IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6219 OF 2007

Shri Gopal F. Lalchandani ... Petitioner

Vs

1. The Sales Tax Officer & Ors. ... Respondents

Mr. P.C. Joshi i/b Mr. N.B. Shah for the Petitioner.

Mr. V.A. Sonpal, Special Counsel for the Respondent Nos.1 to 5.

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

TUESDAY, 30TH AUGUST, 2016

P.C. :

1. The petitioner has challenged by this petition under Article 226 of the Constitution, the orders passed by the respondent No.3 dated 3rd November, 2006, Annexure-A, 6th August, 2005 passed by respondent No.2, Annexure-I as also the order passed by respondent No.1 dated 20th March, 2002, Annexure-F. By the order dated 3rd November, 2006, the Second Appeal was partly allowed by the Deputy Commissioner of Sales Tax and he issued the following directions :

" Second appeal petition bearing No. DC/APP/2/PN/SA-104/05-06 is partly allowed.

Being URD his total sales during previous year as well as current year exceeded Rs.40 Lakhs he is liable for VAT. Therefore, his entire sales of Rs.36,29,13. The Petitioners crave leave of this Hon;bkle244/- are liable for 20% ST. Since appellant is a URD he is not entitled for set off under any Rules.

Consequentially, appellant is also liable interest u/s. 36(3)(b) which is restricted to Rs.3,84,795/-.

Considering facts and circumstances of this case, penalty u/s. 36(2)(a) is restricted to Rs.10,000/-.

The assessing officer is directed to keep recovery proceedings in abeyance for amount of Rs.2,12,301/- for the period 9.12.98 to 31.1.99, till the decisions of Honourable Bombay High Court writ petition N.92 of 1999. Balance amount is recoverable as per provisions of Law."

2. On such a petition and during its pendency this Court after hearing both sides, passed an order on 15th October, 2010 which reads as under :

" Heard the learned counsel for the Petitioner and the learned counsel for the Revenue.

2. During the course of hearing, the learned counsel for the Petitioner brought to our notice about the pendency of an application made to the Divisional Administrative Officer i.e. the Joint Commissioner of Sales Tax, Pune (Respondent No.3A herein) for condonation of delay in making the application for registration. According to the learned counsel for the Petitioner, the said application is pending since May 2006. He, therefore, prays that suitable directions be issued directing the concerned authority to decide the said application.

3. Mr. Sonpal, the learned counsel appearing for the Revenue has no objection.

4. Accordingly we direct the Respondent No.3A herein to decide the said application by a reasoned order following principles of natural justice within a period of three weeks from the date of receipt of the copy of this Order.

5. It is made clear that pendency of this Petition shall not come in the way of deciding the said application.

6. S.O. after vacation."

3. The petitioners have, therefore, pursued their application

dated 15th May, 2006, made to the Joint Commissioner of Sales Tax, Pune. On that application, an order has been passed and now the petitioner's registration stands revived from 1st April, 1998. We enquired from both sides as to why in terms of this order the petition cannot be allowed and to enable the authorities, particularly under the Bombay Sales Tax and the Rules made thereunder, to take note of the subsequent development and, if permissible in law, grant the necessary relief to the petitioner.

5. Mr. V.A. Sonpal, learned Special Counsel sought time to take instructions and has today tendered an affidavit of one Shaikh Shoukatali Gulabsaheb, Joint Commissioner of Sales Tax (PT), Pune. The affidavit indicates that the application was indeed filed on 15th May, 2006, by the petitioner and reminder was also issued on 22nd January, 2007. Upon the petitioner's application, an order was passed on 24th March, 2011, and the registration of the petitioner is validated from 1st April, 1998. Exhibit-1 to this additional affidavit tendered today by the Joint Commissioner is he requisite order of 24th March, 2011.

6. In view thereof, we do not think that the writ petition should be kept pending. The legal questions and issues are kept open for decision in an appropriate case. We dispose of the Writ Petition with a direction that in terms of the affidavit filed by the Joint Commissioner of Sales Tax, the matter should be re-examined and by the competent authority. However, even if that competent authority is of the level of Deputy Commissioner or above, he shall proceed on the footing that the registration of the petitioner has been validated with effect from 1st April, 1998. He should also abide by the order dated 24th March, 2011. If the matter goes to the Assessing Officer as well, the Revenue has no objection and it will not raise the issue of its competence and jurisdiction.

6. In disposing off the writ petition by consent and in the above manner, we also take note of the additional affidavit filed by the petitioner. We take that affidavit also on file. The matter being fairly old, the proceedings shall be disposed of as expeditiously as possible and within a period of three months from the date of receipt of a copy of this order.

7. The writ petition is, accordingly, disposed of. There shall be no order as to costs.

B.P. COLABAWALLA, J. ***S.C. DHARMADHIKARI, J.***