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

WRIT PETITION NO. 1967 OF 2019

Nav Bharat Minerals and Chemicals & Anr. ...Petitioners
vs
The Assistant Commissioner of State Tax, Mumbai & Ors. . ..Respondents

Mr.Nikhil Rungta I/b. Rajat Gupta for Petitioners.
Mr.V.A. Sonpal, Special Counsel for State.

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

DATE : 30 JULY 2019

P.C. :

This petition, under Article 226 of the Constitution of India, challenges the order dated 29 March 2019 passed by Assistant Commissioner of Sales Tax under the Maharashtra Value Added Tax, 2002 ('the Act').

2 At the very outset, we informed the Petitioners that we were not inclined to entertain the petition as an efficacious alternative remedy of an appeal is available under the Act.

3 At this, Mr.Rungta, learned Counsel for the Petitioner, pointed out, that the reason for challenge to the impugned order dated 29 March 2019, is that the Revenue Respondent No.2 – State of Maharashtra has enacted the Maharashtra Settlement of Arrears of Tax, Interest, Penalties for Late Fee Act, 2019 ('Amnesty Scheme'). It is further pointed out to us that the last date for filing under the Amnesty Scheme (for the first phase)

is 31 July 2019. It is submitted that if the Petitioner opts for the Amnesty Scheme, the refund which the Petitioner is likely to get from the State in respect of input tax recovered from the selling dealer will not be available to the Petitioner. This even when the impugned order has disallowed the input tax credit as the tax paid to the selling dealer. This, it is submitted, is contrary to the assurance given by the State of Maharashtra to this Court in **Mahalakshmi Cotton Ginning Pressing and Oil Industries Ltd., Kolhapur vs. State of Maharashtra**[1] and in particular in respect of input tax credit denied on account of default of the selling dealers, as recorded in para 51 thereof as under:

> “51. The Learned Advocate General appearing on behalf of the State has tendered a statement of the steps that would be pursued against defaulting selling dealers :
>
> 1) The Sales Tax Department will identify the Defaulters namely, registered selling dealers who have not paid the full amount of tax due in the Government Treasury either by not filling their returns at all or by filing returns but not paying the full tax due (i.e. "short filing") or where returns are filed but sales to the concerned dealers are not shown (i.e. "undisclosed sales").
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> 2) Set off will be denied to dealers where at any stage in the chain of sales a tax invoice/certificate by a Defaulter is or has been relied on :
>
> a) In the event of no returns having been filed by the Defaulter, the dealers will be denied the corresponding set off;
>
> b) In the case of short filing, dealers who have purchased from the Defaulter will be granted set off pro rata to the tax paid;

1 **2012 SCC OnLine Bombay 733 : (2012) 4 AIR Bom R 581**

c) In the case of undisclosed sales, the dealers will be denied the entire amount being claimed as set off in relation to the undisclosed sale;

d) To prevent a cascading effect, the tax will be recovered only once. As far as possible, the Sales Tax Department will recover the tax from the dealer who purchases from the Defaulter. However, the Sales Tax Department will retain the option of denying a set off and of pursuing all selling dealers in the chain until recovery is ultimately made from any one of them.

3) The full machinery of the Act will be invoked by the Sales Tax Department wherever possible against Defaulters with a view to recover the amount of tax due from them, notwithstanding the above. Once there is final recovery (after exhaustion of all legal proceedings) from the Defaulter, in whole or part, a refund will be given (after the end of that financial year) to the dealer(s) claiming set off to the extent of the recovery. This refund will be made pro rata if there is more than one dealer who was denied set off;

4) Refund will be given by the Sales Tax Department even without any refund application having been filed by the dealers, since the Sales Tax Department will reconcile the payments, inform the dealer of the recovery from the Defaulter concerned and grant the refund;

5) Details of Defaulters will be uploaded on the website of the Sales Tax Department and dealers denied set off will also be given the names of the concerned Defaulter(s);

6) The above does not apply to transactions by dealers where the certificate/invoice issued is not genuine (including hawala transactions). In such cases, no set off will be granted to the dealer claiming to be a purchaser;

7) The above should not prevent dealers from adopting such remedies as are available to them in law against the Defaulters."

It is the Petitioner's case that in terms of the assurance given to the court, the State should proceed against the defaulting dealers and on recovery of such input tax from the dealers, the refund will be given by the Sales Tax Department to the assessee, who has been denied the input tax credit. This even without the assessee making an application for refund. The Petitioner apprehends that if it does opt for Amnesty Scheme, it would by virtue of Section 18 of the Act, not be entitled to the refund of the amount recovered by the State from the defaulting selling dealer, contrary to the assurance given to this Court in **Mahalakshmi Cotton Ginning Pressing and Oil Industries Ltd.** (supra).

5 Mr.Sonpal, learned Counsel appearing for the State, very fairly states that the Respondents are bound by the assurance given by the Advocate General to the court in **Mahalakshmi Cotton Ginning Pressing and Oil Industries Ltd.** (supra). Mr.Sonpal further states that if and when any amount is recovered from the defaulting dealers in terms of the assurance given, the said amounts recovered from the defaulting dealers proportionate to the extent the set-off has been disallowed to the Petitioner would be disbursed to the Petitioner after also taking into account the extent of the amount of tax waived under the Amnesty Scheme.

6 In the above view, the Petitioner's opting for Amnesty Scheme would not have any impact on the disbursement to be made by the State in terms of the assurance given to this court today that they are bound by the assurances given to this court in **Mahalakshmi Cotton Ginning Pressing and Oil Industries Ltd.** (supra).

7 In these circumstances, the apprehension of Mr.Rungta that the assurance given by the State to this court in **Mahalakshmi Cotton Ginning Pressing and Oil Industries Ltd.** (supra) would be rendered ineffective in case the Petitioner opts for the Amnesty Scheme is not justified. As the amounts recovered will be paid over to the Petitioner in terms of para 51 of the decision of this court in **Mahalakshmi Cotton Ginning Pressing and Oil Industries Ltd.** (supra), it would not be a refund under the Amnesty Scheme. However in fairness the disbursement of the amounts collected from the defaulting sellers would be limited to the proportionate extent of input credit disallowed and after taking into account the amount of benefit of waiver of tax obtained by the Petitioner under the Amnesty Scheme.

8 The petition is disposed of in the above terms.

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