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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9714 OF 2017

M/s. Praj Industries Ltd …Petitioner
Versus
The State of Maharashtra & Ors. …Respondents

Mr. Chandrakant B. Thakar for the Petitioner.
Mr. Manish M. Pabale, AGP for Respondents.

CORAM: A.S. OKA AND
RIYAZ I. CHAGLA, JJ.
DATED: 27th September 2017

ORAL JUDGMENT (Per A.S. Oka, J.)

1. Rule. The learned counsel appearing for the Respondent waives service. Parties were put to notice on 31st August 2017 that the Writ Petition will be taken for final disposal at admission stage. An Appeal was preferred by the Petitioner against order passed by the Joint Commissioner of Sales Tax (LTU) – 2, Pune Division, Pune on 22nd February 2016 in relation to periods 2006 – 2007, 2007 – 2008, 2008 – 2009, 2009 – 2010 and 2011 – 2012. An application for stay was made by the Petitioner in the statutory Appeal. By the impugned order, the Maharashtra Sales Tax Tribunal at

Mumbai disposed of the application for stay subject to the Petitioner depositing an amount of equivalent to 25% of the basic tax due for each period in the instalments specified in the impugned order.

2. The submission of the learned counsel appearing for the Petitioner that several legal submissions were made in support of prayer for stay, but the Tribunal has declined to consider those submissions on merits. He relied upon a decision of this Court dated 3rd May 2016 in the case of ***M/s. Sun Tan Trading Co. Limited Vs. The State of Maharashtra & Others***[1], which was followed by the judgment and order dated 4th July 2017 by another Division Bench of this Court in the case of ***M/s. Delta Electro Mechanical Pvt. Ltd. Vs. The State of Maharashtra***[2]. The view taken in the case of ***M/s. Sun Tan (Supra)*** is that while dealing with application for stay, the Appellate Tribunal ought to apply its mind to the issues raised by the parties. In paragraph 8 of the decision in the case of ***M/s. Sun Tan (Supra),*** the Division Bench held thus:

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1 WP Nos. 3354 and 3355 of 2016 decided in 3rd May 2016.

2 MVAT Appeal No. 34 of 2017.

> *8. After having heard both counsel at some length and perusing with their assistance the order passed by the Tribunal and impugned in the present petitions, we are of the view that the Tribunal's order on the interim application, though elaborate, it has failed to express even any prima facie view on all the contentions raised. It has gone ahead and fixed the part payment in one Appeal (VAT Appeal No. 941 of 2015) at Rs.1,30,40,938/- and in another Appeal (VAT Appeal No. 942 of 2015) at Rs.2,16,12,410/-. How these amounts are arrived at and from rejection or acceptance of which arguments and in relation to which part of the controversy, has not been clarified at all. It may be that at a prima facie stage the Tribunal would not express itself conclusively and decisively. However, from the order it must be apparent that the Tribunal applied its mind to all the issues raised and based on which the assessment has been made. If they are debatable and arguable and therefore merit consideration, then whether the rights and equities can be balanced by some arrangement or whether a case is made out for complete waiver of the precondition should be indicated by the Tribunal. We have been impressing upon the Tribunal that its order, even at the prima facie stage, must indicate beyond noting the rival contentions, that the Tribunal appreciated what is the controversy, has grappled with it in such a way that the issues are present to its mind and which have been dealt with or decided in Appeal, either by the First Appellate Authority or by it.*

3. In the present case, the submissions made by the learned counsel appearing for the Petitioner in support of application of stay have been noted in paragraph 2 of the impugned order and but in paragraph 4 of the impugned

order, the Appellate Tribunal has observed thus:-

> "At this stage of granting interim stay, we are not inclined to go into the merit of the case. It is sufficient to mention that, according to the facts disclosed, huge liability is arising as per Review Orders. The main reason for this liability is dis-allowance of set-off. The reason for dis-allowance is bogus / inflated purchases. Both the parties have opportunity to prove their case at the time of hearing of appeals. At this juncture, in our considered opinion, an amount to the extent of 25% of the basic tax dues for each period, will meet the requirement of part payment for granting stay in these appeals".

4. Thus, the Tribunal has declined to consider any of the submissions made by the learned counsel appearing for the Petitioner. The learned AGP appearing for the State relied upon the order dated 14th June 2016 passed by a Division Bench of this Court in the case of ***Reliable Paper Company, Mumbai Vs. The State of Maharashtra & Ors.***[3]. He submitted that in similar case, the Division Bench declined to interfere with the order of the Appellate Tribunal of part deposit.

5. In our view the law laid down by the Division Bench of this Court in the case of ***M/s. Sun Tan (Supra),*** which is

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3 Writ Petition No. 2739 of 2016 decided on 14th June 2016.

followed in the case of ***M/s. Delta Electro (Supra)*** is very clear. It is true that at the stage of considering application for stay it is not necessary to record any concluded findings or to finally deal with serious issues. However, the order must reflect application of mind, on the issue whether the issues raised in the pending Appeal are debatable or arguable. *Prima facie* consideration of the submissions made on merits is necessary to decide, whether stay should be granted by complete waiver or whether stay should be granted on conditions. It is true that it is not necessary for Tribunal to go into all the aspects of merits of the Appeal. Surely *prima facie* consideration of the case is required to be made with a view to come to a conclusion whether blanket waiver deserves to be granted or whether equities can be balanced by some arrangement.

6. It is not clear from the order dated 14th June 2006 in the case of ***Reliable Paper (Supra)*** as to what were the facts of the case. However, paragraph 1 of the order indicates that the Tribunal had found the case not to be genuine and, therefore, part payments were ordered to be made. It is in

this context that the Writ Court declined to exercise its extraordinary jurisdiction under Article 226 of the Constitution of India. In the facts of the present case, even the Tribunal has declined to go into the question of existence of a *prima facie* case.

7. The Petitioner has deposited a sum of Rs.10 lakhs on 13th September 2017 without prejudice to its rights and contentions in the pending Appeal. In view of this deposit and considering the nature of the impugned order, we find that interference with the impugned order is warranted.

8. Accordingly we pass following order:-

(a) The order dated 17th July 2017 passed by the Maharashtra Sales Tax Tribunal at Mumbai is set aside and stay applications in VAT Appeal Nos. 208 to 212 of 2016 are restored to the file of the Maharashtra Sales Tax Tribunal;

(b) The applications shall be heard afresh and decided in the light of the observations made in this judgment;

(c) We are sure that the requisite priority will be given by the Tribunal for disposal of the stay applications in the Appeals of the year 2016;

(d) The deposit of Rs.10 lakhs made by the Petitioner will be without prejudice to rights and contentions of the Petitioner in the pending Appeal and pending stay applications. The deposit of the said amount made by the Petitioner shall be taken into consideration,while deciding the stay applications;

(e) Rule is partly made absolute on the above terms. No order as to costs.

(f) Needless to add that till the disposal of the applications for stay, considering the deposit of Rs.10 lakhs, no coercive steps shall be taken against the Petitioner for execution of the orders which are impugned in the pending case.

(RIYAZ I. CHAGLA J.) **(A.S. OKA, J)**