IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7961 OF 2018

VVF (India) Ltd. ...Petitioner
V/s.
The State of Maharashtra & Ors. ...Respondents

Mr.Sridharan, Senior Counsel a/w Mr.Jas Sanghvi i/b PDS Legal for the Petitioner.
Mr.Sonpal, Special Counsel a/w Mrs.Shruti D. Vyas 'B' Panel Counsel for the State.

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

DATE : 31st JULY 2018

P.C.:

1. This Writ Petition challenges an assessment order dated 26.03.2018 for the Assessment year 2013-2014.

2. At the very outset we indicated to Shri.Sridharan, learned Senior Counsel appearing for the petitioner, that in the teeth of multiple remedies available to the petitioner-dealer under the Scheme of the Maharashtra Value Added Tax Act, 2002 (for short 'MVAT Act'), we are extremely reluctant to interfere in Writ jurisdiction and therefore, this Writ Petition can and will be dismissed on the ground of availability of alternate equally

efficacious remedy under that law.

3. Shri.Sridharan however, would submit that the paragraphs in the Writ Petition which commence under the heading brief statement of facts, namely “paras 4 to 14" highlights a single issue. The petitioner made Stock Transfers to its Daman Unit during the course of its manufacturing activities. The transfer was made from Taloja Unit to its Daman unit. However, the law in field, namely, Central Sales Tax Act, 1956 insofar as the machinery or mechanism for assessment of the tax is concerned borrows the scheme of MVAT Act 2002. In other words, the authority under the MVAT Act can assess the dealer to tax even if the tax to be collected is under the Central Sales Tax Act, 1956. Under the Scheme of the Central Sales Tax Act, by Section 6-A the burden of proof is on the dealer and who claims that he is not liable to pay tax under the Central Sales Tax Act. It is the dealer who has to demonstrate that the movement of goods from one State to another (Union Territory) was not occasioned by reason of sale, but by reason of transfer of such goods by him to any other place of business or to his agent or the principal as the case may be. It is to discharge that burden that the petitioner was at pains to point out through its duly authorized representative that the Stock Transfers as detailed for the

assessment year 2013-2014 are to the tune of total Rs.3,66,66,437/-. Insofar as one billing document No.7103400270 dated 02.10.2013 in the F-Form DD-FA 1755688 Lorry Receipt No.10985 dated 02.10.2012 the quantity transfered was 20.93 metric tones. The value of that was 23,55,026 in rupees.

4. Inadvertently and purely as a mistake in computation or in calculation, this authorized representative, a Chartered Accountant, pressed the figures on the computers while forwarding the E-return as Rs.23,55,00,026/-(Twenty Three Crores Fifty Five Lakhs and odd). He has given an explanation for that and has owned the mistake. This mistake was noticed during the course of the assessment and before it's finalization and hence the petitioner-dealer also alerted the assessment officer by a letter of 23.03.2018.

5. No opportunity was given to explain this even to the authorized representative who was present. It is relying upon the incorrect figure that the assessment has been framed, but even while doing so, there are no reasons assigned. It is in these circumstances that this Writ Petition should be entertained. It is submitted that there is inherent power to correct such arithmetical mistakes and it is brought to the notice of the Assessing Officer during the course of

the assessment and this is not a exercise of substantive power not conferred by law.

6. Mr.Sonpal appearing on behalf of the Respondents, on the other hand would submit that if Writ Petitions challenging the assessment orders and merely because an alleged clerical or arithmetical mistake is highlighted are entertained, then, that would be opening flood-gates and all assessments may be reopened by this method without filing statutory appeals and without securing the tax or revenue. This anxiety according to Mr.Sonpal is enough to reject this Writ Petition.

7. Alternatively and without prejudice Mr.Sonpal would submit that if the grievance is that had such an error, as is highlighted had been noticed and duly considered and reasons assigned for not accepting the version of the petitioner, then, purely in the facts and circumstances of this case and peculiar to it, on account of breach of the principles of the natural justice and in order to leave no room for any grievance, the respondents are ready and willing to grant a personal hearing to the petitioner's representative, but restricted to this issue of Stock Transfer. In that grab, no other issue or plea should be reintroduced.

8. After hearing both sides on this limited point, we are of the opinion that this Writ Petition can be conveniently disposed of by accepting the alternate and without prejudice proposal of the respondents. While accepting that alternate request and without prejudice proposal, we clarify that we have not endorsed any of the pleas of the petitioners as raised in the petition. Whether it was a calculation or arithmetical mistake or otherwise or is an attempt to reopen a completed assessment, will have to be determined by the Assessing Officer, but before he decides and determines it, he must comply with the principles of natural justice. That alone is our anxiety. He should assign reasons for coming to either conclusion. We are not for a minute suggesting that the Revenue has accepted that the respondents are wrong in what they have done or that petitioner's version deserves to be thrown out and rejected outright. We are only accepting, in the peculiar circumstances, the proposal of respondents that the petitioner can go back to the Assessing Officer and request him to deal with its contentions as raised in the Writ petition and all grounds in support of the issue of Stock Transfer. Whether it is a sale or stock transfer has to be entirely determined by the Assessing Officer. We clarify we have not expressed any opinion on this issue. All contentions of petitioners are kept open for being raised and in relation of issue of Stock Transfer. The

Assessing Officer shall deal with them afresh and uninfluenced by his earlier conclusion. The Writ petition is disposed of in these terms. While we accept the alternate proposal and dispose of the Writ Petition in above terms we further clarify that this order is not to be treated as a precedent as we have left open the larger issue of maintainability. When we allow the petitioner to approach the Assessing Officer again, it shall not argue that now the assessment itself is time barred.

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

Nilam Santosh Kamble Digitally signed by Nilam Santosh Kamble Date: 2018.08.02 06:41:40 +0530