IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11991 OF 2018

Deepak Fertilizers and Petrochemicals
Corporation Ltd. .. Petitioners

v/s.

The State of Maharashtra & Ors. ..Respondents

Mr. V. Sridharan, Sr. Counsel a/w Mr. Prakash Shah, Sriram Sridharan, Jas Sanghavi I/b PDS Legal for the petitioners
Dr. Kirti Kulkarni, AGP a/w Ms. Shruti Vyas, "B" Panel Counsel for respondent nos. 1, 2 and 4

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

DATED : 29th OCTOBER, 2018.

P.C.

1. This petition under Article 226 of the Constitution of India challenges the order dated 26th September, 2018 passed by the Maharashtra Sales Tax Tribunal (the Tribunal). The impugned order dated 26th September, 2018 was passed under Section 26(6) of the Maharashtra Value Added Tax Act, 2002 (MVAT Act, 2002).

2. The impugned order dated 26th September, 2018 emanated from the petitioner's appeal challenging the order dated 5th July, 2017 of the Deputy Commissioner of Sales Tax (Appeals) (who was hearing the

petitioner's first appeal) directing the petitioners to deposit an amount of Rs.12.69 crores out of the aggregate dues of Rs.90.82 crores (tax and interest) payable for the period 2015 to 2016 under the Maharashtra Tax on Entry of Goods into Local Areas Act, 2002 (the Act) for staying of the order dated 20th March, 2017 passed by the Asst. Commissioner of Sales Tax under the Act.

3. We note that the impugned order of the Tribunal records the fact that as per the assessment order dated 20th March, 2017, an aggregate amount of Rs.90.82 crores (tax and interest) under the Act is recoverable from the petitioners. The first appellate authority granted a stay of the order dated 20th March, 2017 till disposal of the appeal on payment at Rs.12.69 crores out of the aggregate amount of Rs.90.82 crores. This on the basis that if the petitioners had paid the entry tax then it would have been entitled to set off the same while making payment of VAT on the sale of its final goods. Thus, resulting in loss to the Revenue of Rs.12.69 crores in the aggregate i.e. Rs.9.11 crores of tax amount plus Rs.3.58 crores towards interest. On the aforesaid facts, the impugned order dated 26th September, 2018 of the Tribunal found granting stay of assessment order on payment of Rs.12.69 crores reasonable.

4. The grievance of the petitioners is that the impugned order dated 26th September, 2018 is a non-speaking order. This as it did not consider the petitioners' following submissions before while upholding the order dated 5th July, 2017 of the first appellate authority :-

(a) The assessing authority viz. The Asst. Commissioner of Sales Tax (Investigation), the person who passed the original order dated 5th July, 2017 had no jurisdiction to pass the same under the Act;

(b) Section 3 of the Act would have no application to the present facts as the levy is on goods entering the local areas from outside the State. In this case, the goods have entered the local area from Thane; and

(c) The petitioners are undergoing great financial hardship which made it impossible for it to deposit the amount of Rs.12.69 crores as directed by the first appellate authority for staying the assessment order till the disposal of the appeal by the first appellate authority.

5. So far as the grievance of the petitioners to the impugned order of the Tribunal in respect of the submissions (a) and (b) as recorded hereinabove is concerned, we find that the Tribunal has noted that it would require deeper consideration at final hearing and had factored in

the above while holding that the payment of Rs.12.69 crores out of a confirmed demand of Rs.90.82 crores was reasonable. Thus, there is no merit in the submission of the petitioners that the submission (a) and (b) as indicated in paragraph 4 hereinabove was not considered by the Tribunal leading to the impugned order being bad in law.

6. However, so far as submission (c) as indicated in paragraph 4 hereinabove viz. financial hardship making it impossible to deposit an amount of Rs.12.69 crores is concerned, we note that the impugned order does record the above submission. In fact, the appellant had already deposited an amount of Rs.2.69 crores out of Rs.12.69 crores as directed by the first appellate authority but was finding it impossible to pay the balance amount of Rs.10 crores for the subject assessment year. However, after recording the above submission, we find that the impugned order does not deal with the same while upholding the order dated 5th July, 2017 of the first appellate authority.

7. We find that this submission of the financial hardship urged by the petitioners is not at all considered by the impugned order of the Tribunal.

8. An inability to pay the amount directed for stay of the impugned order on account of financial difficulty should not result in the appeal itself becoming infructuous. This as the recovery proceedings should not result in the petitioners' business coming to an end. The aforesaid submission has to be counter balanced by the fact that the Revenue should not loose the tax in its entirety merely because of the delay in recovering the same if in view of financial difficulty, the lapse of time may result in the business itself winding up. However, these are the issues which the impugned order of the Tribunal should have addressed and taken a view while disposing of the petitioner's appeal from the order of the first appellate authority directing a deposit of Rs.12.69 crores.

9. Therefore, the impugned order of the Tribunal is set aside only to the extent it has not dealt with the petitioner's contention with regard to financial hardship. The Tribunal would consider the petitioner's application for stay in the context of claim that it is in financial difficulty and pass an appropriate order thereon, in the context of payment to be made for stay of the order in original dated 20^{th} March, 2017.

10. The parties are directed to apply to the Tribunal for the early hearing of the application only for the hearing of the petitioner's grievance with regard to the financial hardships making it impossible to make the payment.

11. Needless to state that the respondents will not adopt recovery proceedings till such time as the Tribunal passes an order on the petitioner's grievance about the financial hardship and for a period of three weeks after the passing of the order by the Tribunal on the above issue of financial hardship.

12. Petition disposed of in the above terms.

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