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

WRIT PETITION NO. 2031 OF 2019

Tata Sons Private Limited … Petitioner

V/s.

Union of India and Ors. ... Respondents.

Mr. Rafique Dada, Senior Advocate a/w. Sanchita Rungta, Jintendra Motwani i/b. Economic Laws Practice for the Petitioner.

Mr. Dushyant Kumar, AGP for the Respondent - State.

CORAM : M.S. SANKLECHA &
NITIN JAMDAR, JJ.

DATE : 20 SEPTEMBER 2019.

P.C. **:-**

This Petition under Article 226 of the Constitution of India challenges the action of the Deputy Commissioner of Sales Tax (Respondent No.4) and the Assistant Commissioner of Sales Tax (Respondent No.5) in insisting on adjudicating upon show cause notices dated 24 July 2015, 26 September 2017, 10 October 2018 and 12 July 2019 relating to Financial Years 2012-13, 2013-14, 2016-17 and 2017-18, respectively – under the Maharashtra Value Added Tax Act, 2002 (Act).

2. The above impugned notices call upon the Petitioners to show cause why penalty should not be imposed upon them under Section 61(2) of the Act and prosecution should not be launched under Section 74(3)(m) of the Act. This for having failed to file the Audit Report in Form E-704 for the above period. It is the submission of the Petitioner that insistence on adjudicating upon the impugned show cause notices is not justified as the basic issue of jurisdiction of Authority under the Act to tax the Petitioner is being considered by the Supreme Court and the tax for the above period has admittedly been paid by the Petitioner.

3. It is the Petitioners contention that the use of its brand name / trademark by its group companies for a consideration does not have any element of sale as it is in the nature of service, on which service tax payable under the Finance Act, 1994 has been discharged. Thus, it is submitted that there is no obligation to comply with the Act and all proceedings under the Act are without jurisdiction.

4. However, this Court in the Petitioner's case being Writ Petition No. 2818 of 2012 *(Tata Sons Ltd. Vs. State of Maharashtra)* decided on 28 January 2015 held for the period 1998-99 to 2001-02

that the Petitioners are liable to pay tax under the Act on allowing the use of its brand name / trade name by its group companies for consideration. The Petitioners have preferred an appeal from the above order to the Hon'ble Supreme Court. The Appeal was admitted on 23 November 2015. The Hon'ble Supreme Court while admitting the above appeal had stayed the imposition of penalties imposed under the Act while directing the Petitioners herein to pay the tax involved in the transaction of allowing the use of its brand name to its group companies. It is stated on instructions that the above appeal is likely to be heard and disposed of in the near future. We are informed that there is no change in facts and/or in law for the years covered by the impugned notices and the appeal pending before the Hon'ble Supreme Court.

5. It is further submitted that subsequent to the decision of this Court in *Tata Sons Ltd. v. State of Maharashtra* (supra). This Court in *Subway Systems India Pvt. Ltd. v. The State of Maharashtra* (Writ Petition No. 497 of 2015) decided on 11 August 2016 while construing similar agreements (according to the Petitioner) in respect of use of brand name has taken a view that no element of sale is involved in allowing user of its trade mark by its group companies. The Revenue is in Appeal against the order in the case of *Subway Systems India* Pvt. Ltd (supra).

6. It is in these above circumstances that in response to the impugned notices the Petitioner requested the Respondent to keep these impugned notices in abeyance till the Apex Court has taken a final view on the Petitioner's pending appeal, but to no avail. The Petitioner apprehend that the Respondent Nos.4 and 5 will adjudicate upon the impugned notices. Therefore, this Petition.

7. However after the matter was argued for some time, Mr. Dada, learned Senior Advocate on instructions states that without prejudice to the Petitioner's right and contentions, they would file the audit report in Form E-704 for the subject Financial Years 2012-13, 2013-14, 2016-17 and 2017-18 within a period of four weeks from today. It is important to bear in mind that for the subject Financial Years, the Petitioners have on their own, admittedly discharged the VAT payable under the Act.

8. Mr. Dushyant Kumar, learned AGP on instructions states that if the Petitioners file the Audit Report in Form E-704 as undertaken by them to this Court, the Respondents will keep the impugned show cause notices in abeyance.

9. In view of the above consensus arrived at between the parties, no specific directions are required to be passed. Needless to state further course of action would be taken by the authorities in

accordance with the decision of the Hon'ble Supreme Court in the pending appeal.

10. The Petition is disposed of in the above terms.

NITIN JAMDAR, J. **M.S. SANKLECHA, J .**