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

WRIT PETITION NO. 1981 OF 2019

Sanvijay Rolling and Engineering Ltd. ...Petitioner
vs
The State of Maharashtra & Anr. ...Respondents

Mr.Sriram Shridharan for Petitioner.
Mr.V.A. Sonpal, Special Counsel for the State.
Mr.Anil Pandhate, Assistant Commissioner of Sales Tax Unit-1B.

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 a Circular No.40T of 2019 dated 20 July 2019 issued by Respondent No.2 - Commissioner of Sales Tax under Section 19(1) of Maharashtra Settlement of Arrears of Tax, Interest, Penalty or Late Fee Act, 2019 ('the Act').

2 It is the case of the Petitioner that the impugned circular dated 20 July 2019 to the extent it has issued clarification with regard to the meaning of "undisputed tax" and "disputed tax" as defined in Section 2(1) (g) and (q) of the Act by answering queries in para 3. Q.1 and 2 thereof is contrary to and beyond the Act. Thus, the impugned Circular is *ultra vires* the Act and must be set aside. Otherwise, the impugned Circular which is binding upon the officers under the Act will deprive the Petitioner of the entire benefit available under the Act.

3 The impugned circular dated 20 July 2019 in answer to queries in para 3(1) and (2) while dealing with collection of MVAT credit for payment of Central Sales Tax liability has clarified it to be an undisputed tax under the Act. It is, however, pointed out that in respect of identical provisions/definitions of disputed and undisputed tax found in the Amnesty Scheme of 2004 issued by the State Government it was clarified by a Trade Circular dated 19 August 2004 wherein an identical provision though in the context of the Bombay Sales Tax Act and the Central Sales Tax as against the present dispute with regard to the MVAT Act and Central Sales Tax Act, had clarified that the same would be treated as a disputed tax. The Petitioner seeks to opt for the benefit of the amnesty scheme as available under the Act. This circular is binding under Section 19 of the Act on all authorities. Besides, if the Petitioner pays the amount in terms of the impugned circular, the benefit of refund is barred under Section 18 of the Act. Thus, under the above circumstances, the Petitioner seeks proper directions from the court.

4 Mr.Sonpal, learned Counsel appearing for the Revenue, in response, invites our attention to the impugned circular dated 20 July 2019 and in particular, to para 5 thereof, and on the basis of the above and on instructions of Mr.Pandhate, Assistant Commissioner, states that in case the Petitioner makes a representation to the Commissioner – Respondent No.2 pointing out what in the Circular, according to the Petitioner, is contrary to the Act, then the Respondent No.2 - Commissioner would consider the representation and after hearing the Petitioner, decide on the above issue. Mr.Sonpal, on instructions of Mr.Pandhate, Assistant Commissioner of Sales Tax, states the Commissioner will take a decision on the

representation filed by the Petitioner within 10 days of the representation being filed. The representation will be filed by the Petitioner within three days of this order being uploaded on High Court site. In the meantime, the amounts paid by the Petitioner under the Amensty Scheme as provided in the Act, as being the amounts payable under the Act, would continue to hold good till such time as the Commissioner decides the Petitioner's representation and for a period of one week thereafter. In the meantime, the Respondents can proceed to consider the amnesty application filed by the Petitioner in terms of Section 11 of the Act.

4 In view of the statement made on behalf of the Respondent by Mr.Sonpal that the Trade Circular would be considered by Respondent No.2 – Commissioner of Sales Tax, the challenge to the Trade Circular for the present does not survive. However, all contentions are kept open. Needless to add, that as the application is made by the Petitioner under the Amnesty Scheme before 31 July 2019, it would be payment made under the Phase-I of the scheme. Thereafter, in the present facts, the Petitioner's application would be considered as an application under the first phase as provided under Section 4 of the Act, even if further differential payment is made consequent to the order on representation by Respondent No.2 – Commissioner. However, the further payment, if any, required to be made by the order on representation would be done within one week of receipt of the above order.

5 In view of the above, the petition is disposed of in the above terms.

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