IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 112 OF 2019

AMBEY METALLIC LTD., THR. ITS
MANAGING DIRECTOR, SUNIL GARG., ... Petitioner

Versus

STATE, THR. THE CHIEF SECRETARY
AND 2 ORS., ... Respondents

Mr. Nitin Sardessai, Senior Advocate with Ms. Gautami Kamat, Advocate for the Petitioner.

Mr. Pravin N. Faldessai, Additional Government Advocate for the Respondents.

Coram:- C. V. BHADANG, J.

Date:- 7th June 2019

ORAL ORDER:

This petition can be disposed off on a short count.

2. The petitioner is a dealer and has a manufacturing unit, which uses raw material/capital goods, which goods, prior to 01.06.2013 were taxed at 0.3% as per Goa Tax on Entry of Goods Act, 2000 (Act of 2000, for short). The petitioner was eligible for input tax credit on the finished goods for the purpose of assessment of Value Added Tax (VAT), levied under the Goa Value Added Tax Act, 2005 (Act of 2005, for short). The rate of entry tax on the goods, which were covered by entry at serial nos. 34 and 35 of schedule I of the Act of 2000, was enhanced to 2% w.e.f. 01.06.2013. According to the petitioner, he was

unaware of the said enhancement and continued to pay entry tax at the rate of 0.3% and the input tax credit was also claimed at the said rate, for computation of VAT under the Act of 2005.

3. The respondents raised separate claims for various assessment years, towards the difference, which according to the respondents, was payable on account of enhancement of the entry tax from 0.3% to 2% w.e.f. 01.06.2013. According to the petitioner, there were no dues outstanding.

4. The Entry Tax Officer refused to accept the claim of the petitioner and the said matter pertaining to the said dues for different assessment years is pending before the Assistant/Additional Commissioner of Commercial Taxes, in separate Appeals filed by the petitioner.

5. The petitioner filed an application dated 14.11.2017, before the Commissioner, purportedly for compounding of the offence. It was contended that, the offence of short declaration/payment of entry tax, in his returns for the period from 01.04.2013 to 30.06.2017 be compounded/condoned and the difference of the tax paid under the VAT in excess of demand, be adjusted against the short payment of entry tax, as has been shown in the working statement annexed to the application. The petitioner also claimed that all the payments

were made well within time and therefore, no penalty or interest was payable under the Act of 2000 or under the Act of 2005.

6. The learned Commissioner, by the impugned order dated 31.10.2018 has rejected the application, mainly on the ground that under sub-section (6) of Section 9 of the Act of 2005, it is only the entry tax "paid", which is entitled for input tax credit, subject to other provisions. It is this order, which is subject matter of challenge in this petition.

7. I have heard Mr. Sardessai, the learned Senior Counsel for the petitioner and Mr. Faldessai, the learned Additional Government Advocate for the respondents. Perused record.

8. Mr. Sardessai, the learned Senior Counsel for the petitioner has submitted that the material dispute about the liability of the petitioner and/or its entitlement to seek input tax credit against VAT, is subject matter of various appeals, pending before the Assistant/Additional Commissioner of Commercial Taxes. It is submitted that the competent Authority has not yet initiated prosecution against the petitioner and even otherwise, Section 43 of Act of 2000 does not provide for compounding of the offence. It is submitted that the application filed before the Commissioner on 14.11.2017, was filed out of inadvertence. It is submitted that the observations made by the Commissioner in the impugned

order, may come in the way of the petitioner in prosecuting the Appeals before the Assistant/Additional Commissioner of Commercial Taxes.

9. Mr. Faldessai, the learned Additional Government Advocate for the respondents, does not dispute that the material dispute, as to the liability of the petitioner (as claimed by the respondents) or the entitlement of the petitioner to seek input tax credit, is subject matter of challenge before the Commissioner. He submits that this Court may pass appropriate orders, as may be deemed just and necessary.

10. I have carefully considered the circumstances and the submissions made. Admittedly, the material dispute between the parties is as to the liability of the petitioner, if any, to pay the difference, is pending before the Assistant/Additional Commissioner of Commercial Taxes as the order passed by the Entry Tax Officer has not attained finality. That apart, the competent Authority has yet not initiated any prosecution. Thus, the application dated 14.11.2017, filed by the petitioner, was not competent under Section 43 of the Act of 2000.

11. Mr. Sardessai, the learned Senior Counsel for the petitioner, on instructions, states that the petitioner is desirous of withdrawing the application dated 14.11.2017 and will not press

for the same.

12. In such circumstances, the petition is allowed. The impugned order is hereby set aside. The application dated 14.11.2017, filed by the petitioner, is dismissed as withdrawn. Needless to mention that the Appeals, filed by the petitioner, which are pending before the Assistant/Additional Commissioner of Commercial Taxes, shall be decided on their own merits and in accordance with law. Rival contentions of the parties are left open. In the circumstances, there shall be no order as to costs.

C. V. BHADANG, J.

EV