IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2486 OF 2021

M/s Aneeka Universal Pvt Ltd. & Anr ….Petitioners

V/s.

The State of Maharashtra & Ors. …Respondents

Mr. Rahul C. Thakar a/w Mr. Kevin Shah i/b Mr. C. B. Thakar for Petitioners
Mr. Himanshu Takke, AGP for Respondents-State

CORAM : K.R. SHRIRAM &
A.S. DOCTOR, JJ
DATED : 5th AUGUST 2022

P.C. :

1 Petitioner No.2 is a Director of petitioner no.1. Petitioner no.1 runs a business as dealer and manufacturer of Hydrogen Gas and other chemicals. Petitioner no.1 (hereinafter referred to as Petitioner), is registered under the Maharashtra Value Added Tax Act, 2002 (MVAT Act) vide TIN 27430882072V. Petitioner received a notice digitally signed on 19th February 2020 under Sub-Section (5) of Section 23 of MVAT Act in Form 302 from respondent no.3. Notice covered the period 1st April 2014 to 31st March 2015. Notice provided that for this period, proceedings under Section 64 of the MVAT Act are in progress and respondent no.3 was of the opinion that tax is sought to be evaded by petitioner by not recording or recording in incorrect manner the sale / claims or deductions mentioned therein. Petitioner was called upon to produce documents and accounts on 9th March

2021 at 11.00 a.m. According to petitioner, this notice was never received. Subsequently, an exparte cum reminder cum penalty show cause notice dated 16th March 2021 was issued by respondent no.3 calling upon petitioner to attend in person within 7 days of receipt of the notice and submit an explanation and also show cause why penalty under Section 29(3) of MVAT Act should not be imposed on petitioner equal to the amount of tax found due. This was in respect of the proceedings going on under Section 23(5) of the MVAT Act. According to petitioner, even this was not received by them.

2 Respondent no.3, thereafter issued the impugned order, whereby petitioner has been found liable to pay dues at Rs.80,84,642/- . Even this was, Mr. Thakar states, not received by petitioner. The order has been noticed only after petitioner started receiving recovery calls from the department. Mr. Thakar states that even the order was sent to GST email-id of petitioner and not on the correct email-id provided for MVAT proceedings.

3 Though Mr. Thakar raised various points including about dates in the impugned order being incorrectly mentioned, the main thrust was that the impugned order has been passed after the expiry of 6 years from the end of the year containing the transaction and, therefore, the order has been issued without jurisdiction and hence has to be quashed and set aside. Mr. Thakar submits that Section 23 (5) of MVAT Act is applicable to proceedings where the authority has reason to believe that tax has been evaded or sought to be

evaded or tax liability has not been disclosed correctly or excess set off has been claimed. Mr. Thakar submits that proviso to Sub-Section (5) of Section 23 provides that in case a notice is issued under the said Sub-Section on or after 1st April 2015, no order of assessment under the said sub Section shall be made after the expiry of 6 years from the end of the year, containing the transaction or, as the case may be, claimed. Since in this case the impugned order has been passed after the expiry of 6 years the same was issued without jurisdiction. Mr. Thakar states this proviso was inserted w.e.f., 1st April 2015.

4 Mr. Takke strongly opposed the petition but in fairness stated that even though the impugned order is dated 30th March 2021, the same has been digitally signed on 19th April 2021 at 18:13:33 hrs. and, therefore, only on 19th April 2021 the order came into existence.

