IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION {L} NO.1059 OF 2016

Unity SMC Joint Venture .... Petitioner
Vs.
Maharashtra Sales Tax Tribunal .... Respondent

WITH
WRIT PETITION {L} NO.1060 OF 2016

Backbone Unity Joint Venture .... Petitioner
Vs.
Maharashtra Sales Tax Tribunal .... Respondent

WITH
WRIT PETITION {L} NO.1061 OF 2016

Unity Chopra Joint Venture .... Petitioner
Vs.
Maharashtra Sales Tax Tribunal .... Respondent

WITH
WRIT PETITION {L} NO.1062 OF 2016

Unity Asian (W) Construction Co. .... Petitioner
Vs.
Maharashtra Sales Tax Tribunal .... Respondent

WITH
WRIT PETITION {L} NO.1063 OF 2016

Backbone Unity Joint Venture .... Petitioner
Vs.
Maharashtra Sales Tax Tribunal .... Respondent

Mr. Vinayak Patkar with Mr. Ishaan Patkar,
Ms Tapaswini Shah and Mr. Dharmapal Dave
i/by M/s. TJS Legal for the Petitioner in all
petitions.
Mr. V.A. Sonpal, Special Counsel with Ms Uma
Palsuledesai, AGP, for the Respondent in all
petitions.

CORAM: S.C. DHARMADHIKARI &
DR. SHALINI PHANSALKAR-JOSHI, JJ.

DATE : MAY 03, 2016

P.C:

1. Under a genuine mistake, the Maharashtra Sales Tax Tribunal has been impleaded as party-respondent. There is no other respondent.

2. It is correct that ordinarily the Tribunal or its Presiding Officer or Member is not impleaded as party-respondent to a writ petition and it is the State against whom writ petitions are filed. The Tribunal, if at all impleaded, are formal parties and never put to notice or ever brought in the arena. The Tribunal, therefore, should be rest assured that this Court will protect its interest and equally the status and dignity

of its Members. We, therefore, direct deletion of the Tribunal as the respondent and substitution of the said respondent with the State of Maharashtra and the concerned Commissioner as party-respondents. Let these two entities be impleaded as party-respondents. Amendment be carried out within two weeks from the date of receipt of copy of this order.

3. After hearing Mr. Patkar and Mr. Sonpal at some length, we are of the view that all these petitions need to be disposed of by allowing the petitioners before us and the appellants in the First Appeals to raise appropriate contentions and based on the grounds of the Memo of Appeal to support the prayer for dispensation of condition of pre-deposit.

4. It is specifically argued that the petitioners had filed Returns to claim exemption under Section 45(2) of the Maharashtra Value Added Tax Act, 2002 (for short, "the MVAT Act") and produced the relevant materials.

5. The First Appellate Authority and the Tribunal feel otherwise. They held that no such materials were ever produced.

6. We have found that the First Appellate Authority ought to have been careful and should have taken up every application for waiver of the condition of pre-deposit separately, and instead of passing a common order, confusing itself about the facts and submissions, this course, though a little lengthy and elaborate, should have been adopted. If this course had been adopted, considerable judicial time, at least of this Court, would have been saved. We find that in the interim stay orders passed by the First Appellate Authority and the Tribunal, there is a consistent theme flowing and that is lack of evidence, even at the prima facie stage to indicate compliance with the condition stipulated by sub-section (2) of Section 45 of the MVAT Act. The Tribunal has found that there is evidence prima facie to show that the agent has not paid the taxes. Mr. Patkar submits that there is voluminous evidence to indicate otherwise and Form Nos.408 and 407, so also Form No.704 were duly produced, which would demonstrate as to how there is compliance with sub-section (2) of Section 45 of the MVAT Act.

7. We are of the opinion that even these materials should have been examined carefully and at the prima facie stage. The petitioners ought to have been given complete opportunity to produce them and even if the Tribunal or the First Appellate Authority was required to pass a separate order on each application, that should have been done. That would have avoided any complaint and of the present nature.

8. For the aforementioned reasons, we set aside the interim orders passed by the First Appellate Authority and of the Tribunal. We restore the applications for dispensation of the condition of pre-deposit before the First Appellate Authority and that shall be decided uninfluenced by any earlier conclusions in the orders of that Authority as also of the Tribunal. If the First Appellate Authority is approached with such applications and within four weeks from today, all of them shall be decided within four weeks thereafter. Mr. Patkar submits that the petitioners will render all assistance and co-operation to the First Appellate Authority and not seek unnecessary adjournments at the hearing of these applications.

9. All the petitions are allowed in the above terms and accordingly stand disposed of.

(DR. SHALINI PHANSALKAR-JOSHI, J.) (S.C. DHARMADHIKARI, J.)