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

WRIT PETITION NO. 518 OF 2018

M/s. Carestream Health India Pvt. Ltd. …Petitioners
V/s.
The State of Maharashtra & Anr. ….Respondents

Mr. V. Sridharan, Sr. Counsel a/w. Mr. Rahul Thakkar i/b.
C.B. Thakkar for the petitioners.
Ms. Jyoti Chavan, AGP for the respondents.

CORAM : S.C. DHARMADHIKARI &
SMT. ANUJA PRABHUDESSAI, JJ.

DATE : 24TH APRIL, 2018

P.C.:

. By this petition under Article 226 of the Constitution of India, the petitioners pray for the following reliefs :-

> *" (a) this Hon'ble Court may be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ, order or direction under Article 226 of the Constitution of India :*
>
> *(i) Set aside the order dated 22.12.2017 passed by the Maharashtra Sales Tax Tribunal demanding part payment of Rs.75,00,000/- for entertaining the appeal.*
>
> *(ii) Directing the Maharashtra Sales Tax Tribunal to entertain the appeal proceedings in VAT Appeal 399/2017 without insistence on*

any part payment.

(iii) restraining the Respondents by their servants, agents and subordinates from enforcing the order dated 22.12.2017 passed by the Maharashtra Sales Tax Tribunal directing the Petitioners to make part payment. "

2. The facts and circumstances in which these reliefs are claimed are that the petitioners have registration in their favour under the Central Sales Tax Act, 1956 (for short 'CST Act'). They are engaged in the trading of medical equipments, X ray films, dental chemicals and spares.

3. The goods are imported and stored at Bhiwandi warehouse. There are various depots outside the State of Maharashtra and the petitioners claim that the goods imported are stocked and transferred to such depots. They are further sold to customers within the transferee States. It is claimed to be an intra-state sales based on the customer demand. The petitioner claim that they have discharged their liability to pay Value Added Tax (VAT) in the transferee States where the sales are treated as local sales. This fact was sought to be established by producing the chart and relying on which the petitioners claim that though their returns were filed, the sales could not have been assessed

to local taxation. In other words, the CST Act is an applicable statute. However, for the assessment period 2012-13, demand in the sum of Rs.14,31,31,735/- under the CST Act is raised by the assessment order of 17th March, 2017. Thus, the tax demand finalised in this order is to the tune of Rs.7,37,89,928/-.

4. Aggrieved by the order dated 17th March, 2017, appeal was preferred to the Maharashtra Sales Tax Tribunal under Section 18A of the CST Act, 1956. In this appeal, reliance was placed on sub-section (2) of Section 6A of the CST Act, 1956. By a stay application the Tribunal was requested to stay the recovery of tax pending the appeal. By the order impugned in the petition, that stay application was allowed by imposing the condition to deposit a sum of Rs.75,00,000/-. Against this order, which according to the petitioners suffers from an error or mistake apparent on the face of record, a Rectification Application No.10 of 2018 was preferred before the said Tribunal. That also having been rejected on 15th February, 2018, the present petition.

5. During the course of the arguments, reliance is placed on section 18A and interpretation thereof by the Hon'ble Supreme Court as also

by this Court by judgment dated 21st July, 2015 in ***Writ Petition No.6533 of 2015 [Thyssenkrupp Electrical Steel India Pvt. Ltd v/s. The State of Maharashtra and Anr.] with Writ Petition No.6534 of 2015.***

6. On the earlier occasion, the learned AGP appearing for the respondents sought time and particularly to make a statement whether the issue is concluded in favour of the petitioners and against the respondents by this judgment.

7. When the matter was called out today, the learned AGP, on instructions, fairly states that in the light of the exposition of law and particularly in paragraph 11 of the said judgment, the issue is answered in favour of the petitioners.

8. Once this concession is given and even otherwise we do not find any point surviving in this petition after this judgment, We allow this Writ Petition. The impugned order stands quashed and set aside. The Tribunal to decide the appeal without insisting on any part payment by the petitioner. The contentions of the parties are kept open. This being an interim and tentative order, any observations and findings therein

shall not bind the Tribunal in the final determination of the issue raised in the appeal.

(SMT. ANUJA PRABHUDESSAI, J.) **(S.C. DHARMADHIKARI, J.)**