

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1757 OF 2016

M/s. Krishnaping Minerals Pvt. Ltd. Petitioner
Vs.
State of Maharashtra & Others Respondents

Mr. Altaf Khan for the Petitioner.
Mr. M.A. Sayed, AGP, for the Respondents.

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

DATE : OCTOBER 18, 2016

P.C:

1. We have heard Mr. Khan, appearing for the petitioner, at great length.

2. With his assistance, we have perused the impugned order passed on 29-7-2015 in VAT Appeal Nos.236 to 238 of 2015.

3. The appeals were disposed of by a common order as they arose from a direction to make and deposit part-payment.

That direction was made and the deposit was directed by the First Appellate Authority.

4. The orders of assessment were passed against which appeals were preferred before the Joint Commissioner of Sales Tax (Appeal), Mumbai. He fixed the part-payment under the Central Sales Tax Act, 1956 and the Maharashtra Value Added Tax Act, 2002 for the subject and relevant assessment years. Being aggrieved by the same, the appellant/petitioner preferred appeals to the Tribunal. The said appeals were heard at some length by the Tribunal and after noting the rival contentions, the Tribunal arrived at a tentative and *prima facie* finding. That tentative and *prima facie* finding is disputed and challenged before us. We are mindful of the fact that in a tentative view where the transaction is termed as hawala, that will never bind the Tribunal when it decides the appeals finally. The Tribunal has not expressed its agreement with that view but has merely indicated that *prima facie* the investigations carried out revealed absence of a genuine transaction. Therefore, the tax liability could have been foisted on the dealer. Taking that tax liability

into account, the condition has been imposed. The amount of part-payment is determined only on the basic tax liability. We do not think that when the appeals of the petitioner are partly allowed by the Tribunal and its liability to deposit sums is brought down and crystallised to the basic tax amount, that this is a fit case for interference in our writ jurisdiction. The view taken by the Tribunal, which is tentative and *prima facie*, is based on the peculiar facts of this case. That cannot be termed as arbitrary or perverse.

5. We see no assistance being derived by the petitioner from the order passed by this Court in MVAT Appeal No.7 of 2016 along with MVAT Appeal No.6 of 2016 **{*Bhave Engineering Pvt. Ltd., Badlapur, Thane Vs. The State of Maharashtra*}**, decided on 14-6-2016. There the direction was to deposit something more than the basic tax and that is why it was interfered. We do not see how such an order can be of any assistance to the petitioner. It would rather support the exercise of the Tribunal and which we intend to uphold.

6. In the light of the above discussion, the writ petition fails. It is dismissed.

7. Time to comply with the Tribunal's order is extended by six weeks from today. If compliance is reported, the First Appellate Authority to entertain the appeals and decide them in accordance with law. No further extension will be granted under any circumstance.

(B.P. COLABAWALLA, J.)

(S.C. DHARMADHIKARI, J.)