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

WRIT PETITION NO. 704 OF 2017

HDFC Bank Ltd. .. Petitioners

v/s.

State of Maharashtra & Ors. ..Respondents

Mr. N. Venkatraman, Senior Counsel a/w Mr. Shammi Kapoor, Mr. Arnab Roy, Mr. Melvyn Fernandes, Ms. Pratiksha Agrawal I/b Vaish Associates for the petitioners
Mr. V.A. Sonpal, Special Counsel a/w Ms. Jyoti Chavan, AGP for respondent nos 1 to 3

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

DATED : 21st SEPTEMBER, 2018.

P.C.

1. This petition under Article 226 of the Constitution of India challenges a Notification dated 30th March, 2016 issued by respondent no.1 – State of Maharashtra. By the impugned Notification, Entry No.82B has been inserted in Schedule C to the Maharashtra Value Added Tax Act, 2002 (MVAT Act) to levy Value Added Tax (VAT) as "*repossessed motor vehicles sold by the banks / financial institutions on which entry tax or as the case may be, Sales Tax has been paid at an earlier stage in the State*".

2. The challenge in this petition to the impugned Notification is made on the following grounds :-

(a) The repossession of the vehicles and the sale of the repossessed vehicles by the banks / institutions would not amount to sale of goods; and

(b) The levey of tax by introduction of Entry No.82B in Schedule C to the MVAT Act is arbitrary and violative of Article 14 of the Constitution of India as the Notification seeks to tax identical nature of goods i.e. second hand motor vehicles on different basis as is evident from the VAT payable on it by other dealers under a composition scheme.

3. Mr. Venkatraman, the learned Senior Counsel in support of the petition very fairly points out that there are decisions of Madras, Delhi, Rajasthan, Tamil Nadu and Orissa High Courts where orders were passed in the petitioners' own cases and it was held under the respective Acts that the petitioners were dealers in respect of the sale of repossessed motor vehicles and liable to VAT. However, he further points out that all the decisions of the above High Courts have been appealed to the Hon'ble Supreme Court and a stay of the recovery consequent to High Court orders has been granted. It is submitted that the appeals before the Supreme Court filed by the petitioners are likely

to be disposed of in the near future. Therefore, it is submitted that the petition be admitted and the result of the above proceedings before the Hon'ble Apex Court be awaited.

4. We find that at this stage, no notice has yet been issued to the petitioners seeks to assess the petitioners under Entry No.82B of the Schedule C of the MVAT Act. This in the light of the petitioner's contention that the petitioners are not the dealer nor is their activity in disposing of repossessed motor vehicles a sale under the MVAT Act. It is for the respondents now to issue an appropriate notice in case it does not agree with the contention of the petitioners. On such a notice being issued by the respondent, the petitioners would respond. It is only thereafter that the respondent's officers would decide the issue on the basis of the proper interpretation of the word “Seller” and “Dealer” as defined in the MVAT Act.

5. As no proceedings have yet been commenced and no order has been passed by the Authorities under the MVAT Act on the proper interpretation of the words “Seller” and “Dealer” in the context of Entry No.82B of the Schedule C to the MVAT Act, it would only be proper that if and when the Revenue issues a notice, the petitioners will respond to

the same and appropriate order thereon would be passed. If the petitioners succeed in its contention with regard to the interpretation of the words “Seller” and “Dealer” in the context of Entry No.82B, Schedule C to the MVAT Act, then the challenge to the constitutional validity would in the present facts become unnecessary.

6. In these circumstances, we are of the view that at this stage, the petition is premature. The issue of constitutional validity would only arise if interpretation put forth by the petitioners on the Entry No.82B of Schedule C to the MVAT Act does not find favour with the respondent Revenue on adjudication. Thus, we see no reason to interfere at this stage. However, we make it clear that the petitioners challenge to the constitutional validity of the impugned notification dated 30th March, 2016 is kept open, to be urged in case the petitioners feel it necessary after orders are passed by the Authorities under the Act.

7. Petition is disposed of in the above terms. No order as to costs.

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