IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8622 OF 2016

M/s Leader Gas and Petroleum Ltd ..Petitioner

Vs.

The State of Maharashtra and Others ..Respondents

Mr. Ratan Samalo,for the Petitioner.

Ms. Sushma Bhende, AGP,for the Respondents.

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

DATE :- **AUGUST 23, 2016.**

P. C.:

The Petitioner is the original Appellant in VAT Appeal No.236 of 2015.

2 An application was made for interim stay before the Joint Commissioner of Sales Tax (First Appellate Authority). That was made pending disposal of an Appeal against the assessment order. The First Appellate Authority fixed part payment of Rs. 1 Crore under the Maharashtra Value Added Tax Act, 2002 (for short "MVAT Act") and deposit of Rs. 1 lakh under the Central

Sales Tax Act, 1956 for staying the balance recovery.

3 Aggrieved and dissatisfied with such an order, the Petitioner/Appellant carried the matter to the Tribunal in the above Appeal.

4 The argument before the Tribunal and before us is that, all authorities have overlooked that the suppliers have deposited the taxes due with the Government Treasury. The proof of that is available with the authorities themselves and they should have verified it from their own records and thereafter given appropriate adjustment to the Petitioner.

5 This is a purely factual matter. The Tribunal in paragraph 7 of the impugned order holds that the Petitioner/Appellant has not shown any record about suppliers depositing taxes with the Government Treasury. Mr Samalo states that such a proof is available and the Petitioner/Appellant is in possession thereof. It is annexed to the present Petition.

6 These are hardly satisfactory state of affairs. In interim orders where rights and equities are balanced by the

Tribunal, we do not think that there is any scope for us to interfere, when all that the Tribunal has done and in favour of the Appellant/Petitioner is to bring down part payment amount from Rs. 1 Crore to Rs. 50 Lakhs and in another case to Rs. 50,000/-. The First Appeal of the Appellant is pending. If compliance is reported with the conditions imposed under the Tribunal's order, all reliefs can be claimed in the substantive proceedings. The First Appellate Authority may be requested to set aside and quash the demand or grant appropriate adjustment while disposing off the Appeal. When all such remedies, rights and contentions are intact, we are disinclined to interfere in the writ jurisdiction. The condition imposed is just, fair and requisite and cannot be termed as arbitrary. The Writ Petition is dismissed.

7 The extension of time to comply with the Tribunal's order is refused.

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