

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 1545 OF 2017
WITH
WRIT PETITION NO. 1546 OF 2017**

Sharad Sahakari Sakhar	}	
Karkhana Ltd.	}	Petitioner
versus		
The State of Maharashtra	}	
and Ors.	}	Respondents

Mr. V. Sridharan - Senior Advocate i/b.
Mr. Tejpal S. Ingale for the petitioner.

Mr. P. G. Sawant - AGP for the
respondents.

**CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.
DATED :- FEBRUARY 7, 2017**

P.C. :-

1. This Writ Petition No. 1545 of 2017 challenges the order dated 29th November, 2014 passed by the third respondent for the assessment year 2007-08. It also seeks to put in issue the communication styled as "instalment order" dated 22nd December, 2016 of the fourth respondent. The last but not least, the demand notice issued demanding a sum of Rs.1,04,83,000/- for the above assessment year dated 19th December, 2016 is also challenged.

2. The applicable law in this case is the Maharashtra Purchase Tax on Sugarcane Act, 1962.

3. The single submission of the learned senior counsel appearing for the petitioner is that in the instant case, this writ petition had to be filed because neither the assessing officer nor the revisional authority were aware that so long as the petitioner sugar factory had installed a facility so as to generate electricity and had reached a certain capacity and achieved the target of the specific mega vat, then, they are exempt from payment of the tax under this Act. There are several notifications and specifying the requirement so as to claim the exemption from payment of purchase tax on sugarcane. However, a combined reading of these notifications, according to Mr. Sridharan, would enable the petitioner to urge that the exemption would operate retrospectively and even for the given assessment year. Thus, even if the conditions stipulated in the exemption notifications are satisfied, not in the subject assessment year, but later on, the exemption notifications carve out a scheme so as to claim the exemption from a prior date. That would cover the tax liability and that is how for a while the respondents have understood the issue before them.

4. The respondents would urge that this court should not entertain the writ petitions for in the first matter, there is a revision application pending and it is the petitioner itself who has

claimed an exemption. For claiming that, it ought to satisfy the conditions. It has admitted that the conditions were not satisfied and that is why the installments, in which the tax liability would be cleared, was the prayer made.

5. In the second matter, only an assessment order has been passed, against which, an appeal has been filed. Therefore, multiple remedies being available in law that this court should not entertain these petitions.

6. After having heard both sides, we expressed our view that bearing in mind the essential controversy with regard to the satisfaction of the conditions of the exemption notifications, retrospective benefit, it would be desirable if in both matters the order of assessment made would stand quashed and set aside and the matters shall be relegated back to the assessing officer so that he carries out a fresh assessment strictly in accordance with law.

7. We are happy to note that both sides have agreed to this course in the sense that the respondents' advocate Mr. Sawant, on instructions, makes a statement that the assessing officer shall, in both matters, hear the parties/petitioner afresh and pass a speaking order uninfluenced by the earlier conclusions. He shall hear the petitioner on all points, including the aspect of

exemption, the benefit of the same, whether it operates retrospectively or prospectively and whether the conditions thereof are fulfilled or otherwise. He would take note of all the contentions of the petitioner and pass a reasoned order.

8. In the light of this agreement reached between the parties, we need not keep these petitions pending nor examine any larger issue. We keep the rival contentions open for being raised and agitated at an appropriate stage. The writ petitions are disposed of in the above terms. There would be no order as to costs.

9. Needless to clarify that the amount deposited with the respondents shall be retained by the respondents till the disposal of the above proceedings. Needless to further clarify that in the light of the statement made by Mr. Sridharan, on further instructions, the petitioner will not raise a plea of limitation nor plead that bar before the assessing officer. It shall also not question the jurisdiction of the assessing officer on the count of his competence so that he would make a fresh assessment order in terms of the above directions.

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