IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 85 OF 2018

M/s. Mohit Ispat Ltd.,
a Company incorporated under the
Companies Act, 1956 and having
its office at Kundaim Industrial
Estate, Kundaim- Goa and represented herein
by its Director Mr. Achintya Mittal. ... Petitioner
Major of age

Versus

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

2. ASST. COMMISSIONER OF COMMERCIAL TAXES,
Government of Goa,
Vikrikar Bhavan, MG Road,
Panaji- Goa- 403 001.

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 petitioner.

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.)

Not on board. However at the request of and with the consent of the learned counsel for the parties, the matter is taken on board and disposed off alongwith other matters which are already on board for final disposal.

2. Heard the learned Counsel for the parties.

3. The challenge in this petition is to the order dated 4th August 2017 made by the Tribunal under the provisions of Goa Tax on Entry of Goods, 2000 (the said Act).

4. The impugned order dated 4th August 2017 made by Tribunal reads as follows :

ORDER

2017, August 4th

Ld. Advocate Shri A.T. Kamat present for Appellant, Ld Advocate Shri A. Rodrigues present for Respondent.

The Advocate has not complied with the direction of the Tribunal dated 12.07.2017. The Ld Advocate for the Appellant expresses inability of the Appellant to deposit the amount due to financial problems.

Appeal is dismissed for non compliance. Accordingly, the application for stays stands disposed.

PRONOUNCED

sd/-

(RAJESH NARVEKAR)

PRESIDENT

5. The aforesaid order has to be read in conjunction with the order of 12th July 2017 made by the tribunal, which is in fact referred to in the order dated 4th August 2017. The order dated 12th July 2017 reads as follows:

> *"12/07/2017 – ROZNAMA :*
>
> *Application for Settlement filed by the Applicant is rejected. Appellant is directed to deposit Security Amount or furnish Bank Guarantee as per the provision of Law on or before the next date of hearing. Adjourned for compliance of direction / arguments on merits."*

6. Section 29 of the said act reads thus :

Appeal to the Tribunal.–

1 Any officer empowered by the Government in this behalf or any other person objecting to an order passed by the appellate authority under section 28 or an order *passed by a revisional authority under subsection (3) of section 30 may appeal to the Tribunal within a period of sixty days from the d ate on which the order was communicated to him.*

2 The Tribunal may admit an appeal preferred after the period of sixty days referred to in subsection (1) but within a further period of one hundred and eighty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within that period.

3 The officer authorized under sub-section (1) or the person against whom an appeal has been preferred, as the case may be, on receipt of notice that an appeal against the order of the Additional Commissioner or Assistant Commissioner has been preferred under sub-section (1) by the other party, may, notwithstanding that he has not appealed against such order or any part thereof, file at any time before the appeal is finally heard, a memorandum of cross-objections, verified in the prescribed manner, against any part of the order of the Additional Commissioner or the Assistant. Commissioner, as the case may be, and such memorandum shall be disposed of by the Tribunal as if it were an appeal presented within the time specified in sub-section (1).

4 The appeal or the memorandum of cross-objections shall be in the prescribed form, shall be verified in the prescribed manner, and in the case of an appeal preferred by any person other than an officer empowered by the Government under subsection (1) *shall be accompanied by a fee equal to two per cent of the amount of assessment objected to, provided that the sum payable in no case be less than two hundred rupees or more than one thousand rupees.*

5 *Notwithstanding that an appeal has been preferred under sub-section (1), the payment of tax or penalty or any other amount, payable in accordance with any order passed by the Additional Commissioner or the Assistant Commissioner under section 28 shall not, pending disposal of the appeal, be stayed by the Tribunal.*

6 *The Tribunal shall, after giving both parties to the appeal a reasonable opportunity of being heard, pass such orders thereon as it thinks fit:*

Provided that if the appeal involves a question of law on which the Tribunal has previously given its decision in another appeal and either a revision petition in the High Court against such decision an appeal in the Supreme Court against the order of the High Court thereon is pending, the tribunal may defer the hearing of the appeal before it till such revision petition in the High Court or the appeal in the Supreme Court is disposed of:

