IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1889 OF 1984

Messrs. Hindustan Diamond Co. Ltd.
& Another .... Petitioners
Vs.
B.C. Khatua & Another .... Respondents

Ms Nikita Badheka with Mr. Parth Badheka for the Petitioners.
Mr. V.A. Sonpal, Special Counsel with Ms Jyoti Chavan, AGP, for the Respondents.

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

DATE : JUNE 26, 2018

P.C:

1. By this petition, filed in the year 1984, the petitioners are seeking the following reliefs:-

> *"(a) that this Honourable Court may be pleased to issue a writ of or in the nature of certiorari, prohibition, mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution against the Respondents calling for the entire records and proceedings of the case and*

after going into the legality or validity thereof, quash and set aside the said notices dated 9.8.84 (Exhibit 'W' Colly. herein) and permanently restraining the Respondents, their servants, agents or representatives or subordinate officers or their respective successors from in any way proceeding against the Petitioners under Section 67 of the said Act.

(b) for declaration that the provisions of Sec.67 of the said Act are null and void and of no effect.

(c) for declaration that the provisions of Sec.49 of the said Act are null and void and of no effect.

(d) for declaration that the provisions of the said rule 10(2) and 10(3A) are null and void and of no effect."

It is undisputed from the record that this petition was placed before a learned single Judge of this Court who dismissed it in limine. Aggrieved thereby, an Appeal No.1019 of 1984 was filed in this Court and on 5-11-1984, this Court passed an order setting aside the single Judge's action of dismissing the petition in limine. The writ petition was taken to be restored to the file. Rule was issued in terms of prayer clauses (c), (d) & (e)(i) to (iv). There was an interim order as well.

2. After all this and three decades later, the petition has

been placed for final hearing but in the meanwhile the original records could not be traced and that is why the Department sought time. The order of the Division Bench in the appeal makes it clear that the writ petition is admitted in terms of prayer clauses (c), (d) & (e)(i) to (iv). The writ petition was not admitted for considering the relief in terms of prayer clause (b).

3. In such circumstances, we indicated to both sides that no useful purpose will be served now and after the impugned rule itself is not on the statute book, in examining its legality and validity.

4. The petitioners can very well approach and appear before the Appellate Authority and point out to the Appellate Authority that the entire assessment is illegal, invalid and not warranted by law. These are mixed questions and given the fact and the background in which the assessment order was passed, the circumstances peculiar to the assessee would have to be gone into and examined. The interest of justice would be served if this writ petition is disposed of by granting liberty to the

petitioners to raise all contentions before the Appellate Authority. The Appellate Authority thereafter shall pass a reasoned order on hearing all the submissions of the petitioners. Such a reasoned order shall be passed and a copy thereof be served on the petitioners' Advocate.

5. We clarify that we have not examined the rival contentions nor have we perused the records in order to satisfy ourselves about the correctness and validity of the assessment order. All contentions of the petitioners in that regard are kept open.

6. The writ petition accordingly stands disposed of.

7. In passing this order, we have also taken note of the order passed by the Hon'ble Supreme Court of India on 26-3-1985 in the appeal of the State of Maharashtra being Civil Appeal No.1131 of 1985. That was directed against the interim order of the Division Bench of this Court.

8. The original records and proceedings be returned to

Mr. Sonpal on his undertaking that the same will be replaced by certified true copies. The certification shall be done by the Joint Commissioner of Sales Tax.

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