IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 654, 656 AND 712 OF 2019

M/s. BALAJI METALS
a company incorporated under the
Companies Act, 1956 and having
its office at E-7, Madkaim Industrial
Estate, Madkaim- Goa. ... Petitioner

Versus

1. STATE OF GOA,
through its Chief Secretary,
having office at Secretariat,
Porvorim, Goa.

2. ASST. COMMISSIONER OF COMMERCIAL
TAXES,
Government of Goa,
Serra Building, 1st Floor,
Altinho, Panaji- Goa.

3. COMMERCIAL TAX OFFICER,
Government of Goa, Vikrikar Bhavan,
MG road,
Panaji – Goa – 403 001. ... Respondents

Mr. Y.V. Nadkarni and Mr. Sanket Kamat, Advocates for the petitioners.

Mr. D.J. Pangam, Advocate General with Mr. S. Redkar, Additional Government Advocate for the respondents.

Coram:- M. S. SONAK &
NUTAN D. SARDESSAI, JJ.

Date:- 17th September, 2019

ORAL JUDGMENT : (per M.S. Sonak, J.)

Heard the learned Counsel for the parties.

2. According to us, the issue involved in these petitions stands covered by our decision in WP No. 380 of 2019. Accordingly, for the reasoning in the said decision, we set aside the First Appellate Authority's orders dated 06/03/2018, 05/03/2018 and 06/03/2018 respectively and restore the petitioners appeals before the First Appellate Authority for disposal in accordance with law and on their own merits.

3. Consequently, we also set aside the Tribunal's order dated 06/06/2019 by which the Tribunal had refused to set aside the aforesaid orders made by the First Appellate Authority.

4. Further, we make it clear that merely because the appeals are pending, the same shall not operate as restraint upon the Respondents recovering the amount of tax and penalty, in accordance with law.

5. In this case, we note that there are some obvious errors which have crept in to the orders of the First Appellate Authority. For example in Writ Petition No. 654 of 2019, the demand is for tax of ₹43,63,126 and there is a similar amount imposed as penalty which takes the total recoverable amount to ₹87,26,252/- . However, the order of the First Appellate Authority refers to the petitioners disputing the demand of tax of ₹43,63,126/- and observes that for the balance undisputed amount paid challan have not been submitted. We agree with Mr. Nadkarni, learned Counsel that if the petitioners have disputed the tax demand amount then it is obvious that the petitioner would also dispute the penalty amount as well.

6. Accordingly, the impugned orders of the First Appellate Authority to the extent they suggest that only the tax demand amount was disputed but the penalty amount was not disputed are set aside specifically so that the same issue does not arise at the stage of consideration of the appeals pursuant to remand.

7. The rule is made partly absolute in these petitions, in the aforesaid terms. There shall, however, be no order as to costs.

8. All concerned to act on the basis of an authenticated copy of this order.

NUTAN D. SARDESSAI, J. **M. S. SONAK, J.**

mv