IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 4264 OF 2016

M/s. Jaika Motors Pvt.Ltd., Nagpur, through its Managing Director Prafulla Kashinath Kale

-vs-

State of Maharashtra, thr. its Secretary, Finance Deptt and others

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Office notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders.

Mr. V.R.Thakur, counsel for the petitioner.
Mr. A.A.Madiwale, AGP for the respondent Nos.1 to 4.

CORAM : SMT. VASANTI A NAIK & MRS. SWAPNA JOSHI, JJ.

DATE : 05.08.2016.

By this writ petition, the petitioner challenges the order of the Joint Commissioner of Sales Tax (Appeal), dated 31.08.2015 rejecting an application filed by the petitioner for stay of the judgment, dated 30.01.016 by which the petitioner was directed to pay Value Added Tax to the extent of more than rupees ten crores for the Assessment Year 2007-08.

Shri V.R.Thakur, the learned counsel for the petitioner, submitted that the Joint Commissioner of Sales Tax (Appeal) was not justified in rejecting the stay application, as the order of assessment was passed against the petitioner without granting any opportunity, whatsoever, to the petitioner. It is stated that a notice was not served on the petitioner and the petitioner was not granted an opportunity to defend the claim before the assessment order was passed. It is stated that the Assessment Officer could not have passed the assessment order in the absence of service of the notice seeking explanation, on the petitioner. It is stated that though this fact was pointed out to the Joint Commissioner of Sales Tax (Appeal) while seeking stay to the order of the Assessment Officer and the order in appeal, the said aspect was not considered by the Authority.

Since we had found that the petitioner had a *prima facie* case, we issued a notice of final disposal to the respondents on 29.07.2016 and had directed the State Government not to take any coercive action against the petitioner. We had asked the learned Government Pleader, who had waived notice on the said date to confirm whether any notice was served on the petitioner before the assessment order was passed.

Shri A.A.Madiwale, the learned Assistant Government Pleader appearing on behalf of the respondents, states on instructions from the respondent No.2-Deputy Commissioner of Sales Tax, Nagpur that before passing the assessment order for the Assessment Year 2007-08, no opportunity was granted to the petitioner and a notice for explanation was also not served on it. It is stated that in the aforesaid background, it would futile to proceed with the appeal and the respondents are ready to recall the order of the Assessment Officer and to take up appropriate action, after serving a notice for explanation on the petitioner in respect of the Assessment Year 2007-08. It is stated that the writ petition could be disposed of by accepting the aforesaid statement, made on behalf of the respondent No.2-Deputy Commissioner of Sales Tax.

By accepting the statements made on behalf of the respondent No.2-Deputy Commissioner of Sales Tax, which would be binding on the respondents, we dispose of the writ petition. The order of assessment, dated 30.03.015 stands recalled, in view of the statements made on behalf of the respondents. It is needless to mention that the demand notices would also not survive, in view of the recall of the assessment order. The appeal filed by the petitioner before the Appellate Authority i.e. the Joint Commissioner of Sales Tax (Appeal) would not survive, in view of this order. The respondents are free to take appropriate action against the petitioner in accordance with law. Order accordingly. No costs.

JUDGE **JUDGE**

KHUNTE

C E R T I F I C A T E

I certify that this Order uploaded is a true and correct copy of original signed Order.

Uploaded by : G.S.Khunte,
P.A.to Hon'ble Judge

Uploaded on : 09/08/2016