IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1644 OF 2017

Messrs JASH MERCANTILE LLP … Petitioner
Vs.
The Union of India & Anr. … Respondents

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Mr. Prakash Shah a/w Mr. Jas Sanghavi i/b. PDS Legal for the Petitioner.
Mr. Anil C. Singh, Additional Solicitor General a/w Mr. Pradeep S. Jetly and Ms. Geetika Gandhi for the Respodents.

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CORAM : S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.

DATE : FEBRUARY 28, 2017.

<u>P.C.</u> :

1. After this Writ Petition was argued for some time and a suggestion was made by the Court as to why the request of the petitioner to cross-examine the limited number of persons, and whose statements are being relied upon by the Revenue, cannot be accepted, the learned Additional Solicitor General Mr. Anil Singh, initially, on instructions, stated that the petitioner had submitted a list of persons solely residing in Mumbai and requested that they be summoned for cross-examination. Later on, they are increasing the number of persons residing out of Mumbai to be cross-examined and that is obvious for the petitioners desire to delay the proceedings as much as they can.

2. After some arguments only on this point, both the sides have agreed that the following eight persons, whose statements are being relied upon by the respondents/Revenue to prove the allegations in the show-cause notice, shall be made available for cross-examination by the petitioner's Advocate. By consent of both the parties, the Writ Petition is therefore, disposed of with the following directions:

I. The petitioner shall be entitled to cross-examine, in the first instance, Mr. Chandru R. Punjabi, Smt. Shalini Bachani and Mr. Laxman R. Moorjani. These persons would be made available for cross-examination by the petitioner's Advocate on 9th March, 2017 at the Commissionerate, Air Cargo Complex-Export, Mumbai Zone-III, Sahar, Andheri (East), Mumbai – 400099.

II. On the petitioner depositing with respondent no. 2 to this Writ Petition, a sum of Rs.1,25,000/- within a period of one week from today, the remaining persons, namely, Mr. Pravin Kumar Kabra, Mr. Jeyaraj, Mr. Nagraj Raju, Mr. G.U.S.R. Subba Rao and Mr. Praveen Kumar Goel, would be summoned by respondent no.2 for cross-examination by the petitioners at the same venue.

III. This amount of Rs.1,25,000/- shall constitute as an ad-hoc amount and which might be incurred by these persons for travelling to Mumbai and back to their destination.

IV. If any additional amount is required to be deposited by the petitioner, Mr. Shah appearing for the petitioner, on instructions, states that the same would also be deposited so that none of these persons residing outside Mumbai would have any complaint about non-reimbursement of travelling expenses.

V. Needless to clarify that if the petitioner commits default in depositing the above amount, the summonses/notices to the above named persons need not be issued and the petitioner would forfeit its right to cross-examine these persons.

VI. In the event the amount is deposited, notices or summonses are issued, but these persons do not comply and remain present for facing the cross-examination by the petitioners, then, the Revenue shall not be allowed to rely on their statements to support its case during the adjudication proceedings.

VII. Needless further to clarify that the benefit of this order shall be available only to the petitioner in this Writ Petition and none others can derive any advantage from the directions issued by this Court.

VIII. Needless further to clarify that the statements of the above persons residing in Mumbai and recorded by the Revenue, and who do not remain present to face the cross-examination by the petitioners, shall not be relied by the Revenue against the petitioner in this petition.

IX. The Writ Petition is disposed of with the above directions by clarifying that the Court has expressed no opinion on the rival contentions so far as the merits of the adjudication proceedings and their maintainability.

X. Needless further to clarify that the 2nd respondent, on acknowledging the receipt of the sum of Rs.1,25,000/-, and further sums as above, shall cause a receipt of the same to be issued by the recipients so as to enable the petitioner to account for the same and claim any deductions in the proceedings under the Income Tax Act, 1961 or otherwise.

XI. It is also agreed between the parties that the petitioner will conclude the cross-examination of these witnesses/persons residing in Mumbai, who will remain present on 09th March, 2017, on that day itself. As far as the other persons/witnesses and residing out of Mumbai are concerned, if they attend the proceedings, the petitioner agrees that the petitioner or its legal representatives shall conclude the cross-examination within one day so that no inconvenience is caused to the persons coming from outside Mumbai, and equally, the 2nd respondent.

(B. P. COLABAWALLA, J.) **(S. C. DHARMADHIKARI, J.)**