Sharayu Khot.

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

WRIT PETITION NO. 1728 OF 2018

Aludecor Lamination Pvt.Ltd. & Anr. ...Petitioners

Versus

The State of Maharashtra & Ors. ...Respondents

Mr. Praful C. Joshi, a/w Mr. Piyush Shah, for the Petitioners.

Mr. Himanshu Takke, AGP, for the Respondents-State.

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

DATE : 12 October 2018

ORDER :

1. This Petition under Article 226 of the Constitution of India challenges the order dated 30th January 2018 passed by the Maharashtra Sales Tax Tribunal, Mumbai (for short "***the***

Tribunal"). By the impugned order dated 30th January 2018, the Tribunal has disposed of the Petitioners' Application for stay of the order dated 30th March 2017 which is in Appeal under Section 26(6) of the Maharashtra Value Added Tax Act, 2002 (for short "***MVAT Act***"). This by directing deposit of 25 percent of the disputed tax amount relating to the period 2011-12.

2. Briefly the relevant facts leading to this Petition is that by order dated 30th March 2017 that the Joint Commissioner of Sales Tax (Appeals) IV, Mumbai upheld the order dated 27th February 2016 passed by the Deputy Commissioner of Sales Tax relating to the period 2011-12. Both the above orders held product viz. 'aluminum composite panel' is classifiable under the residuary Schedule Entry E-1 of the MVAT Act. This after negativing the Petitioners contention that 'aluminum composite panel' is classifiable under Schedule Entry C-54 of the MVAT Act.

3. Being aggrieved with the order dated 30th March

2017 of the Joint Commissioner of Sales Tax (Appeal), the Petitioners filed an Appeal to the Tribunal and also sought stay of the order dated 30th January 2018 which is the subject matter of Appeal. The Petitioners in turn relied upon the decision rendered by the Apex Court under the Central Excise Act, 1944 in ***Sharp Industries Limited Vs. Commissioner of Central Excise***[1]. The Tribunal records that the Revenue in turn relied upon the order of its co-ordinate Bench in ***Kevin Impex Pvt.Ltd.*** rendered on 5th January 2015 on a similar/identical product which was classified under Schedule Entry E-1 of the MVAT Act.

4. The impugned order dated 30th January 2018 of the Tribunal after considering the aforesaid decisions. It took note of the fact that an Appeal from the order of this Court in ***Kevin Impex Pvt.Ltd.*** is pending before this Court in Appeal and the decision rendered in the ***Sharp Industries Limited*** (supra) was under the Central Excise Act, 1944, directed the Petitioners to

1 ***2005(188) ELT 146 (S.C.) Civil Appeal No. 5242 of 2000***

deposit 25 percent of the amount of tax confirmed by the order dated 30th March 2017 which is pending in Appeal before it.

5. According to us, the impugned order of the Tribunal dated 30th January 2018 is a reasonable order. It is an order which has been passed after taking into consideration, the submissions of the parties and finding that the issue is debatable directed the Petitioners to deposit 25 percent of the duty as a condition precedent to the stay of the order dated 30th January 2018.

6. In the above view, we see no reason to interfere with the impugned order dated 30th January 2018 passed by the Tribunal. Accordingly, the Petition is dismissed. No order as to costs.

7. Shri. Joshi, the learned Counsel appearing for the Petitioners, submits that the Petitioner is in grave financial hardship and is unable to deposit the same. Thus, seeks liberty

to apply/approach to Tribunal. Final hardship was not a contention urged before the Tribunal during hearing of the stay application leading to the impugned order dated 30th January 2018. Nor has the Petitioner demonstrated before us that its financial situation has become precarious after the passing of the impugned order dated 30th January 2018. In the above circumstances, we are not inclined to grant any liberty. However, we make it clear that if the Petitioner is otherwise entitled to approach the Tribunal for variation of the impugned order dated 30th January 2018 and/or for the expeditious hearing of the Appeal, this order will not prohibit the Petitioner from doing so.

[RIYAZ I. CHAGLA J.] **[M.S. SANKLECHA, J.]**