

Digitally
signed by
PURTI
PRASAD
PARAB
Date:
2022.11.16
17:01:59
+0530

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 12732 OF 2022

Shehzad Nasir Khoja
Legal Heir of Deceased Proprietor
of Kapila Enterprises
Nasir Pyarali Khoja

....Petitioner

V/s.
The State of Maharashtra and Ors.

...Respondents

Mr. Rahul Thakar i/b Mr. C.B. Thakar for Petitioner.
Ms. S.D. Vyas – “B” Panel Counsel for State.

**CORAM : K.R. SHRIRAM &
ARIF S. DOCTOR, JJ.
DATED : 15th NOVEMBER 2022**

P.C. :

1. It is petitioner’s case that Section 26(6B) of the Maharashtra Value Added Tax Act, 2002 (the MVAT Act) provides for pre-deposit of 10% of the disputed tax before filing of an appeal and under Sub Section 6(C) of Section 26 of the MVAT Act once such a deposit is made, the Appellate Authority or as the case may be, tribunal has to stay the recovery of the remaining disputed dues. The fact that, that is the legal position or that petitioner has made this pre-deposit of 10% is not disputed. Ms. Vyas submitted that petitioner could exercise the alternate remedy by filing an appeal. In our view, this is not a case where petitioner should be directed to file an appeal because the orders impugned is clearly in breach of the legal provisions. Section 26(6C) of the MVAT Act provides for an automatic stay

of the recovery of the remaining amount. In the impugned order there is nothing to indicate why the recovery could not be stayed. Even for a moment we accept that there was delay in informing the department the demise of the sole proprietor of Kapila Enterprises still the pre-deposit of 10% would entitle petitioner of a stay. The total amount of dues as per assessment order is Rs.22,16,682/-. Against this petitioner has first deposited 10% amounting to Rs.2,21,668/- when he filed first appeal. 10% on the balance amount of Rs.19,95,014/- amounting to Rs.1,99,501/- was paid before filing second appeal before tribunal. In our view, petitioner has in fact deposited more than 10% of the disputed tax amount and not just 10%. Petitioner would certainly be entitled to stay against recovery of balance dues. Ordered accordingly.

2. Petition disposed. No order as to costs.

(ARIF S. DOCTOR, J.)

(K.R. SHRIRAM, J.)