

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9260 OF 2019**

Cummins INC.

....Petitioner

V/s.

The State of Maharashtra, through
Government Pleader & Ors.

...Respondents

**WITH
WRIT PETITION NO.8992 OF 2022
WITH
WRIT PETITION NO.9230 OF 2019
WITH
WRIT PETITION NO.9216 OF 2019
WITH
WRIT PETITION NO.9218 OF 2019
WITH
WRIT PETITION NO.9209 OF 2019
WITH
WRIT PETITION NO.9106 OF 2019
WITH
WRIT PETITION NO.9174 OF 2019
WITH
WRIT PETITION NO.9168 OF 2019
WITH
WRIT PETITION NO.9220 OF 2019
WITH
WRIT PETITION NO.9161 OF 2019**

Mr. Sriram Sridharan in WP/9260/2019 and connected matters for Petitioners.

Mr. Pradeep Jetly, Sr. Advocate a/w Mr. Siddharth Chandrashekar, Mr. Karan Adik and Smt. Maya Majumdar for Respondent No.5 in Writ Petition No.9161 of 2019.

Mr. Karan Adik, Mr. Ram Ochani and Smt. Maya Majumdar for Respondent Nos.4 & 5 in WP/8992/2022, WP/9218/2019, WP-9106/2019 & WP/9168/2019

Mr. A.A. Kumbhakoni, Advocate General a/w Ms S. D. Vyas "B" Panel for State in all matters

CORAM : K.R. SHRIRAM &
A.S. DOCTOR, JJ
DATED : 28th JULY 2022

PC. :

1. Learned Advocate General appearing for Respondent-State submitted that the issues raised in these Petitions on the maintainability of the Petitions were considered by the co-ordinate Bench of this Court of the Hon'ble the Chief Justice and Mr. Justice N. B. Suryawanshi in ***M/s Mestra A. G. Switzerland Vs. The State of Maharashtra & Ors.***¹. The learned Advocate General submitted that the Court felt that Petitioner should approach Appellate Authority under Section 27 of the MVAT Act.
2. We are bound by the findings in the said Judgment. Mr. Shridharan states that a Special Leave Petition has been preferred against the Judgment in *M/s Mestra A. G. Switzerland (supra)* and the Hon'ble Apex Court has, on 13th July, 2022, issued notice to Respondents returnable in 6 weeks.
3. In the circumstances, we dispose these Petitions with the directions as contained in paragraph Nos.27 and 28 of the Judgment in *M/s Mestra A. G. Switzerland (supra)*,, which read as under:

“27. However, in the peculiar facts and circumstances, viz. pendency of this writ petition on the file of this Court for quite some time and that a Constitutional issue touching Article 286 of the Constitution is sought to be raised, we are inclined not to relegate the petitioner to the first appellate remedy but to give it opportunity to prefer an appeal before the Tribunal directly, if it so chooses, so that any infirmity in the impugned order can be brought to its notice, including the decision of this Court in the case of Mahyco Monsanto Biotech (India) Pvt. Ltd. (supra), for its correction. It is

1. Writ Petition No.12297 of 2021, Judgment dated 16th February, 2022.

ordered accordingly.

28. We make it clear that such appeal may not be entertained unless the requisite pre-deposit is made by the petitioner for preferring an appeal before the Tribunal. There is a statement in the writ petition that the requisite pre-deposit for approaching the first appellate authority has already been made. If indeed that is so, it would constitute half of the pre-deposit for filing an appeal before the Tribunal. The balance pre-deposit together with an acknowledgment of the amount of pre-deposit that has been made, may be filed along with any appeal that the petitioner may wish to prefer before the Tribunal. In the event the petitioner prefers an appeal before the Tribunal within six weeks from today, as prayed by Mr. Sridharan, limitation shall not be a bar for entertaining and trying such appeal on merits.”

4. In view of the intervening holidays in the next month, we grant 8 weeks to these Petitioners, instead of 6 weeks as mentioned in *M/s Mestra A. G. Switzerland (supra)*, from the date of uploading of this order on the official website of the High Court of Bombay. Liberty is given to Petitioners to approach this Court for reviving these Petitions should Petitioners succeed before the Hon’ble Apex Court.

5. Learned Advocate General assures the Court that as and when the matter is listed, the State will also appear and will not seek any adjournment.

(A. S. DOCTOR, J.)

(K.R. SHRIRAM, J.)