

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7477 OF 2016

Idemitsu Lube India Pvt Limited

..Petitioners

Vs.

The State of Maharashtra and Others

..Respondents

Mr. V. Sridharan, Senior Counsel a/w Mr. Prakash Shah, Mr. Rahul Thakar i/b PDS Legal, for the Petitioners.

Mr. V. A. Sonpal, Special Counsel a/w Mr. Sandip Babar, AGP, for Respondent Nos.1 to 3.

Ms. Shalaka A. Gujar-Karande, for the Respondent Nos.4 and 5.

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

DATE :- OCTOBER 25, 2016.

P. C.:

By this Writ Petition under Article 226 of the Constitution of India and equally as amended, the Petitioners are seeking a declaration that the impugned transactions brought to tax under the Maharashtra Value Added Tax Act, 2002 ("MVAT Act") fall outside its purview in as much as even if the transactions are taken to be sales, that sale has been concluded outside the State of Maharashtra. The sale is therefore covered by Section 4

(1) of the Central Sales Tax Act, 1956. It is not liable to be taxed under the MVAT Act.

2 The Petitioners are challenging in the garb of this declaration the assessment orders, details of which are provided in prayer clauses (a) to (c) and therefore Mr. Sonpal, the learned Special Counsel appearing for Respondent Nos. 1 to 3 has raised the preliminary objection to the maintainability of the Writ Petition. He would submit that against the assessment orders, there are remedies of multiple Appeals under the MVAT Act and the Appellate Authority can very well examine the questions raised in the Writ Petition. Even if the question touches the jurisdiction of these officers, the decision thereon would require application of mind to the facts and circumstances of the particular transactions, their situs and therefore a factual issue is involved. According to Mr. Sonpal the Writ Petition therefore need not be entertained.

3 After having heard the counsel appearing for parties only on this preliminary point, Mr. Sridharan, on taking instructions, states that the Petitioners are not averse to approaching the Appellate Authority. They would bring an

Appeal and file it within two weeks from the date of receipt of a copy of this order. Mr. Sridharan would submit that since he is heavily relying upon a Division Bench judgment of this Court in the case of **Subway Systems India Pvt Limited v/s State of Maharashtra in Writ Petition No.497 of 2015** decided on 11th August, 2016 and raising a purely legal issue, namely, that when it comes to intangible goods, it is not the place of trading in such goods but the source of its title which would govern the applicability of taxing provision. The Appellate Authority should not insist on any deposit. The debatable issue would enable the Petitioners therefore not to make any part payment or the department in insisting it.

4 After having heard both sides on the amended pleas and bearing in mind the construction that is sought to be placed relying on the judgment of this Court, we are of the opinion that the Petitioners are entitled to an unconditional stay of recovery of taxes pending the Appeal. If the Appeal is filed within the period of two weeks from today, the First Appellate Authority shall endeavour and dispose it off as expeditiously as possible and within a period of three months from the date of its institution.

5 The Writ Petition is disposed off by clarifying that the matter is relegated to the First Appellate Authority but this Court has not examined the rival contentions particularly on the point of jurisdiction as also on merits. All of them are kept open for being raised in the appellate proceedings. If the Appeal is filed within two weeks from the date of receipt of copy of this order, the same shall not be dismissed by the First Appellate Authority on the ground of limitation.

(B. P. COLABAWALLA, J.) (S. C. DHARMADHIKARI, J.)