value Added Tax Act, 2002 by the Deputy Commissioner of Sales Tax is confirmed.

5. The Respondent thereafter preferred Second Appeals bearing Nos.252, 253 and 254 of 2013 respectively against the impugned order therein dated 25.10.2013 passed by the Joint Commissioner of Sales Tax (Appeals), Kolhapur Division, Kolhapur. In the said Appeals the Respondent herein contended that he is holding Eligibility Certificate as well as Entitlement Certificate under the Package Scheme of Incentives, 1993 (in short “PSI scheme”) with option for exemption and that he was entitled to claim refund of tax as per returns filed by him under Section 51(3)(a)(iii) of the Maharashtra Value Added Tax Act, 2002 (in short “MVAT Act”). That the Respondent had filed application in Form-501 for grant of refund under Section 51 of the MVAT Act and provisional refund under Section 51 of MVAT Act has been granted to the Respondent from time to time for the period 2005-06, 2006-07, 2007-08, but very late. The

Respondent contended that after filing of the returns and Form-501, he was entitled to get refund within six months from the end of the year, succeeding the said year. He claims that on provisional refund interest on delayed refund under Section 53(1) of MVAT Act was not granted. He further contended that the Deputy Commissioner of Sales Tax, Kolhapur neither granted interest on delayed refund nor took up assessment of the Appellant since it was bound to result in refund as per law. He claimed that refund was delayed several months and years, for which he had submitted detailed chart before the said authority. It was the further contention of the Respondent that the Deputy Commissioner of Sales Tax, Kolhapur passed assessment orders for the year 2005-06 and 2006-07 on 31.03.2011 i.e. after a period of five years and for the year 2007-08 on 03.07.2010. The Respondent claimed that refund under Section 52 was granted after deducting refund given to him from time to time between period 2006 to 2008. The Respondent contended that no interest was allowed on the provisional refund which he had received from time to time for the period 2005-06. The Respondent further claimed that in the year 2006-07 and 2007-08 provisional refunds were granted to him however no interest as contemplated under Section 53(1) of the MVAT Act was granted on the delayed refund to it. It was the contention of the Respondent that for all the said three years, the said two authorities had rejected interest under Section 53(1) of MVAT Act on provisional refund which was granted late and as per the contention of the Respondent it was admitted position that the provisional interest was not granted to him in the period stipulated under Section 51 of the MVAT Act.

6. The Maharashtra Sales Tax Tribunal by the impugned judgment and order dated 01.07.2014 partly allowed the Appeals preferred by the Respondent and directed the Appellant herein to pay the interest over delayed payment by calculating the period as was directed in the said order. The Appellate Tribunal came to the conclusion that the Appellant herein was bound to pay interest on delayed provisional refund to the Respondent herein as there was delay as contemplated under Section 51(4) of the MVAT Act which was prevailing at the relevant time.

7. Shri. Vinay Sonpal, Learned AGP contended that the Appellate Tribunal has committed error in allowing the Appeals, thereby holding that the period for refund as contemplated under Section 51(4) of the MVAT Act as six months. He submitted that in view of the amended sub Section (4) of Section 51, the Commissioner was entitled to refund under the said Section within a period of 18 months from the end of the month containing the date of the receipt of the application for refund and as such there was no delay at all in granting the refund and all the provisional

refunds to the Respondent. He submitted that as there was no delay in view of Section 51(4) of the MVAT Act, 2002, the Learned Appellate Tribunal has committed grave error in appreciating the said provision inter-alia, thereby passing the impugned order.

8. Shri. P. V. Surte, Learned Counsel appearing for the Respondent per contra submitted that the period of 18 months has been extended by way of amendment to Section 51(4) of the MVAT Act and has been brought on the statute book by an amendment bearing No.M-5 of 2011 with effect from 01.05.2011. He submitted that the period for refund involved in the present Appeals is from 01.04.2005 to 31.03.2008, therefore the earlier provisions prior to amendment which was at the relevant time are applicable to the present Appeals. He further submitted that as the said period has been mentioned in the earlier amendment prior to amendment of 01.05.2011 i.e. of six months has to be taken into consideration while deciding the delayed payment on the refund of the Respondent. Shri. P. V. Surte by relying upon a judgment reported in **AIR 1953 SC 221** in the case of **Messrs. Hoosein Kasam Dada (India) Ltd. Vs. The State of Madhya Pradesh and others** contended that the amended provision comes into effect from the date of amendment and it has no retrospective effect for its operation.

9. It is the settled position of law that the amendment of section or provision does not apply to proceedings commenced before amendment unless and until the legislature is absolutely clear while applying a provision retrospectively. The plain reading of the amended Section 51(4) of the MVAT Act clearly demonstrates that said provision has come into effect on 01.05.2011 with prospective effect and the legislature did not intend of its retrospectivity of the same. After a careful perusal of the impugned judgment and order dated 01.07.2014, we are of the considered opinion that the Tribunal has rightly interpreted the provisions of Sections 51, 52 and 53 of the MVAT Act while partly allowing the Appeals. It is to be noted here that a conjoint reading of the provisions of Section 51 and 53 of MVAT Act and by applying the same to the facts of the present case, we are of the considered opinion that the Tribunal has rightly remanded the matter back to the Assessing Authority to calculate the period of delay as per observations made in the impugned judgment and has directed to award interest over delayed refund to the Respondent. We are of the further considered view that the Tribunal has not committed any legal infirmity or error while passing the impugned judgment and order and the same does not require any interference at the hands of this Court. We may further mention here that no substantial question of law as contemplated under Section 27 of the MVAT Act is involved in the present Appeals and

the present Appeals proceed clearly on facts and circumstances involved in the present case.

10. For the reasons stated herein above, we find that there is no merit in the Appeals and Appeals are dismissed accordingly.

[A. S. GADKARI, J] **[B. R. GAVAI, J]**