IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 1081 OF 2019

Power Engineering (India) Pvt. Ltd. Plot No.58/A, Tuem Industrial Estate,
Tuem, Goa. Through its General Manager (Legal) Mr. Manguesh Dalvi. ... Petitioner

Versus

1. State of Goa,
through the Chief Secretary, Government of Goa, Having office at the Secretariat, Porvorim, Bardez, Goa.

2. The Commissioner of Commercial Taxes, M. G. Road, Panaji, Goa.

3. The Assistant Commissioner of Commercial Taxes, Vikrikar Bhavan, M. G. Road, Panaji, Goa. ... Respondents

Mr. S. D. Lotlikar, Senior Advocate with Ms. Sailee Kenny, Advocate for the Petitioner.
Mr. D. Pangam, Advocate General with Mr. Pravin Faldessai, Additional Government Advocate for the Respondents.

Coram :- **M. S. SONAK &**
M. S. JAWALKAR, JJ.
Date : **13th December, 2019.**

ORAL JUDGMENT *(Per M. S. Sonak, J)*

1. Rule, made returnable forthwith. Learned Additional Government Advocate for the respondents, waives service.

2. Heard Mr. S. D. Lotlikar, learned Senior Advocate for the petitioner and Mr. Pangam, the learned Advocate General for the respondents.

3. The challenge in this petition is to the order dated 31.03.2012 made by the Assistant Commissioner of Commercial Taxes. The challenge is not to the entire order but to the portion of the said order by which penalty of Rs.86,67,432/- has been imposed upon the petitioner.

4. Mr. Lotlikar, the learned Senior Advocate for the petitioner pointed out that the tax/duty in terms of the impugned order dated 31.03.2012 has already been paid. Insofar as the penalty is concerned, the petitioner on 21.09.2012, addressed a representation to the Commissioner of Commercial Taxes seeking waiver/reduction. Mr. Lotlikar, the learned Senior Advocate submits that though the impugned order dated 31.03.2012 was appealable to the Additional Commissioner, the petitioner was advised that a representation to the Commissioner would suffice since the petitioner was basically contesting the levy of penalty. Mr. Lotlikar, the learned Senior Advocate submits that the representation dated 21.09.2012 was within the extendable period of limitation prescribed under the Goa Tax on Entry of Goods Act, 2000 (For short, the said Act). He submits that in the peculiar facts of the present case, the petitioner's representation dated 21.09.2012 could have been sent by the Commissioner to the Additional Commissioner, who, in turn, would have treated the same as an appeal under the provisions of the said Act.

5. Mr. Lotlikar, the learned Senior Advocate for the petitioner, submits that if at this stage the petitioner is required to pay the entire penalty amount, in all probabilities, the petitioner has to close down operations. He submits that the petitioner has been bonafidely pursuing the issue of penalty with the authorities and the petitioner was hopeful of some favourable result.

6. Mr. Lotlikar, the learned Senior Advocate, on the basis of instructions from the petitioner states that the petitioner without prejudice will pay to the respondents fifty percent of the penalty amount coming to approximately Rs.43,33,716/- within a period of three months from today. He submits that an amount of Rs.10,00,000/- will be paid by 31.12.2019 and the balance amount of approximately of Rs.33,33,716 will be paid by 28.02.2020. He submits that on this basis, the Additional Commissioner (Appeals) may be directed to treat the petitioner's representation dated 21.09.2012 as appeal and dispose off the same on its own merits and in accordance with law.

7. In the peculiar facts and circumstances of the present case, the learned Advocate General states that the aforesaid course of action proposed by the learned Senior Advocate appearing for the petitioner can be adopted provided the petitioners without prejudice to their rights and contentions pay to the respondents the amount of Rs.43,33,716/- latest by 28.02.2020. Only if such amount is paid by the petitioner, the Additional Commissioner will treat the petitioner's representation dated 21.09.2012 as an appeal and then dispose off the same on its own merits.

8. Accordingly, we accept the statement made by the learned Senior Advocate on behalf of the petitioner and direct the petitioner to pay without prejudice to their rights and contentions to the respondents the amount of Rs.43,33,716/- in the following manner :

> *(a) Amount of Rs.10,00,000/- be paid on or before 31.12.2019;*
>
> *(b) Balance amount of Rs.33,33,716/- to be paid on or before 28.02.2020.*

9. If the aforesaid amounts are indeed paid on or before 28.02.2020, without seeking any further indulgence or extension of time, then the Additional Commissioner of Commercial Taxes, Government of Goa, to treat the petitioner's representation dated 21.09.2012 (annexure C of page 31 of the paper book) as appeal under the provisions of the said Act and to dispose off the same on merits and in accordance with law.

10. In case the petitioners desire to take up any supplementary or additional grounds, they are at liberty to do so within a period of one month from today. However, it is made clear that the representation/additional grounds can be considered by the Additional Commissioner only in the event the petitioners honour their commitment to pay the aforesaid amounts.

11. If amounts as aforesaid are indeed paid by 28th February, 2020, the impugned order shall not be executed pending disposal of appeal on merits. The appeal to be disposed off by 30th May, 2020 on merits. But, if there is default in adhering to payment schedule as referred in paragraph 8 above, this petition shall be deemed to have been dismissed, without further reference to this Court.

12. Rule is disposed off in this petition in the aforesaid terms. There shall be no order as to costs. All concerned to act on basis of authenticated copy of this order.

M. S. JAWALKAR M. S. SONAK, J.

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