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

WRIT PETITION NO. 2743 OF 2019

Sumer Corporation … Appellant

V/s.

The State of Maharashtra and Ors. ... Respondents.

Mr. C.B. Thakar for the Appellant.
Mr. Dushyant Kumar, AGP for the Respondent - State.

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

DATE : 18 OCTOBER 2019.

***P.C.* :-**

This Petition under Article 226 of the Constitution of India challenges the recovery proceedings initiated under the Maharashtra Value Added Tax Act, 2002 (MVAT Act). This consequent to assessment orders dated 24 September 2018, 2 November 2018 and 27 March 2019 passed by the Respondent No.3 – Assistant Commissioner of Sales Tax relating to Financial Years 2008-09, 2012-13 and 2010-11 respectively.

2. The learned Counsel for the parties point out the demand for all the three years arises on account of the issue whether

the obtaining of TDR from SRA against handing over of land and constructed tenaments amount to sale for valuable consideration. This issue was decided against the Petitioner by this Court holding that it is eligible to tax in Writ Petition No. 2119 of 2016 with MVAT Appeal No. 68 of 2016 by order dated 25 August 2017. The issue arose for Financial Year 2006-07. Being aggrieved the Petitioner filed an appeal to the Hon'ble Supreme Court, which by its order dated 11 January 2018 stayed the operation of the above order dated 25 August 2017.

3. Thereafter on the same issue, consequent to assessment order for Financial Year 2007-08, a demand notice was issued to the Petitioner. It was challenged by the Petitioner in Writ Petition No. 1134 of 2018. The above Petition was disposed of on 19 June 2018 on the statement of AGP that the recovery will not be enforced till the decision of the Hon'ble Supreme Court in the pending appeal from order dated 25 August 2017 of this Court in Writ Petition No. 2119 of 2016 with MVAT Appeal No. 68 of 2016.

4. A similar Petition for the Financial Years 2011-12 being Writ Petition No. 1948 of 2018 which in turn relied upon the order dated 19 June 2018 in Writ Petition No. 1134 of 2018 was disposed of on 26 October 2018 consequent to the statement of AGP. Following the above, in this case also the AGP makes a statement

that demand made consequent to the three assessment impugned orders for the Assessment Years 2008-09, 2010-11 and 2012-13 will not be given effect to/enforced till such a time as the Hon'ble Supreme Court decides the appeal filed by the Petitioner against the order and judgment dated 25 April 2017 of this Court in Writ Petition No.2119 of 2016 and MVAT Appeal No. 68 of 2016.

5. Thus, the Petition is disposed of in the above terms.

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