IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION (L)NO.18066 OF 2018

M/s. S. K. Wheels Pvt. Ltd., .. Petitioner.
v/s.
The State of Maharashtra
& Others .. Respondents.

Mr. V. Sridharan, Sr. Advocate with Mr. Himanshu Kode, for the Petitioner.
Mr. V. A. Sonpal, Special Counsel with Ms. Shruti B. Vyas, 'B' Panel, for Respondents Nos.1 to 5- State.

**CORAM: M.S.SANKLECHA &**
**RIYAZ I. CHAGLA, JJ.**
**DATE : 6st OCTOBER, 2018.**

**P.C:-**

At the request of the parties, the Petition is disposed of at the stage of admission.

2 This Petition under Article 226 of the Constitution of India, challenges the order dated 2nd May, 2018 passed by the Maharashtra Sales Tax Tribunal (the Tribunal). The impugned order dated 2nd May, 2018 of the Tribunal directed the part payment of Rs.22.19 Crores as against the assesse's due of Rs.32.96 Crores as condition for grant of the stay, pending the disposal of the Petitioner's Appeal before the First Appellate Authority under the Central Sales Tax Act, 1956 (the Act).

3 The Petitioner, is a dealer/ trader, inter alia, of cigarettes. During the Financial Year 2015-16,it made inter-state sale of cigarettes amongst others to two parties in Delhi and one in Haryana. It claimed benefit of inter-state sale by submitting 'C' form received from the above three parties. However, by an Assessment Order dated 17th January, 2017, the Assistant Commissioner of Sales Tax confirmed a total demand of Rs.33.63 Crores (inclusive of interest and penalty). This, by denying the benefit of 'C' form on the ground that the Registration of the buyers (person issuing the 'C' form) in Delhi was canceled and in Haryana the Tax Authorities had reported that they had not issued the 'C' form.

4 Being aggrieved by the order dated 17th January,2 017, the Petitioner preferred a First Appeal to the Deputy Commissioner of Sales Tax (Appeals) along with application for stay. By an order dated 20th May, 2017, the First Appellate Authority by order dated 20th May, 2017, granted stay of the order dated 17th January,2 017 of the Assistant Commissioner of Sales Tax on deposit of Rs.22.19 lakhs.

5 Being aggrieved with the above order dated 20th May, 2017,the Petitioner preferred an appeal to the Tribunal. By the impugned order dated 2nd May, 2018, the appeal was dismissed, upholding the order of deposit/ payment of Rs.22.19 lakhs for grant of stay.

6 The grievance of the Petitioner is that the impugned order dated 2nd May, 2018 of the Tribunal, is a non-speaking order, inasmuch as, it has not considered the decision of the Delhi High Court in ***Jain Manufacturing (I) Pvt. Ltd., v/s. Commissioner of Value Added Tax 93 VST 326,*** which according to the Petitioner, covers the entire dispute. It is submitted that the above decision following the decision of the Supreme

Court in ***State of Maharashtra v/s. Suresh Trading Co., 109 ST 439***, has held that once a 'C' form has been issued under the Act, in compliance with the statutory provisions then existing, it cannot be canceled retrospectively. On facts, it is the case of the Petitioner that the Authorities in Delhi and Haryana have issued 'C' form under the Act, at a time when they were registered dealers with the authorities in their respective States. Thus, the subsequent cancellation is not justified.

7 We note that the impugned order dated 2nd May, 2018 of t he Tribunal records that the Petitioner places reliance upon the decision of the Delhi High Court in Jain Manufacturing (I) P. Ltd., (supra), in the context of its case. However, the impugned order dated 2nd May, 2018 of the Tribunal, does not deal with the same in the context of the Petitioner's facts. We are conscious of the fact that at the stage of consideration of application for stay and directing the pre-deposit, a detailed order may not be necessary. However, the authorities concerned must deal with the decision relied upon by the parties and give a *prima facie,* view with regard to the applicability of the decision to the facts of the case. Non-consideration of the decision (even *prima facie*, at the stage of stay) is an order without giving any reason, resulting in a flaw in the decision making process. The consideration of the decision of the Delhi High Court in Jain Manufacturing (I) Pvt. Ltd., (supra) which in turn, relied upon the decision of the Supreme Court , is relevant in the present facts. This for the reason that if the issue in the context of the facts in this case is covered by the decision of the Delhi High Court, then it may have a bearing on the determination of the amount pre-deposit and/or grant of unconditional stay.

8 Therefore, in the aforesaid circumstances, we set aside the order dated 2nd May, 2018 and restore the Petitioner's application for stay to the Tribunal, for fresh disposal, in accordance with law.

9 Needless to state that the Tribunal will decide the matter on its own merits without in any manner being influenced by the observations made herein above, save and except, our directions to the Tribunal to take a, *prima facie,* view of the decisions relied upon by the parties, so that the order passed by it is not vitiated as being an order without reasons.

10 All contentions left open.

11 **Petition disposed of** in the above terms. No order as to costs.

**(RIYAZ I. CHAGLA,J.)** **(M.S.SANKLECHA,J.)**

Smita Rajnikant Joshi

Digitally signed by Smita Rajnikant Joshi
Date: 2018.10.09 15:55:42 +0530