IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.904 OF 2017

SOMESH STEEL MFG. PVT. LTD.)...PETITIONER

V/s.

THE COMMISSIONER OF SALES TAX&ANR.)...RESPONDENTS

Mr.C.B.Thakkar, Advocate for the Petitioner.

Mr.Himanshu Takke, AGP for the Respondent.

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

DATE : 4th JULY, 2017

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

1 The present petition is filed against the condition imposed in the order dated 20th October 2016 in Miscellaneous Application No.122 of 2012.

2 The present appellant had filed appeals before the Assistant Commissioner of Sales Tax (Appeals) P-9, Worli Division, Mumbai. The said appeals were dismissed for non-prosecution.

Against the said order, second appeal was preferred by the appellant before the Tribunal. The appeals preferred by the appellants were allowed by the Tribunal. The appeals dismissed in default were restored on the condition that the appellant would deposit costs of Rs.5,000/- in each appeal within one month. It appears that it is the contention of the appellant that the cost was deposited. However, the said appeals were dismissed again for non-prosecution on account that the cost is not deposited. The appeal was filed before the Tribunal. The Tribunal allowed the appeal by passing the following order :

> " **ORDER**
>
> (i) Miscellaneous Application No.122 of 2012 is allowed. Delay in preferring Second Appeal No.268 of 2012 is condoned subject to payment of costs of Rs.25,000/- and part payment amount of Rs.1,50,00,000/-, within two months from the date of receipt of copy of order.
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> (ii) Second Appeal No.268 of 2012 is partly allowed. On payment of costs and part payment as directed above, the First appeal order be treated as quashed and set aside, and the matter be remanded to the First Appellate Authority, who

shall afford opportunity of hearing to the appellant. In the event of failure of appellant to comply with this order, the appeal shall stand dismissed.

(iii) No order as to costs."

3 Mr.Thakkar, the learned counsel for the petitioner submits that though cost is imposed upon the petitioner, still an onerous condition is imposed directing the petitioner to deposit Rs.150 Lakh within two months from the date of receipt of the order. According to the learned counsel, for admission of appeal before the Commissioner, no such condition of pre-deposit is laid down under the Statute. The Commissioner (Appeals) has powers to direct part payment while deciding stay application, depending upon the facts and circumstances of the case. The learned counsel submits that such condition directing the petitioner to deposit Rs.150 Lakh is too harsh and and is not in consonance with the Statute.

4 The learned counsel for the Revenue supports the order and submits that for long period of twenty years, the

assessee is not co-operating in the proceedings and is protracting the matter. The Tribunal has considered the said aspect and has rightly directed the petitioner to deposit Rs.150 Lakh. The conduct of the petitioner was of protracting the matter. As such, the Tribunal has rightly imposed the said condition.

5 We have considered the submissions canvassed by the learned counsel for the parties. The Tribunal has arrived at the conclusion to restore the appeals of the appellant and give an opportunity of hearing to the appellant. It would appear that, there appears to be some delay on the part of the petitioner. The petitioner is imposed with cost by the Tribunal. The condition of making part payment of Rs.150 Lakh by the Tribunal is onerous. We can understand that Commissioner (Appeals), where the appeals have been directed to be restored, passed orders of part payment while considering the stay application. It is not disputed that there is no provision for directing part payment for the purpose of admission of appeal. The cost has been rightly imposed by the Tribunal upon the petitioner. There is no

propriety, in the facts and circumstances of the present case, to impose the condition of deposit of Rs.150 Lakh.

6 In the result, the impugned order to the extent of directing the petitioner to deposit Rs.150 Lakh within two months is quashed and set aside. The petitioner shall deposit the cost, as directed by the Tribunal, within a period of four weeks from today.

7 Writ petition is accordingly partly allowed in above terms. No costs.

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