IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9052 OF 2018

M/s. Kothari Cranes Pvt. Ltd. .. Petitioner

v/s.
State of Maharashtra & Ors. ..Respondents

Ms. Prabha Badadare for the petitioner
Ms. Shruti Vyas, B Panel Counsel for respondent nos. 1 and 2 State

CORAM : M.S. SANKLECHA &
RIYAZ I. CHAGLA, J.J.

DATED : 4th OCTOBER, 2018.

P.C.

1. This petition under Article 226 of the Constitution of India challenges the order dated 28th February, 2018 passed by the Maharashtra Sales Tax Tribunal, Mumbai (Tribunal). By the impugned order, the petitioner's application to dispense with the requirement of depositing the tax into Government Treasury in accordance with Section 26(6B) of the Maharashtra Value Added Tax Act, 2002 (MVAT Act) was rejected.

2. Section 26(6B) of the MVAT Act prescribes that no appeal shall be filed before the Tribunal unless the appeal is accompanied by the proof of payment of the amounts specified therein. Admittedly, in the

present facts, the petitioner has not deposited any amount out of the total tax dues of Rs.66.94 lakhs, much less the 10% of the tax dues as mandated by Section 26(6B) of the MVAT Act. The above provision viz. Section 26(6B) of the MVAT Act is a statutory bar, which prohibits an assessee from filing an appeal before the Tribunal unless it is accompanied by proof of payment of 10% of the tax as required to be paid in terms of Section 26(6B) of the MVAT Act. Thus, the petitioner could not have filed an appeal before the Tribunal. In the above facts, no fault can be found with the impugned order dated 28th February, 2018.

3. Inspite of the above, Ms. Prabha Badadare, learned Counsel appearing in support of the petition states that the petitioner has not been able to deposit the amounts as required under Section 26(6B) of the Act in view of the financial difficulties and more particularly because its bank accounts are frozen / seized by the respondents. Therefore, the petitioner is in the process of raising funds so as to comply with the requirement of deposit under Section 26(6B) of the MVAT Act to enable the petitioner to prosecute its appeal before the Tribunal. This according to the petitioner would take time. Therefore, it is submitted that the time to deposit / pay the 10% of the tax dues in

terms of Section 26(6B) of the MVAT Act be extended by a period of 8 weeks.

4. The mandate of Section 26(6B) of the MVAT Act is very clear. It does not provide for any exception in complying with the requirement of pre-deposit for the purpose of filing an appeal. The difficulty of the petitioner in depositing the amounts while filing the appeal will not exempt them from the requirement of Section 26(6B) of the Act. Therefore, no fault can be found with the impugned order dated 28th February, 2018 of the Tribunal so as to warrant any interference by us under Article 226 of the Constitution of India.

5. However, it may be pointed out that when the petitioner is able to satisfy with the requirement of Section 26(6B) of the MVAT Act, it could file an appeal along with an application for condonation of delay to the Tribunal. In terms of Section 81 of the MVAT Act, it would be open to the Tribunal to consider the petitioner's application for condonation of delay on its own merits after the petitioner filed an appeal along with evidence of the requisite deposit in terms of Section 26(6B) of the MVAT Act. If the Tribunal allows the application for condonation of delay in filing the appeal, the Tribunal would decide the

appeal on its own merits.

6. In the above view, at this stage no interference is warranted. Therefore, the petition is dismissed. No order as to costs.

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