IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

MAHARASHTRA VALUE ADDED TAX APPEAL NO.5 OF 2017

FOUR SEASONS WINES LIMITED)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Pramod Jadhav a/w. Mr.Kalpesh Patil, Advocate for the Appellant.

Ms.Jyoti Chavan, AGP for the Respondent.

CORAM : S.V.GANGAPURWALA &
A. M. BADAR, JJ.

DATE : 4th JULY, 2017

P.C. :

1 The appellant assails the order passed by the Tribunal dismissing the appeal filed by the appellant holding the appellant liable to pay the tax which he was required to deduct while making payment to the contractor along with interest.

2 The learned counsel submits that following substantial questions of law arise :

> “Q.2 Whether on the facts and in circumstances of the case and in law, the Tribunal was correct in concluding that the Appellant should pay TDS even after complete payment of due taxes by the contractor and further in granting liberty to the contractor to claim the set off of such taxes paid by the Appellant ?
>
> Q.3 Whether on the facts and in circumstances of the case and in law, the Tribunal has erred in applying the ratio of the decision of Mukund Limited (Supra) without appreciating the peculiar facts of the present case ?
>
> Q.4 Whether on the facts and in circumstances of the case and in law, the Tribunal was correct in not dealing with the Appellant's claim pertaining to interest on the consequential refund ?”

3 According to the learned counsel there is an audited account of the contractor which shows that the contractor has paid the tax. If the amount is recovered from the appellant, the same would amount to dual taxation. It would not be permissible to collect dual tax. The learned counsel submits that documents are filed on record to substantiate the case of the appellant that

the amount of tax has been paid by the contractor and so non-deduction of the TDS would not be fatal and recovery cannot be directed against the appellant. The learned counsel relied on the judgment of the Apex Court in the case of **M/s.Hindustan Coca Cola Beverage Pvt. Ltd. vs. Commissioner of Income Tax in Appeal (Civil) 3765 of 2008 dated 16th August 2007**.

4 Ms.Jyoti Chavan, the learned counsel for the respondent, submits that to deduct TDS is the responsibility of the assessee. The assessee shall have to pay the amount which he was required to deduct by way of TDS and thereon claim set off from the contractor. The liability as against the assessee on account of non-deduction of TDS is crystallized. The Tribunal has not committed any error while passing the order.

5 We had asked the learned counsel for the respondent to verify as to whether the contractor has paid the tax. The learned counsel for the department, on instructions, states that the contractor has deposited the tax as is applicable.

6 In view of the above, if again the appellant is directed to deposit the tax which he was required to deduct by way of TDS, then no purpose would be served, as entire tax as applicable is already recovered by the department. However, it would appear that as the appellant has failed to deduct the TDS, he has made himself liable to pay interest. The appellant certainly will be liable to pay the interest for the delayed period on account of non-deduction of TDS.

7 We are considering the equities also. We are passing this order considering the equity. In light of the above, the impugned order to the extent of liability to pay tax for non-deduction of TDS, is set aside. However, it is held that the appellant is liable to pay interest over the said amount.

8 With this observation, the appeal is partly allowed. No costs.

(A. M. BADAR, J.) **(S.V.GANGAPURWALA), J.)**