IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.3356 OF 2015
[Ramesh Mohanlalji Taori .vs. State of Maharashtra and one]

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

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Shri S.V. Bhutada, counsel with Shri Y.J. Maheshwari, counsel for the petitioner,
Shri N.S. Khubalkar, AGP for the respondent nos.1 and 2.
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CORAM : SMT. VASANTI A. NAIK AND
A.I.S. CHEEMA, JJ.

DATED : AUGUST 31, 2015.

By this petition, the petitioner challenges the order of assessment under section 23 of the Maharashtra Value Added Tax Act, 2002 thereby fastening the liability on the petitioner to pay VAT to the extent of Rs.78,729/- with interest. The petitioner has challenged the notice of demand, dated 13.4.2015 as being bad in law.

The petitioner is a proprietor dealing in marble. During the course of his business, the petitioner-dealer bona-fide purchased certain tiles from M/s. Sun Earth Ceramics Ltd. believing that the said firm was a registered dealer. According to the petitioner, though M/s. Sun Earth Ceramics Ltd. is not a registered dealer, since it had issued the invoice in respect of the relevant purchases made by the petitioner, the petitioner was entitled to set off or refund under the provisions of Section 48 of the Maharashtra Value Added Tax Act, 2002. According to the petitioner, set off or refund could be granted to the petitioner once the petitioner produces the tax invoices. It is stated on behalf of the petitioner that it would not be necessary for a dealer seeking set off or refund under Section 48 of the Act, 2002 to make an enquiry, whether the selling dealer from which he purchases the goods/products is a registered dealer and that he had paid the tax on the goods sold to him. It is stated that only a tax invoice containing certificate that the registration certificate of the selling dealer was in force on the date of sale by him would be necessary.

On hearing the learned counsel for the parties and on a perusal of the provisions of Section 48 of the Act, 2002, it appears that set off or refund could be claimed only by a dealer who makes the purchases from a registered dealer. The provisions of Section 48 (2) of the Act, 2002 can be read into two parts. The first part of the provisions provides of set off or refund to a dealer who purchases the goods from a registered dealer after the appointed day. As per second part of Section 48 (2), the claimant dealer is not only required to make the purchases from a registered dealer but is also required to produce a tax invoice, containing a certificate that the registration certificate of the selling dealer is in force on the date of sale by him and the tax due on the sale has been paid or would be paid by the selling dealer. In the instant case admittedly the selling dealer from whom the petitioner purchased the goods was not a registered dealer and the tax invoice also does not disclose that the registration certificate of the selling dealer was in force on the date of sale by him and the tax due and payable on the sale, has been paid or shall be paid by the selling dealer. As per Section 48 (2) of the Act, 2002 both the conditions are required to be fulfilled, one that the purchases should be made by a dealer seeking a set off or refund from a registered dealer and that the claimant dealer produces a tax

invoice, containing a certificate that the registration certificate of the selling dealer was in force on the date of sale by him and the due tax, if any, payable on the sale has been paid or shall be paid. Since both the conditions that are required to be followed while seeking a set off or refund under Section 48 (2) of the Act, 2002 are not fulfilled by the petitioner, the petitioner cannot seek set off or refund.

Since there is no merit in the petition, the same is dismissed, with no order as to costs.

Civil Application No.1702/2015 also stands disposed of.

JUDGE **JUDGE**

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