IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3149 OF 2019

Pfizer Products India Private Limited .. Petitioner
v/s.
The State of Maharashtra & Others .. Respondents

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Mr. Prakash Shah, a/w. Mr. Jas Sanghavi, i/b. PDS Legal, for the Petitioner.

Mr. Yatin S. Khochare, AGP, for Respondent Nos.1 to 4.

Mr. Srikant Jyotiram Beley, JC Appeal VI, Bandra.

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CORAM: M.S.SANKLECHA, &
S.C. GUPTE, JJ.

DATE : 1 AUGUST, 2019.

P.C:-

. This petition, under Article 226 of the Constitution of India, challenges the action of Respondent No.3 – Joint Commissioner of Sales Tax (Appeals) in not entertaining the Petitioner's three appeals under the Maharashtra Value Added Tax Act, 2002 (“MVAT Act”) and the Central Sales Tax Act (“CST Act”) from two orders dated 17 September 2018 for the Year 2011-12 and one order dated 15 October 2018 for the Year 2006-07. This as Respondent No.3 - Joint Commissioner of Sales Tax (Appeals), is insisting a proof of payment, under Section 26(6A) of the MVAT Act. This in spite of the fact, that the Petitioner claims to have paid the same.

2. Respondent No.4, Deputy Commissioner of Sales Tax

(Assessing Officer), on remand passed an Assessment Order dated 15 October 2018, confirming a tax demand of Rs.41.70 lakhs for Assessment Year 2005-06 for the purpose of State Tax payable under the MVAT Act. While on 17 September 2018, the Assessing Officer on remand passed two orders relating to Assessment Year 2011-12, one confirming a demand of Rs.31.03 lakhs relating to the State tax payable under MVAT Act, the other confirming a demand of Rs.96.30 lakhs relating to Central Tax payable under the CST Act.

3. At the very outset, Mr. Shah for the Petitioner and Mr. Khochare, AGP for the Revenue, on instructions, state that so far as the appeals relating to central tax payable under the CST Act for the Financial Year 2011-12 is concerned, the appeal is being entetained as the entire amount of demand has been paid. Thus, the dispute now relates only to the appeals for Financial Year 2006-07 and 2011-12 which are not being entertained for want of deposit of 10% of the tax in terms of Section 26A of the MVAT Act. It is an admitted position that for the Assessment Years 2006-07 and 2011-12, the Petitioner had, in an earlier round of appeal, had deposited an amount of Rs.5 lakhs each in respect of Years 2006-07 (VAT) and 2011-12 (VAT), which was a part payment as directed by the appellate authority for the purpose of granting of a stay of the Assessment Orders till the disposal of the appeals. The two orders passed in appeal are consequent to the order of remand by Respondent No.3 - Joint Commissioner of Sales Tax (Appeals). The amounts deposited before the appellate authority continue to be with the State, even though the earlier order has been set aside. Therefore, for the purpose of computing 10% payable under Section 26A of the Act, the amounts, which were deposited in the earlier round with the appellate authorities, should be taken into

account for computing the 10% of the disputed State tax under the MVAT Act for the appeal being entertained on merits.

4. Mr. Khochare, learned AGP, on instructions of Mr. Beley, Joint Commissioner of Sales Tax (Appeals), states that the amounts of Rs. 5 lakhs each relating to Assessment for the Year 2006-07 (VAT) and for the Year 2011-12 (VAT), which had been deposited in the earlier round, would be taken into account to determine the deposit for the purposes of Section 26A of the MVAT Act.

5. In view of the above statement, nothing survives in the petition.

6. Thus, the petition disposed of as above.

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