Provided further that if as a result of the appeal any change becomes necessary in the assessment which is the subject-matter of the appeal, the Tribunal may authorise the assessing authority to amend the assessment, and the assessing authority shall amend the assessment, accordingly and thereupon, any amount over paid by the *assessee shall be refunded to him without interest, or any additional amount of tax due from him shall be collected in accordance with the provisions of the Act, as the case may be.*

7 *Notwithstanding that an appeal has been preferred under sub-section (1), tax shall be paid in accordance with the assessment made in the case:*

Provided that the Tribunal may, except in case of an appeal against an order passed by the Additional Commissioner or Assistant Commissioner under section 28 in its discretion, give such directions as it thinks fit, in regard to the payment of tax, if the appellant furnishes sufficient security to its satisfaction in such form and manner as may be prescribed.

8(a) *The Tribunal may, on the application, either of the appellant or of the respondent, review any order passed by it under sub-section (5) on the basis of facts which were not before it when it passed the order:*

Provided that no such application shall be preferred more than once in respect of the same order.

(b) *The application for review shall be preferred in the prescribed manner within six months from the date on which the order to which application relates was communicated to the applicant; and where the application is preferred by any person other than an officer empowered by the Government under sub-section (1), it shall be accompanied by a fee equal to that*

which had been paid in respect of the appeal:

Provided that if the application for review is preferred within ninety days from the date on which the order to which application relates is communicated to the applicant, the application shall be accompanied by half the fee which had been paid in respect of the appeal.

9 *With a view to rectifying any mistake apparent from the record, the Tribunal may, at any time, within five years from the date of any order passed by it under sub-section (5) or sub-section (7), amend such order:*

Provided that no order under this sub-section shall be made without giving both parties affected by the order a reasonable opportunity of being heard.

10 *Except as provided in the rules made under this Act, the Tribunal shall not have power to award costs to either of the parties to the appeal or review.*

11 *Every order passed by the Tribunal under sub-section (5) or sub-section (7) or sub-section (8) shall be communicated to the appellant, the respondent, the authority on whose order the appeal was preferred and the Assistant Commissioner concerned if he is not such authority, and the Commissioner.*

12 *Every order passed by the Tribunal under sub-section (5) shall, subject to the provisions of sub-section (6), sub-section (7) and section 31, be final.*

7. According to us, there is no provision in section 29 of the said Act which empowers the Tribunal to dismiss appeal simply because the appellant may not have complied with any directions issued by the Tribunal in exercise of the powers conferred upon the Tribunal under Section 29(7) of the said Act. If such a direction is not complied with, there may be power to execute the said direction. However, the Tribunal, could not have refused to entertain the appeal merely because the petitioner has failed to make payment of the disputed amount to the respondents.

8. In the context of the provisions in Section 28 of the said Act, we have already made a detailed order in Writ Petition No. 380/2019. The reasoning therein, at least to certain extent, will apply in the present matter, as well. This is because, as long as there is no clear provision in Section 29 of the said Act which makes payment of even disputed tax a precondition for entertainment of a second appeal before the Tribunal, or as long as there is no provision which declares that disobedience of any direction for payment of tax and penalty, renders the appeal itself as not maintainable, we are afraid the impugned order made by the Tribunal in the present case, cannot be sustained. Though the provisions of Sections 28 and 29 of the said Act may not be identical, our aforesaid reasoning in the context of interpretation of the provisions in Section 28 of the said Act, will

apply to this limited extent to the interpretation of Section 29 of the said Act.

9. Accordingly, we set aside the impugned order dated 4th August 2017 and we restore the petitioner's second appeal before the Tribunal for consideration and disposal on its own merits and in accordance with law.

10. Though we are restoring the Appeal to the file of the Tribunal, we make it clear that mere pendency of such appeal, will not operate as a restraint upon the Respondents to recover tax and penalty from the Petitioner, in accordance with law.

11. We, further clarify that we have not examined the merits of the rival contentions and such merits are, therefore, left to the Tribunal for examining in accord with law.

12. The Rule is made partly absolute in the aforesaid terms. However, there shall be no order for costs.

13. The parties to appear before the Tribunal on 14th October 2019 at 10.30 a.m. and file an authenticated copy of this order.

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

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

ssm/mv