IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5691 OF 2019

Leighton India Contractors Pvt. Ltd. .. Petitioner
v/s.
The State of Maharashtra & Ors. .. Respondents
....

Mr. Prakash Shah, a/w. Mr. Prasad Paranjape, Mr. Mihir Mehta and Mr. Mohit Raval, iI/b. PDS Legal, for the Petitioner.

Mr. Vasonpal, Special Counsel, a/w. Shruti D. Vyas, 'B' Panel Counsel, for the Respondent State.

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CORAM: M.S.SANKLECHA, &
S.C. GUPTE, JJ.
DATE : 16 JULY, 2019.

P.C:-

. On 3 May 2019, we passed the following order:-

> "1. The petitioner has challenged an order of assessment passed by the Deputy Commissioner of Sales Tax imposing tax on the petitioner to the tune of Rs. 159/- Crores (rounded off). The petitioner has raised multiple grounds to challenge this order including that the entire sale of goods in the course of execution of the work contract took place at Bombay High and therefore, this sale is not liable to any sales tax of the State. The petitioner also argued that substantial portion of the goods were imported at Gujarat which also the Assessing Officer has not taken into account. Yet another ground of the petitioner is that the Assessing Officer has taxed the entire value of the work contract for levying tax and taxed the entire amount at the higher rate of tax prescribed for residual entry.
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> 2. In our prima facie opinion, certain grounds raised by the petitioner would require reconsideration at the hands of the Assessing Officer. The impugned order is silent on these vital aspects of the matter. Before taking final decision, we would like

> to hear the respondents. Let the respondents file reply before the next date of hearing.
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> 3. S.O to 14th June, 2019. By way of ad-interim relief, it is provided that there should be no recovery pursuant to the impugned order of the assessment."

2. From the above, it is evident that the following three issues had not been considered by the Deputy Commissioner of Sales Tax in his impugned order dated 28 February 2018 relating to financial year 2013-14:

(i) The sale of goods in the course of sale of execution of work contract took place outside the State of Maharashtra. Therefore, the State has no jurisdiction to levy tax under the MVAT Act, 2002;

(ii) A substantial portion of the goods used in the execution of works contract were imported at Gujarat and forwarded from there to Bombay High in the course of execution of works contract. Therefore these goods could not form part of the turnover to be subjected to tax within the State of Maharashtra under the MVAT Act, 2002; and

(iii) The works contract executed by the Petitioner for ONGC has been classified under a residual entry and not under the specific entry under the individual classification. Thus leading to incorrect classification and rate of tax being attracted.

3. We find that the impugned order dated 28 February 2018 passed by the Deputy Commissioner of Sales Tax does not examine much

less discuss any of the above or any issues incidental thereto. In the aforesaid circumstances, it is evident that the aforesaid submissions which are a part of the Petitioner's written submissions dated 27 February 2018 have not been considered as is evident from the impugned order dated 28 February 2018. Thus the impugned order is in breach of principles of natural justice. It is a clear case of a flaw in the decision making process, which compels us to exercise our writ jurisdiction in the present facts and not relegate the Petitioner to an alternative remedy under the MVAT Act, 2002.

4. Therefore, it would be in the interest of justice that the impugned order dated 28 February 2018 of the Deputy Commissioner of Sales Tax is set aside and he is directed to pass a fresh order after hearing the Petitioner. As the Deputy Commissioner of Sales Tax is considering the matter afresh, we are leaving all contentions open on both sides. It is clarified that the scope of adjudication before the Assessing Officer would be limited only on the basis of the record available before him on the issues raised by the Revenue. It is, however, clarified that in case the Revenue seeks to raise new issues, which have not been the subject matter of the proceedings then a notice for the same would be given by the Assessing Officer to the Petitioner, to enable the Petitioner to meet the grievance of the Revenue.

5. In view of the above, the challenge to the order dated 31 March 2019, being the order passed by the Deputy Commissioner of Sales Tax, on rectification application, seeking to rectify the order dated 28 February 2018, does not survive.

6. Petition disposed of in the above terms.

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