IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7264 OF 2018

Rocket Engineering Corporation Pvt. Ltd. .. Petitioner
v/s.
The State of Maharashtra .. Respondent

Mr. Vinayak Pathkar a/w Ms. Jindagi Shah I/b TJS Legal for the petitioner
Ms. Shruti D. Vyas, “B” Panel Counsel for respondent no.1 – State

CORAM : M.S. SANKLECHA &
S.C. GUPTE, J.J.
DATED : 23rd JULY, 2019

P.C.

1. This petition under Article 226 of the Constitution of India seeks to challenge the order dated 4th December, 2017 passed by the Maharashtra Sales Tax Tribunal (Tribunal). The impugned order dated 4th December, 2017 disposed of the petitioner's stay application in a pending appeal by directing a stay of the order dated 30th March, 2017 passed by the Joint Commissioner of Sales Tax (Appeals) on part payment / deposit of Rs. 10 lakhs out of the tax dues of Rs.45.60 lakhs.

2. The grievance of the petitioner is that the impugned order on stay has not considered the facts of this case. It is the petitioner's claim that it had been cheated by its selling dealer, who represented to it that

it has paid VAT to the State on the goods being sold by it to the petitioner. Thus, making the petitioner believe they are entitled to Input Tax Credit. The petitioner had also filed criminal proceedings against the defaulting selling dealers and were seeking action by the State against them to recover the tax dues. This particularly in view of the decision of this Court in ***M/s. Mahalaxmi Cotton Ginning Pressing and Oil Industries Vs. The State of Maharashtra & Ors. (2012) 51 VST 1*** wherein the Advocate General had assured the Court that the full machinery of the State will be invoked against defaulters namely; the selling dealers who have not paid the taxes to the State, and after recovering credit and / or refund will be given to the purchasing dealers. On the basis of the above, it is their submission that the State is not complying with the assurance given above, resulting in grave hardship to the petitioner. However, we note that while recording the above assurance, the Court also records the fact that Sales Tax Department will retain the option of denying a set off, until a recovery is made.

3. We are of the view that the impugned order has been passed is on the application for stay. Therefore, the in depth examination of the petitioner's submission was not done at the time of disposing of the stay

application. The submissions of the petitioner would be considered in detail at the time of final hearing of the appeal. At this stage, no fault can be found with the impugned order of the Tribunal. The petitioner is pleading grave hardship in view of the huge demand for no fault on its part.

4. Therefore, in the above circumstances, we would request the Tribunal to take up the petitioner's pending appeal for final disposal as early as possible preferably within a period of eight weeks from today. It is made clear that we have not examined the merits of the petitioner's case. This would be done by the Tribunal and any observation made herein should not influence the Tribunal in deciding the appeal.

5. With the aforesaid directions, the petition stands disposed.

(S.C. GUPTE, J.) **(M.S. SANKLECHA, J.)**