R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO. 471 OF 2018

Spruce Trading Pvt Ltd .. Petitioner

Versus

The State of Maharashtra & Ors. .. Respondents

....

- Mr. C.B. Thakkar for the Petitioner
- Ms. Jyoti Chavan, AGP for the Respondents

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CORAM : AKIL KURESHI &
M.S. SANKLECHA, JJ.

DATE : NOVEMBER 30, 2018.

P.C.:

1. The petitioner has challenged an order dated 10.11.2017 passed by the Dy. Commissioner of Sales Tax. By the said order, the Dy. Commissioner of Sales Tax assessed the petitioner's tax liability under the Maharashtra Value Added Tax Act, 2002 ("**MVAT Act"** for short). In addition, he also imposed interest and penalty liabilities. The operative portion of the impugned order reads thus:-

> " Assessment Order u/S. 23 of the Maharashtra Value Added Tax Act, 2002
>
> In response to notice in form 301 Mr. Rajesh Amrute, Director attended with books of A/c which are duly closed and adjusted.

The dealer is trading in computer software packages, optical fibre cable and iron and steel. Dealer has filed returns under MVAT Act, 2002 and paid taxes accordingly.

Dealer has submitted audit report in Form E-704 as per provisions of Section 61(1) of MVAT Act, 2002 within stipulated time. He has also filed quarterly returns along with payment of taxes. He has collected taxes in his sale bills.

He is assessed u/S 23(11) of the MVAT Act 2002 as under.

Gross turnover of sales is determined at Rs. 422548132/- (including rate difference and debit note). Net taxable turnover is worked out at Rs. 402426790/- on which tax at 5 percent is levied at Rs. 20121340/-.

Gross turnover of purchases is determined at Rs. 550233662/-. On which set off u/r 52 is disallowed at Rs. 262204796/- because supplied of said dealer found to be involved in trade circular transaction (as per record availability with). Part refund granted at Rs. 683995/- has been withdrawn. Hence, total allowed ITC is at Rs. 00/-

After adjustment of set off u/r 52 at Rs. 00/- tax paid at Rs. 53014/- Balance tax payable comes to Rs. 20068326/- on which interest is levied u/S. 30(3) at Rs. 21190212/- (including interest of Rs. 519836/- on wrong refund granted). Also penalty is levied u/S. 29(3) at Rs. 6551199/- because of wrong ITC claim. Hence, total payable comes to Rs. 48493731/- (including Rs. 683995/-withdrawn of part refund amount which was granted earlier)

Issued D/N for Rs. 48493731/- along with copy of A.O."

2. Against the impugned order, statutory appeal is available. However, learned counsel for the petitioner submitted that the order of assessment is cryptic order and was passed in gross violation of the principles of natural justice. He submitted that the assessing authority disallowed the tax credit in relation to certain transactions on the ground that selling dealer was involved in trade circular transaction as per the record available with him. The learned counsel further submitted that during the assessment proceedings, the assessing authority had not either provided the details of such dealer, nor called upon the petitioner to clarify the position in this regard.

3. On the other hand, learned counsel for the Department relied on an affidavit in reply dated 29.11.2018 and opposed the petition mainly contending that the impugned order is an appellable order.

4. In the facts of the present case, we are inclined to interfere at this stage since in our opinion, the impugned order suffers from gross violation of principles of natural justice. We have re-produced above the operative portion of the order, perusal of which would show that the disallowance of tax credit was on the premise that the selling dealer had been involved in the trade circular transaction. Even if we were to accept the Revenue's stand that the selling dealer having indulged in bogus billing activities which would dis-entitle the petitioner from taking tax credit, nothing is brought on record to suggest that this information and the particulars of the dealer so involved were shared with the petitioner before passing the final order. Surely, the departmental authority cannot unilaterally come to the conclusion that the petitioner's sales or purchases were not genuine and therefore, tax credit in relation to such transactions was liable to be disallowed. Any such finding must be preceded by an opportunity of hearing to the petitioner. Only on this ground, without expressing any opinion on the availability of the credits or otherwise, the impugned order is set aside. The proceedings are placed back before the adjudicating authority for passing a fresh order in accordance with law. The petitioner shall cooperate with such exercise. The petition is disposed of accordingly. All contentions of both the sides are kept open.

[M.S. SANKLECHA, J.] **[AKIL KURESHI, J]**