

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10760 OF 2016

M/s. Bright Global Papers Pvt. Limited Petitioner
Vs.
The State of Maharashtra & Others Respondents

Mr. Ratan Samal for the Petitioner.
Ms Sushma Bhende, AGP, for Respondent Nos.1, 2,
4 & 5.

CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.

DATE : OCTOBER 18, 2016

P.C:

1. We have heard Mr. Samal at great length.
2. Mr. Samal's main contention is that even after remand by this Court the Tribunal merely put a seal of approval on its earlier findings which, though termed as tentative and *prima facie*, now have been crystallised. The Tribunal non-suits and dismisses the appeals by agreeing with the view that the transactions indulged in are hawala and non-genuine. Therefore,

this is a fit case where we should entertain the writ petition. Alternatively, we should scale down and reduce the amount of part-payment.

3. On the other hand, Ms Bhende, appearing for the respondents, supports the impugned order and submits that the writ petition has no merit and be dismissed.

4. With the assistance of both sides, we have perused the order under challenge. This is an order on an application for stay. The stay has not been granted unconditionally, as prayed, but condition has been imposed. This was the precise exercise undertaken in the earlier round. The petitioner was not agreeable to it and challenged that order in this Court. This Court was persuaded to interfere with the order of part-payment. Reliance is placed by Mr. Samal on Annexure-H, page 112 of the paper-book, which is a copy of this Court's order, dated 6-7-2012, in Writ Petition No.4971 of 2012 {*M/s. Bright Global Papers Pvt. Ltd. Vs. The State of Maharashtra & Ors.*}. The Court was persuaded to set aside the earlier order and it

was submitted that the Judgment of this Court in the case of *M/s. Mahalaxmi Cotton Ginning Pressing and Oil Industries, Kolhapur Vs. The State of Maharashtra & Ors.* {Writ Petition No.33 of 2012), decided on 11-5-2012, should be considered and thereafter an order be passed. Acting in terms of this direction, the impugned order, Annexure-I, page 114 of the paper-book, has been passed. The order itself clarifies that it is on a stay application.

5. There were four appeals brought by a person, namely, the appellant who was carrying on business of importing and reselling paper and paper products. It filed its returns and paid some tax. A raid was conducted and the books of accounts were seized. The books of accounts were verified and that revealed, according to the Department, a set-off which was impermissible. Therefore, a direction to revise the returns was issued and the appellant was directed to reverse the amount of input credit shown in the original returns. The recovery proceedings then were initiated. A writ petition was filed challenging the same and an order was passed by this Court in

the initial round directing assessment of the returns/revised returns. That is how the assessment orders were passed. The assessment orders were challenged before the First Appellate Authority and who determined the total part-payment amount of Rs.14.55 crores against the total dues crystallised at Rs.24,92,99,313/-.

6. The Tribunal after considering the arguments of both sides and noting the reliance placed in the case of **Mahalaxmi** (supra) held that it is not as if the fate of the appellant/petitioner before us is sealed. The Tribunal noted that the First Appeals are still pending. The vendors to whom the goods have been sold are denying that they have sold any goods to the petitioner, but their affidavits have been placed on record. The petitioner prays for an opportunity to cross-examine them on the contents of these affidavits. The Tribunal says that the First Appellate Authority can be approached with all such requests. However, presently it cannot ignore the contents of these affidavits, more so, when the appellant prayed for an alternate relief of set-off. It is in such circumstances and by

assigning tentative and *prima facie* reasons in para 14 of the impugned order, the Tribunal brought down the amount in terms noted at page 124 of the paper-book and partly allowed all the appeals.

7. We do not think, though on a perusal of all this, that the Tribunal's order can be termed as perverse or vitiated by any error of law apparent on the face of the record. The condition imposed is reasonable and cannot be termed as unfair, unjust or unreasonable, leave alone arbitrary. The writ petition, therefore, fails. It is dismissed.

(B.P. COLABAWALLA, J.)

(S.C. DHARMADHIKARI, J.)