IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1470 OF 2019

Mintkart India Pvt. Ltd. .. Petitioner

v/s.

The State of Maharashtra & Ors. .. Respondents

Mr. Madhav Rao a/w Mr. Mihir Deshmukh for the petitioner
Mrs. Jyoti Chavan, AGP for the respondent - State
Mr. Ichake Subhash, Assistant Commissioner of State Tax present in Court

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

DATED : 23rd JULY, 2019

P.C.

1. At the request of the parties, the petition is disposed of finally at the stage of admission.

2. This petition challenges two assessment orders both dated 29th March, 2019 passed by the Assistant Commissioner of State Tax under Section 23(4) of the Maharashtra Value Added Tax Act, 2002 (MVAT Act) and under Section 9 of the Central Sales Tax Act, 1956 (CST Act). The above two impugned assessment orders relate to year 2010-11.

3. At the very outset, Mrs. Chavan, learned Counsel appearing for the respondents states that this Court should not entertain this petition as there is a statutory remedy of appeal available under the MVAT Act and CST Act.

4. However, the grievance of the petitioner is that the impugned orders both dated 29th March, 2019 are non-speaking orders. This inasmuch as after having recorded the petitioners' submissions that they are not dealers under the Act as it only provides a platform which enables buyers and sellers to enter into transactions independently with each other. According to the petitioner it was not in the business of buying and selling goods. This submission of the petitioner has been recorded but no reasons indicated in the impugned orders as to why they are not acceptable. Thus, the impugned orders are in breach of principles of natural justice as they tantamount to the orders without reasons.

5. On perusal of the impugned orders, we *inter alia* note the submissions of the petitioners that they are only providing online market place through its website www.ebay.in where buyers and sellers

directly interact for sale and purchase of various items and being an intermediate, the company is exempted from liability as per provisions of the section 79 of the Information and Technology Act, 2002. The aforesaid submissions of the petitioner have not been considered by the impugned orders. The impugned order without dealing with the petitioner's submissions holds that relation between company and vendors is principal to principal or principal to agent. Therefore, the impugned orders conclude that it has reason to believe that eBay India Pvt. Ltd. has carried on the business of the buying and selling of the goods and is a dealer under the provisions of the MVAT Act, 2002.

6. It would thus be evident that the impugned orders have not dealt with the petitioner's submissions. In the above view, no useful purpose would be served by relegating the petitioner's to file an appeal to the statutory Authorities under the Act. This is so as the decision making process is flawed as it does not consider the petitioner's submissions. Unless the petitioner's submissions are dealt with by the Assessing Officer at the original stage, the petitioner would be handicapped in pleading its case before the Appellate Authority as it would have no clue as to why the submissions of the petitioner were not accepted. Besides, the Appellate Authority would also be at a loss to

know the exact reasons which weighed with the original Authority to discard the submissions made by the petitioner. In the above view, it is necessary that the order passed by the Assessing Officer should deal with the submissions made by the parties before it by giving reasons in support of its conclusion, particularly when it does not accept the submissions made by the parties.

7. In the above view, we set aside both the impugned orders dated 29th March, 2019 and restore the assessment for the period 2010-11 to the Assessing Officer for fresh consideration under the MVAT and CST Act and disposal in accordance with law after following the principles of natural justice.

8. Therefore, petition is allowed in above terms.

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