IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

MVAT APPEAL NO.7 OF 2016
IN
VAT APPEAL NO.918 OF 2014

ALONG WITH

MVAT APPEAL NO.6 OF 2016
IN
VAT APPEAL NO.919 OF 2014

Bhave Engineering Pvt. Ltd.,
Badlapur, Thane. …. Appellant
V/s.
The State of Maharashtra,
Through the Commissioner of Sales Tax,
Mazgaon, Mumbai & Ors. …. Respondents

Mr. Chandrakant B. Thakar for the Appellant.

Mr. B.B. Sharma, A.G.P., for the Respondents.

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

DATE : 14TH JUNE, 2016.

P.C. :

1. We have heard Mr. Thakar, learned advocate appearing for the Appellant, and Mr. Sharma, learned A.G.P., appearing for the Respondents.

2. We have perused the impugned order passed by the Maharashtra Sales Tax Tribunal, Mumbai, on 17th August 2015 in VAT Appeal Nos.918 and 919 of 2014.

3. Having perused this order, we find that both the Appeals deserve to be admitted on the following substantial question of law :-

> "On the facts and circumstances of the case, whether Hon. Tribunal is justified in fixing part payment amount equal to basic tax amount and not granting stay without any part payment or at token amount ?"

4. We have perused the interim order passed by the Tribunal. In the interim order, the Tribunal has found that the Appeals are directed against the order of the first Appellate Authority, namely, Deputy Commissioner of Sales Tax (Appeals), wherein the Appellant before us has been directed to deposit a sum of Rs.68,95,367/- and Rs.6,42,394/-.

5. In the present Appeals, we are concerned with the direction of the first Appellate Authority to deposit a sum of Rs.68,95,367/-. The Tribunal has brought it down to Rs.42,87, 364/-.

6. We have seen the Chart and which was referred by the Tribunal extensively. As against the tax amount payable of Rs.42,87,364/-, the Tribunal has added up not only the interest but commensurate penalty and determined the amount payable as Rs.1,11,87,731/-. We would have appreciated had the Tribunal bothered to consider the basic tax liability. If the Tribunal has taken the basic tax liability as the foundation and for making an appropriate direction to deposit a sum, this Court would not have been inclined to interfere at all. When the Tribunal has applied its mind and as is apparent from para (6), what it has proceeded to hold is

that the investigation was carried out by the Department, which revealed existence of hawala transactions. The observations made in para (6) cannot be said to be prima facie or tentative. The Tribunal should be aware that the First Appeal is still pending before the Deputy Commissioner of Sales Tax (Appeals). He has yet to apply his mind to the merits. All that was under consideration of the Tribunal was a direction of pre-deposit. There, the pre-deposit amount was determined as Rs.68,95,367/-. If this was the position and the request was to bring it down to appropriate and reasonable sum, we do not see any justification for the Tribunal to then go into the merits and express such opinion as would influence the outcome of the Appeal. The Tribunal could have imposed a reasonable condition or a right of appeal ought to be preserved and not rendered illusory by an arbitrary and excessive direction. It would mean that the Appellant, if not complying with the order or pre-condition, will loose an opportunity to convince the Appellate Authority on the merits. Whether, indeed, this was a case of hawala or that was a mere allegation but unsubstantiated, then, it is for the first Appellate Authority to pass an appropriate order.

7. In such circumstances, we allow these Appeals. We reduce the sum in VAT Appeal Nos.918 and 919 of 2014 for the period 2009-10 to Rs.25 Lacs. If that sum is deposited within a period of eight weeks from today, the first Appellate Authority shall take up the Appeals and dispose them of on merits and in accordance with law.

8. If this direction is not complied with, all legal consequences shall follow. Appeals are disposed of in the above terms. Time to deposit the amount is extended by a period of four weeks from today.

[DR. SHALINI PHANSALKAR-JOSHI, J.]   [S.C. DHARMADHIKARI, J.]