IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3791 OF 2021

Dongyang Construction India Pvt. Ltd. ….. Petitioner
VERSUS
State of Maharashtra & Ors. ….. Respondents

Mr. Parth Badheka for the Petitioner.

Mr. A.I.Patel, Additional G.P. for the State – Respondent nos. 1 to 3.

CORAM : R.D. DHANUKA &
S.M.MODAK, JJ.
DATE : 15TH FEBRUARY, 2022.

P.C:-

By this writ petition filed under Article 226 of the Constitution of India, the petitioner seeks a writ of mandamus directing the respondents to return the bank guarantees described in paragraph (59) of the writ petition on the ground that the action under section 35 of the Maharashtra Value Added Tax Act, 2002 cannot sustain beyond a period of three years.

2. It is not in dispute that the bank guarantees furnished by the petitioner pursuant to the order passed by the Joint Commissioner of the Sales Tax, Investigation-A, Mumbai on 30th October, 2013 which

were initially furnished for a period of one year and continued thereafter from time to time have already expired sometime in the year 2019. The original bank guarantees described in paragraph (59) of the petition are still lying with the respondents. In view of the fact that the validity of the bank guarantees has already expired, the respondent cannot enforce the bank guarantees furnished by the petitioner.

3. We accordingly direct the respondents to return the bank guarantees described in paragraph (59) of the petition within two weeks from today.

4. Mr. Patel, Additional G.P. for the State invited our attention to the order dated 7th May, 2015 passed by the Maharashtra Sales Tax Tribunal at Mumbai in VAT Appeal Nos. 61, 62 and 63 of 2015 directing the petitioners herein to extend the bank guarantee till disposal of the appeals making it clear that on failure on the part of the appellant to extend till disposal of the appeals, the department is entitled to recover part payment equal to the amount of basic tax payable for the respective periods before disposal of the appeals. The fact remains that those appeals mentioned in the said order are already

disposed of and the appeals filed by the petitioner thereafter are pending before the Sales Tax Tribunal. The petitioner has already obtained stay on deposit of 10% amount vide order dated 25th June, 2018. The Sales Tax Tribunal while granting stay on deposit of 10% did not direct the petitioner to renew the bank guarantee or to issue fresh bank guarantee. The validity of bank guarantee having expired, those bank guarantees are even otherwise are not enforceable and thus cannot be retained by the respondents.

5. We accordingly direct the respondents to return those bank guarantees described in paragraph (59) of the writ petition within one week from today.

6. Writ petition is allowed in the aforesaid terms. No order as to cost.

7. The parties to act on the authenticated copy of this order.

[S.M.MODAK, J.] **[R.D.DHANUKA, J.]**