IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6751 OF 2019

Insta Exhibitions Pvt.Ltd. ...Petitioner
vs
The State of Maharashtra & Ors. ...Respondents

Mr.Chandrakant B. Thakar for Petitioner.
Ms.Shruti D. Vyas, 'B' Panel Counsel for State-Respondent Nos.1 to 3.

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

DATE : 8 AUGUST 2019

P.C. :

This petition, under Article 226 of the Constitution of India, challenges two orders dated 14 March 2019 passed by the Deputy Commissioner of State Tax for the period 2014-2015. One order dated 14 March 2019 has been passed under Section 23 of the Maharashtra Value Added Tax Act, 2002 (MVAT Act") and the other has been passed under Section 9(2) of the Central Sales Tax Act, 1956 ("CST Act").

2 At the outset, Ms.Vyas, learned Counsel for the Respondents, submitted that there is an alternative remedy of an appeal available from both the impugned orders dated 14 March 2019. An appeal in respect of an order passed under the MVAT Act is available under Section 26 thereof. So far as the order is passed under the CST Act, an appeal is available under Section 9(2) of the CST Act read with Section 26 of the MVAT Act. Thus, it is submitted that this this court should not entertain the petition as a remedy of appeal under the Act is equally efficacious.

3 The grievance of the Petitioner is that both the impugned orders dated 14 March 2019 have been passed in breach of principles of natural justice inasmuch as no sufficient opportunity to present their case was given to the Petitioner. In particular, it is pointed out that the Petitioner had received a notice for personal hearing from the Assessing Officer for the hearing scheduled on 11 March 2019. On that date, i.e. 11 March 2019, the Petitioner’s representative attended the office of the Assessing Officer and filed a letter seeking an adjournment of eight days and the Respondents were requested to make available to the Petitioner its own documents relevant for the assessment relating to Financial Year 2014-2015, which were with the Assistant Commissioner of Sales Tax, Investigation Branch, Bhayander (Evidence in the form of receipt was also enclosed to the Petitioner's letter dated 11 March 2019.) The impugned orders do record that the Petitioner’s representative was present at the hearing and the filing of letter dated 11 March 2019. It is submitted that, the assessment were finalised without giving the Petitioner the documents in the possession of the Revenue. Thus the Petitioner did not have an opportunity to establish its case before the authority.

4 The Respondents have filed an affidavit in reply. In their reply they do not deny that the Petitioner had made a request for the documents relating to the assessment for the period 2014-15 in the possession of the department. This would have enabled the Petitioner to establish its case in respect of its claims for branch transfer and exhibition activity. The only reason stated in the affidavit in reply was that the declaration produced by the Petitioner was examined and its claim for branch transfer and

exhibition activity could not be allowed for want of evidence. It is also further submitted that the assessment was getting time barred on 31 March 2019. In these circumstances, it was not possible to grant further time; otherwise the assessments could not have been completed. Thus the passing of the impugned orders, without giving copies of the documents asked for, could not be found fault with.

5 It is an undisputed position that the Petitioner’s documents relating to the period 2014-2015 and necessary for the Petitioner's assessment in particular to support its claim for branch transfer and exhibition activity were in the possession of the department with effect from 18 April 2017. In spite of the Petitioner’s seeking copies of the same, the same were not granted by the Assessing Officer, as he did not call for the necessary proceedings and papers from the Assistant Commissioner of Sales Tax, Investigation Branch, Bhayander, who was in possession of the papers relating for the Assessment Year 2014-15. In these circumstances, it was impossible for the Petitioner to establish its claim for branch transfer as also the exhibition activity as the documents relevant, according to the Petitioner, in support of its aforesaid two claims, were amongst the documents which were in possession of the Assistant Commissioner of Sales Tax, Investigation Branch, Bhayander. This non-giving of documents certainly handicapped the Petitioner in the assessment proceedings. This certainly amounts to a breach of principles of natural justice.

6 In the above view, there is a flaw in the decision making process which goes to the root of the matter. Therefore, we set aside the impugned orders dated 14 March 2019 passed under the MVAT Act and CST Act. We

restore the Petitioner's assessment proceedings to Respondent No.3 – Deputy Commissioner of State Tax for fresh consideration of the assessment for the period 2014-15 after furnishing to the Petitioner all the documents relating to the Assessment Year 2014-15 which are in possession of the Assistant Commissioner of Sales Tax, Investigation Branch, Bhayander since 18 April 2017.

7 The petition is allowed of in the above terms.

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