IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3466 OF 2001

U. B. Engineering and Ors. } Petitioners
versus
State of Maharashtra and Ors. } Respondents

Ms. Nikita Badheka i/b. Mr. M. M. Vaidya for the petitioners.

Mr. V. A. Sonpal – Special Counsel for respondent nos. 1 to 4.

CORAM :- S. C. DHARMADHIKARI &
G. S. KULKARNI, JJ.
DATE:- AUGUST 30, 2016

P.C. :- (In Chamber)

1. This writ petition was actually heard together with the other matter, in which we have delivered detailed judgment and pronounced it. That is in the case of *Finolex Cables Limited and Anr. vs. State of Maharashtra and Ors.*[1] decided on 20th August, 2016. This writ petition was on board along with Writ Petition No. 1009 of 1998. In fact, the arguments in this petition commenced and concluded prior to Writ Petition No. 1009 of 1998.

2. After the above judgment was pronounced, Ms. Badheka learned advocate appearing for the petitioners in this writ

1 **Writ Petition No. 1009 of 1998**

petition urged that this court should have indicated in the judgment delivered as to whether the controversy raised in this petition is covered and therefore, the above judgment will dispose of this writ petition as well or otherwise.

3. It is with a view to ascertain the correct position about this oral application of Ms. Badheka, that we placed this matter in Chambers today.

4. Ms. Badheka submitted that but for minor details, namely, distinction in the scheme and the issue of its application in terms of the monetary limits, the core issue is common and that is covered by the case of *Finolex Cables Limited* (supra). She would, therefore, submit that the *Finolex* judgment must apply and even this writ petition be allowed in terms thereof.

5. Mr. Sonpal learned special counsel appearing for the respondents on the other hand would submit that the issue is not common. Firstly, these matters were separately argued. Secondly, in this case the issue is regarding production capacity, which is enhanced by the new unit. Therefore, the *Finolex* judgment will not cover this issue.

6. After hearing both sides, we are unable to agree with Mr.Sonpal. What we find is that the issue and which was common

to both matters is regarding the power and jurisdiction of the respondents to tax something which they have relaxed or deferred by a scheme of incentives. During the operation of the scheme all benefits flowing therefrom and otherwise permissible ought to be extended and merely because there is legislative intervention, a statutory provision brought later on should not be made applicable to deprive the eligible unit from the benefits of the scheme. The benefits flowing may be by way of deferral of the sales tax dues. So long as the stipulations, terms and conditions of the scheme and the agreement in pursuance thereof have been complied with, the benefits cannot be denied merely because now a statutory provision has intervened. That is the precise issue which was covered in the judgment in the case of *Finolex* (supra) following the view taken by a learned Single Judge of the Bench of this court at Nagpur and which has been upheld by the Division Bench at Nagpur. Similarly, another Division Bench judgment, which has been also referred in *Finolex case* (supra) has been applied so as to reiterate the legal principle that the statutory provision, even if inserted with retrospective effect, cannot be utilised or invoked so as to deny the benefits of a scheme, which was already in force and when all its conditions and terms are duly complied with by the unit. Once this common thread and theme is flowing through all these matters, then, we hold that the issue in this petition is concluded by the judgment delivered in the case of *Finolex Cables Ltd.* (supra).

7. Therefore, this writ petition is allowed and the petitioners will be entitled to similar reliefs. However, this does not mean that the State would have to return any amounts and it would be open for it to make such appropriations and adjustments as are permissible in law as far as that aspect is concerned.

(G.S.KULKARNI, J.) **(S.C.DHARMADHIKARI, J.)**