

Vinita

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 16 OF 2022

SHEKHAR P. VERNEKAR	...Petitioner.
VS	
COMMISSIONER OF STATE TAX	...Respondent.

Ms. A. Desai, Advocate for the Petitioners.

Mr. S. Priolkar, Addl. Govt. Advocate for the respondent.

CORAM: G. S. KULKARNI, J.
DATE: 16 NOVEMBER, 2022.

P.C.:

1. I have heard learned Counsel for the petitioner on this petition which assails an order dated 30 July 2021 passed under Section 53 of the Goa Value Added Tax Act, 2005 read with Rule 55 of the Rules whereby Commissioner of State Tax has ordered as under:-

Now therefore, considering the application made by the dealer under rule 55 of the Goa Value Added Tax Rules, 2005, I, Shri Hemant Kumar, IAS, Commissioner of State Tax, in exercise of the powers conferred on me by section 53 of the said Act, accept the request to compound the offence of delay in intimation of the change in business by the dealer with the condition that compounding of offence by paying penalty of Rs.1,00,000/- will not grant any right to the applicant to be treated as registered dealer eligible to claim input tax credit and/or collect tax on sales.

2. The grievance of the petitioner is two fold, firstly it is in regard to the amount of penalty for compounding the offence which has been ordered to be paid in the sum of Rs.1,00,000/-. It is the submission of the learned Counsel for the petitioner that in respect of any compounding under Section 53 of the Act maximum amount of the penalty would be Rs.10,000/-. The learned Addl. Govt. Advocate for the revenue however, submits that in the facts of the present case and considering that it was an offence under Section 22(1) of the Act, the maximum penalty would be Rs.25,000/- under Section 44 clause(b) of the Act.

3. The second contention as urged on behalf of the petitioner is with regard to the following observations underscored in the order as quoted above, made in operative order:

“will not grant any right to the applicant to be treated as registered dealer eligible to claim input tax credit and/or collect tax on sales.”

4. It is her contention that the above observations would cause prejudice to the petitioner in appeal which has been filed by the petitioner assailing the Assessment Order dated 13 March 2013. The appeal is stated to be sub judice before the Appellate authority.

Responding to such contention as urged on behalf of the petitioner, learned Addl. Govt. Advocate for the revenue has stated that said portion of the order appears to be clarificatory in nature.

5. Having heard learned counsel for the parties, in my opinion, the grievance of the petitioner with regard to penalty of Rs.1,00,000/- being imposed by the impugned order would be required to be accepted being *exfacie* contrary to the provisions of the Act. Even assuming as to what has been stated on behalf of the revenue that a penalty of Rs.25,000/- would be maximum penalty under Section 44 of the Act or even if the petitioner is right in his contention that the maximum amount of penalty would be Rs.10,000/- under notification dated 2 February 2012 issued by the State Government on either of the Counts, the impugned order which orders a penalty of Rs.1,00,000/- cannot be sustained.

6. In so far as the petitioner's grievance with regards to the wording of the operative part of the order as noted above, in my opinion, the grievance raised by the petitioner is quite correct, although such observation may be clarificatory in nature, it has some consequence, more particularly when the substantive appeal itself is

pending before the Appellate Authority assailing the Assessment Order.

7. In view of the above discussions, in my opinion, it would be in the interest of justice that the impugned order dated 30 July 2021 is required to be set aside. It is accordingly set aside directing the Commissioner of State Tax to hear the petitioner afresh on the issue of penalty and de hors pass a fresh order in accordance with law.

8. Parties are directed to appear before the Commissioner of State on 5 December 2022 who shall fix a convenient date and hear the parties on the proceedings and pass appropriate orders on or before 23 December 2022.

9. Petition is disposed of in the above terms. No costs.

10. Parties to act on the duly authenticated copy of this Order.

G. S. KULKARNI,J.