IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

MAHARASHTRA VALUE ADDED TAX APPEAL NO.34 OF 2017

M/S.DELTA ELECTRO MECHANICAL PVT.LTD.)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.P.C.Joshi, Advocate for the Appellant.

Mr.Himanshu Takke, AGP for the Respondent - State.

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

DATE : 4th JULY, 2017

P.C. :

1 The present appeal is filed against the order passed by the Tribunal directing pre-deposit i.e. part payment of Rs.12 Lakh as against the order of the Commissioner (Appeals) directing to deposit an amount of Rs.22,90,172/-.

2 The learned counsel for the appellant submits that the Tribunal has not given any reasons while directing part payment of Rs.12 Lakh. According to the learned counsel, various aspects were raised before the Tribunal, the same were required to be prima facie dealt with by the Tribunal. It was also the case of the present appellant that the appellant is entitled for refund of more than Rs.25 Lakh. Though the arguments were recorded, the same were not even dealt with prima facie by the Tribunal.

3 The learned counsel for the Revenue supports the order and submits that the Tribunal had reduced the amount of part payment. The various arguments were considered while passing the order.

4 This court in **Writ Petition Nos.3354 of 2016 with 3355 of 2016** in **M/s.Sun Tan Trading Co. Limited vs. The State of Maharashtra & Others**, under order dated **3rd May 2016** dealing with a similar issue had observed as under :

"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 partpayment 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. In the present case, beyond referring to what transpired before the Settlement Commission and making a sweeping observation that the petitioners/appellants had adopted a modus operandi of under invoicing, which was subsequently unearthed by the Directorate of Revenue Intelligence (DRI), that the Tribunal concludes that the quantum of customs duty which should have been part of the sale price of the goods imported and sold by the petitioners cannot be said to be inclusive of the quantum of customs duty evaded and subsequently unearthed by the DRI. We are at a loss and are left to guess as to which Section or provision of the Maharashtra Value Added Tax Act, 2002 the Tribunal had in mind. Is it the definition of the term “Sale Price” as referred by Mr. Sonpal or some other which would support the prima facie view in law, has not been explained at all. Yet, crores of rupees are determined as deposit at an interim stage. This, prima facie, is no discussion, much less even an answer to the contentions raised before the Tribunal. The conduct of the party is one thing and could be relevant, but how that is decisive at all times and on all occasions has not been clear to us at all. In matters after matters in which the Tribunal after referring to the contentions, setting them down seriatim must follow it by applying its mind to basic and fundamental issue at hand. In such circumstances, even this order does not meet the requirement and it is vitiated by failure to apply the mind and to consider the contentions raised at the prima facie stage. The Tribunal having noted them should have at least discussed them briefly. We do not expect it to render a final Judgment but that virtually appears to have been done and if one is required to refer to

> some paras, paras 20 and 21 of the impugned order would indicate the same. It is in these circumstances and once the DRI's investigation has influenced the Tribunal's finding to a great extent, then we cannot sustain the same."

5 In the present matter also, the Tribunal has observed that, at this interlocutory stage it does not want to express opinion. Though the arguments advanced have been recorded, the same are not considered even prima facie. The same does not stand the test as detailed in the order of this court dated 3rd May 2016 in Writ Petition Nos.3354 of 2016 with 3355 of 2016.

6 In the light of the above, the impuged order is quashed and set aside. The parties are relegated before the Tribunal. The Tribunal shall re-consider the aspect afresh after hearing the parties, in the light of judgment in **Writ Petition Nos.3354 of 2016 with 3355 of 2016 in M/s.Sun Tan Trading Co. Limited** referred to supra.

7 The parties shall appear before the Tribunal on **24th July 2017.**

8 The appeal is accordingly allowed. No costs.

9 Parties to act on authenticated copy of this order.

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