

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 220 OF 2015

Ravi Kiran Constructions, Aurangabad
and another .. Petitioners

Versus

The State of Maharashtra and others .. Respondents

Shri Satish M. Godsay, Advocate for Petitioners.
Shri S. G. Karlekar, A.G. P. for Respondent Nos. 1 to 4.
Shri J. R. Shah, Advocate for the Respondent No. 5.

**CORAM : S. V. GANGAPURWALA AND
A. M. BADAR, JJ.**

DATE : 20TH JANUARY, 2016.

PER COURT :

. Mr. Godsay, the learned counsel submits that, the respondent No. 5 is the contractor. The petitioner is the sub-contractor of the respondent No. 5/contractor. The Principal had allotted the work to the respondent No. 5. The respondent No. 5 in turn has given sub-contract to the petitioner. The T. D. S. amount was deducted from the bills payable to the present petitioners and deposited with the department. According to the learned counsel Sub-Section 9 of Section 31 of the Maharashtra Value Added Tax, 2002 lays down that where tax is deductible at source by any employer the person making the said supply shall

not be called upon to pay tax himself to the extent to which the tax has been deducted in respect of the said supply. It is the petitioners who have performed the work. The T. D. S. is deducted from the amounts payable to the present petitioners though in the name of the respondent No. 5. It is the present petitioners who would be entitled for the credit of the said amount. The department has not considered the said aspect and are not accepting the said return submitted by the petitioner No. 1 of the respondent No. 5, granting credit of T. D. S. collected from the petitioner No. 1.

2. Mr. Karlekar, the learned A. G. P. submits that, the petitioners have also filed an appeal U/Sec. 26 of the Maharashtra Value Added Tax, 2002 and the Appellate Authority would consider all the aspects.

3. In view of the fact that, the appeal is already filed by petitioners agitating the same grievance, it would not be appropriate to entertain the writ petition. The petitioners will be entitled to agitate all these aspects before the Appellate Authority. Needless to state, the Appellate Authority would consider the same on merits, after hearing all parties concerned. Till the appeal is decided, the respondents shall not take any coercive steps against the petitioners with regard to the payment of the amount under the appeal. The appeal shall be decided

expeditiously and preferably within a period of six (6) months from today.

4. The writ petition accordingly is disposed of. No costs. All contentions of respective parties are kept open.

[A. M. BADAR, J.]

[S. V. GANGAPURWALA, J.]

bsb/Jan. 16