IN THE HIGH COURT OF JUDICATURE
AT BOMBAY

BENCH AT AURANGABAD.

MAHARASHTRA VALUE ADDED TAX APPEAL NO.1 OF 2017

Hotel Venkatesh, A
partnership firm having its
place of Business at Yeldary
Corner,Main Road, Jintur,
District Parbhani,
through its partner
Shri Rajaram Ramayya Bhure,
Age 55 years, Occ.Business,
R/o Jintur. ... Appellant.

Versus

The State of Maharashtra
through Assistant Commissioner
of Sales Tax(VAT Adm),
Parbhani. ... Respondent.

...

Mr.S.V.Adwant, advocate for the appellant.
Mr.S.W.Munde, A.G.P. for the State.

...

CORAM : S.V.GANGAPURWALA AND
S.M.GAVHANE,JJ.

Date : 05.12.2017.

PER COURT :

1. The appellant impugns the order of the Tribunal to the extent that it has not considered

set off under Rule 51 of the Maharashtra Value Added Tax Act, 2002. It is the contention of the learned counsel for the appellant that the appellant has made his claim for set off for an amount of Rs.1,41,808/- (Rupees one lac forty one thousand eight hundred eight) on the basis of the assessment order for the year 2004-05. The same was carried forward for the period 2005-06. It is submitted by the learned counsel for the appellant that the assessment order for the year 2004-05 could not be produced before the authority because of the genuine reason. The appellant was not to gain by withholding it. At the relevant time, the appellant was prevented by a sufficient cause for not producing it. At the time of initial assessment, the copy of the assessment order for 2004-05 was not with the appellant. The appellant be given one more opportunity to produce the copy of the assessment order before the Second Appellate Authority. In fact, it was produced along with Rectification Application.

2. Learned A.G.P. states that before the

judgment was delivered by the First Appellate Authority, the petitioner was in possession of the copy of the assessment order of the year 2004-05. It is the case of sheer negligence on the part of the appellant.

3. The production of the copy of the assessment order of the year 2004-05 in the Rectification Application is of no avail. The jurisdiction of the Tribunal in entertaining Rectification Application is in a very narrow compass. The jurisdiction of the Tribunal in entertaining the Rectification Application is not akin to review.

4. It appears that the appellant had asked to call for the record and proceedings. The same could have been called by the authority. The copy of the assessment order was very much part of the record of the earlier proceedings for the year 2004-05. Prima facie it appears that while the order was passed for the assessment year 2004-05, an amount of Rs.1,41,808/- (Rupees one lac forty one thousand eight hundred eight) was

carried forward to the next assessment year for the purpose of set off.

5. Considering the reasons given and the fact that the assessment order for the year 2004-05 is now on record, it will be appropriate for the Second Appellate Authority to consider the assessment order and decide the matter afresh.

6. In light of the above, we quash and set aside the order passed by the Tribunal and remit the matter to the Tribunal for consideration afresh. The appellant is entitled to produce copy of the assessment order for the year 2004-05. The Tribunal shall thereafter decide the appeal afresh on its own merits in accordance with law.

7. The Appeal is accordingly allowed. No costs.

(S.M.GAVHANE,J.) **(S.V.GANGAPURWALA,J.)**

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