IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
MAHARASHTRA VALUE ADDED TAX APPEAL NO.30 OF 2016
IN
VAT SECOND APPEAL NO.432 OF 2015

M/s. Viacom 18 Media Pvt. Ltd. .... Appellant
Vs.
The State of Maharashtra .... Respondent

Mr. C.B. Thakar for the Appellant.
Mr. B.B. Sharma, AGP, for the Respondent.

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

DATE : AUGUST 02, 2016

P.C:

1. We have heard both sides.

2. The argument of Mr. Thakar is that the present appeal raises substantial questions of law.

3. They arise out of the order passed on 30-12-2015 by the Maharashtra Sales Tax Tribunal, Mumbai.

4. Mr. Thakar would submit that the Tribunal disposed of the appeal finally, though what was listed before it on the given date and time was an application for stay. Mr. Thakar would submit that a rectification application was also presented to the Tribunal so as to recall the impugned order and thereafter hear the appeal on merits and in accordance with law. On the rectification application, an order has been passed on 7-5-2016 and a copy thereof is handed over to us by Mr. Thakar during the course of his arguments. We take the same on record and mark it as "X" for identification.

5. Mr. Thakar would submit that, once the appeal itself has been disposed of finally, there is a grave loss and serious prejudice to the appellant, for the entire issue and the controversy arising therefrom was not unfolded nor detailed submissions were canvassed. At best, an understanding ought to have been given by the Tribunal to the parties that it was inclined to dispose of the appeal finally. It is in these

circumstances, he would submit that the question of law, at page 7 of the memo of appeal, is a substantial question of law and equally the other two questions, because if this Court were to admit the appeal, then, it would have to go into necessarily the merits of the controversy and at that stage, according to Mr. Thakar, remand may become necessary.

6. We have heard also Mr. Sharma, appearing on behalf of the Revenue. Mr. Sharma does not dispute that a rectification application was presented and it was decided on 7-5-2016. He also does not dispute the correctness of the copy of the order of 7-5-2016 and its content nor the order sheet.

7. We have heard the parties on the limited point as to whether the order passed by the Tribunal has resulted in prejudice being caused to the appellant before it and before us.

8. We have found from a reading of the order passed by the Tribunal on 7-5-2016 on the rectification application that, a

specific contention was raised that on 20-11-2015 the matter was fixed for hearing of the stay application. It was heard for stay and the request of the appellant/applicant was that there should be an unconditional stay of recovery pending the disposal of the appeal. On the other hand, it was argued on behalf of the Revenue that it is correct that there was an application for stay, but exhaustive arguments were canvassed and nothing could prevent the Tribunal from disposing of the appeal finally.

9. After having heard the parties and perusing this order of the Tribunal, we find that in its reasonings, the Tribunal does not dispute that it was a stay application which was heard. However, the arguments that were canvassed, which in the opinion of the Tribunal, were exhaustive, and it had no desire to delay the disposal of the appeal that it adopted the above-noted course. To our mind, interest of justice and fairness requires that on the stay application the Tribunal indicated its mind that it is inclined to grant unconditional stay of recovery of taxes. Then, it should have informed the parties that either the appeal itself be

argued finally on the very date or on some future date and time. Ordinarily, this is what is done even by this Court and we never take the parties by surprise. We inform the Advocates and parties that they should be ready to argue the appeal finally in such cases. If they seek time, we grant them readily so that better assistance is rendered to the Court by those who are regularly practising before the authorities and the Tribunal in this branch of law. This is how a Court of law is expected to function and if it is pointed out from its own record that both sides were heard on the stay application and the matter was kept for order, then, the least that is expected is that the Tribunal accommodates the parties and their Advocates by recalling the earlier orders. More so, when prejudice is caused. By this nothing is lost, rather the Tribunal Members would gain confidence of the Bar. The Judges and Advocates have to work together so as to render justice to parties. The Advocates are never treated as adversaries, but they are part of the system and without their assistance and co-operation it would not be possible for Courts to render justice. In such a case and going by the peculiar facts, the Tribunal should have recalled its order even if that was partly in favour of the present appellant. All the more when a party or a litigant in whose favour the Tribunal has passed an order and has granted partial relief does not want this benefit, then, the Tribunal should have unhesitatingly recalled its earlier order. It should have restored the Appeal to its file. We do not think that on insufficient materials and incomplete reasonings we would be justified in going into the merits of the controversy. We **admit** this appeal on the following substantial question of law:-

> *Q. On the facts and circumstances of the case, when the hearing was made on stay application on 20.11.2015, whether Hon. Tribunal is justified in disposing of VAT Second Appeal finally based on such hearing, without giving opportunity of final hearing?*

10. With the consent of both sides and on above reasoning, we allow this appeal. We quash and set aside the orders passed by the Tribunal on 30-12-2015 and 7-5-2016. We clarify that there will be an unconditional stay of recovery of taxes during the pendency of the appeal. The Tribunal shall now

hear the appeal on merits and in accordance with law, uninfluenced by any tentative or *prima facie* conclusions. All contentions on merits of both sides are kept open. The appeal is allowed and accordingly stands disposed of.

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