IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5030 OF 2018

Vijay B. Patil & Another .... Petitioners
Vs.
Deputy Commissioner of Sales Tax & Another .... Respondents

Mr. V.R. Dhond, Senior Counsel with Mr. Prathamesh Kamat i/by Ms Sapana Rachure for the Petitioners.
Mr. V.A. Sonpal, Special Counsel with Ms S.D. Vyas, "B" Panel Counsel for the Respondents.

CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.

DATE : JULY 10, 2018

P.C:

1. On this writ petition, which seeks quashing and setting aside of two orders, copies of which are at Exhibits "C" and "D" to the petition, on notice, the respondents have appeared.

2. Exhibits "C" and "D" are the two orders which seek to foist liability to pay certain sums on the petitioners in their

capacity as Directors of M/s. Max Energy Private Limited. It is claimed that the Directors can be proceeded against by virtue of sub-section (6) of Section 44 of the Maharashtra Value Added Tax Act, 2002. That is an amendment brought about by Maharashtra Act No.XXXI of 2017 with effect from 15-4-2017.

3. An affidavit in reply is filed seeking to justify this communication/orders and it is claimed that this amount is due and payable as the law stands amended.

4. In the morning session, the Amendment Act which is referred to and particularly sub-section (6) of Section 44 was not available for our perusal.

5. Post-recess, this whole Amendment Act is produced for our perusal and we are satisfied that this Act has been brought into force, in the sense this amendment {addition of sub-section (6)} to Section 44 comes into effect from 15-4-2017.

6. Mr. Sonpal, learned Special Counsel engaged by the respondents/Department very fairly states that the language of

sub-section (6) requires the respondents to record a satisfaction that the liability can be fastened on to the petitioners because they have failed to prove that the non-recovery of the taxes from private company, whether existing or wound-up or under liquidation, cannot be attributed to any gross neglect, misfeasance or breach of duty on their part in relation to the affairs of the said company. Thus, an opportunity will have to be given to the petitioners to prove to the contrary, as enumerated in this section.

7. In any event, Mr. Sonpal, on instructions, states that a demand cannot be foisted without a proper opportunity being given to the petitioners to show cause. That will require a show cause notice to be issued to the petitioners, calling upon them to comply with the newly amended provision and pay the amount, as demanded. Now, on instructions, Mr. Sonpal says that a notice to show cause would be issued by the respondents calling upon the petitioners, as above. In the event the petitioners show cause, then an opportunity of personal hearing will be afforded to the petitioners and a reasoned order will

follow thereafter. At such an opportunity of personal hearing, the petitioners can prove that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on their part, in addition to urging that given the scheme of the Companies Act, 2013 and sub-section (6) being subject thereto, there is a distinct personality in law. The existence of a Director and the company is independent of each other. Unlike a partnership firm, the company does not cease to exist merely because persons like the petitioners are not associated with it. Thus, all contentions can be raised at such an opportunity of personal hearing.

8. In the light of this fair stand of Mr. Sonpal, we are relieved of the obligation to express any opinion on the rival contentions. Keeping the jurisdictional as also other points on merits open for being urged at an appropriate stage in the proceedings which may be initiated pursuant to a show cause notice, we dispose of the writ petition.

9. We accept the statement of Mr. Sonpal, made on

instructions, that the orders of attachment as impugned in the writ petition are withdrawn by the respondents. In the circumstances, no coercive measures can be apprehended by the petitioners any longer. The writ petition is disposed of in these terms.

10. In the light of the above, the orders of 26-2-2018 and the notices of 9-4-2018 cannot be given effect to and rather it is conceded that they are premature.

11. All concerned to act upon an authenticated copy of this order.

(SMT. BHARATI H. DANGRE, J.) (S.C. DHARMADHIKARI, J.)

Suresh Jagdish Sajnawat Digitally signed by Suresh Jagdish Sajnawat Date: 2018.07.12 15:36:51 +0530