IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1211 OF 2022

Crescent Polyvinyl Pvt. Ltd and anr. : Petitioners
versus
The State of Maharashtra and ors. : Respondents

Mr. Chandrakant B Thakar for Petitioners.
Smt.S D Vyas, "B" Panel AGP for the Respondents/State.

CORAM : K. R. SHRIRAM &
ARIF S. DOCTOR, JJ.
DATE : 16th NOVEMBER 2022

P.C.

1 Petitioner has approached this Court impugning two dis-allowances by Respondent No.3, in the Assessment Order dated 31st March 2021, digitally signed on 08th April 2021. One, Petitioners state, relates to sales effected from two FTWZs, one, at Sai Village, Tal. Panvel, District-Raigad (Maharashtra) and other at Mundra, Gujarat. According to Petitioners, the sale of Rs.2,59,55,561/- is from Mundra, Gujarat and hence they are not within ambit of MVAT Act, the situs of such sale being outside Maharashtra. Therefore levy of tax on such turnover is ab-initio illegal and without jurisdiction. So levy of tax on turnover of Rs.2,59,55,561/- is challenged.

The other relates toRespondent No.3 disallowing setoff in total

Rs.3,25,767/-. The amounts of Rs.82,903/- and Rs.1,89,337/- were disallowed as retentions under rules 53(7)(a) and 53(2)(c) respectively, without a speaking order. The same, according to Petitioners, are required to be modified as per facts, records and legal position. An amount of Rs.44,972/- is also disallowed on the ground of mismatch. The said disallowance was also without hearing opportunity. Hence was against principles of natural justice. Further disallowance, according to Petitioners, was also unjustified on facts.

2 Prime contention of Petitioner is that assessment order should have been passed by 31st March 2021 but since it has been digitally signed only on 08th April 2021, the assessment order itself is time barred under the provisions of Section 23(2) of Maharashtra Value Added Tax Act (MVAT Act).

3 The officer, who passed assessment order, one Ms. Rohini Ashok Shinde has filed an affidavit, affirmed on 13th September 2022 stating that the order passed was under Section 23(3) and not under Section 23(2) of the MVAT Act. In the affidavit, however, there is no explanation as to why in such situation did she mention 23(2) in stead of 23(3). If the order was under section 23(3) of the MVAT Act, we agree with Mr. Thakar's contention that this order could have been passed upto 31st

March 2022, because officer would have one more year to complete the assessment. Mr. Thakar pointed out, as averred in the Petition, that Petitioner was fully cooperating with the assessing officer and also attending all hearings except on 23rd March 2021 when the wife of the director, who was attending to the matter, had contacted Covid and therefore the whole office was also closed and an adjournment was sought for. It is also stated in the Petition that the said lady unfortunately died on 21st April 2021.

4 Notwithstanding this request for an adjournment, the assessing officer went ahead and passed the assessment order on 08th April 2021 (31st March 2021 though there was no extreme urgency. It is common knowledge that, that was the time when the entire country was reeling under covid wave and when there was no fear of the matter getting time barred, the assessing officer could have liberally considered the adjournment request more humanely.

5 Therefore, we hereby quash the assessment order with direction to Respondent No.3 to give an opportunity to Petitioner to explain the two items, mentioned in paragraph-1 above, and then pass fresh assessment order.

6 Another ground raised in the Petition is that there are certain duplications. The assessing officer will also look into that.

7 We clarify that we have not made any observation on merits of the matter.

8 Petition stands disposed. No order as to costs.

(ARIF S. DOCTOR, J.) **(K. R. SHRIRAM, J.)**