IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10056 OF 2015

M/s Madhukar Sahkari Sakhar Karkhana
Ltd Jivaramnagar, Faizpur,
Tq. Yawal, Dist. Jalgaon
Through its Managing ...PETITIONER

versus

The Joint Commissioner of Sales
Tax (Appeals) Nashik Division, Nashik
and others ...RESPONDENTS

WITH
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Ltd Jivaramnagar, Faizpur,
Tq. Yawal, Dist. Jalgaon
Through its Managing ...PETITIONER

versus

The Joint Commissioner of Sales
Tax (Appeals) Nashik Division, Nashik
and others ...RESPONDENTS

.....
Mr. S.V. Advant, Advocate for petitioner
Mrs.A.V. Gondhalekar, AGP for respondents No. 1 to 3
.....

CORAM : S. V. GANGAPURWALA AND
K.K. SONAWANE, JJ.

DATED : 18th JULY, 2016.

Order :-

1. The petitioner in both petitions are issued with demand notices. The same were challenged by filing the appeals. The appeals came to be dismissed in default i.e. for non prosecution. Thereafter, the petitioner filed second appeals and the same are also dismissed as not

maintainable. Thereafter, petitioner filed revisions before the authority. The same were also dismissed on the ground of limitation. Aggrieved thereby present petitions.

2. Mr. Advant, learned counsel for petitioner states that absence of the petitioner in appeal proceedings was not intentional nor willful but was for unavoidable circumstances and beyond control of the petitioner. The petitioner states that it could not attend the proceedings before the Deputy Commissioner of Sales Tax as Officer concerned was not keeping good health and while filing revision delay was caused because of wrong proceedings. The appeals were filed, the same were not maintainable, because of the same delay was caused in filing the revision. According to learned counsel, opportunity be given to the petitioner to prosecute his case on merits. The petitioner is ready to abide by terms and conditions that would be imposed by the court.

3. Mrs. Gondhalekar, learned Assistant Government Pleader submits that the petitioner is intentionally protracting the proceedings, huge amount is due against the petitioner. Assessment order is dated 11-02-2011, since then till today the petitioner has not paid any amount. No plausible reason was given for not attending the proceedings in appeal so also delay for filing the revisions. No error was committed by the authority, while passing the order.

4. We have considered the submissions canvassed by the learned counsel for the respective parties. It is trite that whenever technical consideration and cause for substantial justice are pitted against each

other, cause of substantial justice has to be sub-served. The petitioner has given plausible reason for not attending the proceedings. There is no ground to disbelieve the case stated by the petitioner. No doubt, the petitioner is required to appear in the proceedings diligently. Adjournment applications were filed by the petitioner stating that Officer concerned, who was attending the matter was not keeping good health, hence, adjournment was sought. It is only on that ground the proceedings are dismissed.

5. Nodoubt, there is delay in lodging the revisions also. However, we have considered the order dismissing the appeals in default. The petitioner can be mulct with costs as proceedings are protracted because of its absence. Considering the aforesaid aspects of the matter, we have exercised our discretion in favour of the petitioner and to give the petitioner an opportunity to contest the appeals filed before the Deputy Commissioner of Sales Tax on merits.

6. In light of the above, we pass following order:

(i) The impugned order dated 25-11-2011 passed by respondent No. 2 and order dated 30-06-2015 passed by Joint Commissioner, Sales Tax are quashed and set aside on the condition that the petitioner in each of the writ petitions shall pay costs of Rs.25,000/- (Rupees Twenty Five Thousand) to respondent No. 2 on or before 08-08-2016.

(ii) The petitioner shall appear before respondent No. 2 on 08-08-2016.

(iii) If amount of costs, as directed, is deposited respondent No. 2 shall decide the appeals filed by the petitioner on its own merits upon hearing the petitioner, as expeditiously as possible, preferably within a period of six (06) months from the date of appearance of petitioner.

(iii) Petitioner shall co-operate for expeditious disposal of the appeals.

(iv) As appeals filed by petitioner before respondent No. 2 are restored, revisions filed before respondent No. 1 stands disposed of accordingly.

7. With aforesaid directions, writ petitions stand disposed of.

Sd/- Sd/-

[K. K. SONAWANE, J.] **[S. V. GANGAPURWALA, J.]**

MTK