5 Sub-Section (5) of Section 23 of MVAT Act reads as under:

> *"Sec 23(5)(a)- [Where the prescribed authority has reason to believe that the tax has been evaded or sought to be evaded or the tax liability has not been disclosed correctly or excess set-off has been claimed by any dealer or person] in respect of any period or periods by not recording or recording in an incorrect manner, any transaction of sale or purchase, or that any claim has been incorrectly made, then in such a case notwithstanding that any notice for assessment has been issued under other provisions of this section or any other section of this Act, the prescribed authority may, after giving such dealer or person a notice in the prescribed form and a reasonable opportunity of being heard, initiate assessment of the dealer or person in respect of such transaction or claim.*
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> *Provided that, where, - (i) a registered dealer has claimed refund in his last return or a revised return containing last day of the year, or*
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> *(ii) an auditor has mentioned about eligibility for refund in his audit report under section 61,*

then the prescribed authority may, subject to the conditions, restrictions and safeguards as may be prescribed, after adjusting the refund so claimed or, as the case may be, so mentioned, against the tax liability, interest and penalty, if any, determined in the proceedings initiated under this clause, grant net refund to such dealer or, as the case may be, determine the net tax liability :

Provided further that, the amount of refund claimed in the return filed or mentioned in the audit report filed under section 61, whichever is filed later, but not later than the 31st March 2019, in any case, may only be considered for the purposes of the first proviso.]

(b) During the course of any proceedings under section 64, if the prescribed authority is satisfied that the tax has been or is sought to be evaded, as provided under clause (a) by any dealer or person, the said authority may, after issuing a notice in the prescribed form and after giving a reasonable opportunity of being heard to such dealer or person, proceed to assess such dealer or person as provided in clause (a) in respect of any such transaction or claim relating to any period or periods and such authority shall, notwithstanding anything contained in section 59, be deemed to have the requisite jurisdiction and power to assess such dealer or person in respect of such transaction of sale or purchase or claim, covered by clause (a) and such assessment proceedings shall, for all purposes of this Act, be deemed to have been transferred to such authority.

(c) The assessment proceedings under this sub-section shall be without prejudice to the assessment proceedings in respect of the said period or periods under any other provisions of this Act by any authority who otherwise has the jurisdiction to assess such dealer or person in respect of other transactions of sale or purchase or any other claim which are not covered by clause (a) and clause (b).

(d) The assessment under this sub-section shall be made separately in respect of the transaction or claim relating to the said period or periods to the best of the judgment of the prescribed authority where necessary and irrespective of any assessment made under this sub-section, the dealer may be assessed separately under the other provisions of this section in respect of the said period or periods:

Provided that, once the dealer or person is assessed under this sub-section, no tax from such transaction or claim and penalty and interest, if any, consequent upon such tax shall be levied or demanded from such dealer or person, at the time of assessment to tax under the other provisions of this section in respect of the said period or periods relating to such transaction or claim."

> ***Provided further that, in case a notice is issued under this sub-section on or after the 1st April 2015, no order of assessment under this sub-section shall be made after the expiry of six years from the end of the year, containing the transaction or, as the case may be, claim.***
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> *Explanation:- For the purposes of this sub-section "prescribed authority", "the said authority", "such authority" and "any authority" shall mean the Commissioner or, as the case may be, the authorities appointed under Section 10 and other officers or persons to whom the commissioner has delegated his powers in this behalf."*

The proviso, as submitted by Mr. Thakar, is very clear. As per the proviso, in case a notice is issued under Sub-Section (5) on or after 1st April 2015, no order of assessment under Sub-Section(5) of Section 23 shall be made after the expiry of six years from the end of the year containing the transaction. Admittedly, transaction related to the period 1st April 2014 to 31st March 2015. The six years period, therefore, will begin from 1st April 2015 and it will end on 31st March 2021. It is for this reason, respondent no.3 knowing very well that 31st March 2021 is a crucial date, has dated the impugned order as 30th March 2021. But the clear give away is the date on which the digital signature is put on the impugned order, and that is 19th April 2021 at 18:14:33 hrs. Therefore, the order of assessment under Sub-Section (5) of Section 23 has been made after the expiry of 6 years from the end of the year and, therefore, the order has been passed without jurisdiction.

6 The impugned order has to therefore, be quashed and set aside, which we hereby do.

7 Petition accordingly disposed.

8 No order as to costs.

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