IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

(17) WRIT PETITION NO.2788 OF 2019
WITH
INTERIM APPLICATION NO.1286 OF 2019
IN
WRIT PETITION NO.2788 OF 2019

Nircon Construction ….Petitioner
V/s.
State of Maharashtra and Ors. ….Respondents

WITH
(18) WRIT PETITION NO.2789 OF 2019
WITH
INTERIM APPLICATION NO.637 OF 2019
WITH
INTERIM APPLICATION ON.1302 OF 2019
IN
WRIT PETITION NO.2789 OF 2019

Nircon Construction ….Petitioner
V/s.
State of Maharashtra and Ors. ….Respondents

Ms. Sharon Patole for petitioner in both petitions.
Mr. A.A. Kumbhakoni, Advocate General a/w. Ms. Jyoti Chavan, AGP for respondents – State in both petitions.

CORAM : K.R. SHRIRAM &
A.S. DOCTOR, JJ.
DATED : 26th JULY 2022

P.C.:-

1 The reliefs sought in these petitions are covered by a judgment of Full Bench of this Court pronounced on 12th July 2022 (yet to be reported) in ***United Projects V/s. The State of Maharashtra and Anr.***[1] Paragraph 197 of the said judgment reads as under :

197. We accordingly answer the question of law referred to Full

1. Writ Petition No.2883 of 2018 alongwith two other petitions.

Bench as under :-

(i) Question of Law (a) i.e."whether the State of Maharashtra has legislative competence to enact the Maharashtra Tax Laws (Levy, Amendment and Validation) Act, 2017 and the Maharashtra Tax Laws (Amendment and Validation) Act, 2019 to amend the provisions of the Maharashtra Value Added Tax Act, 2002 to incorporate mandatory pre-deposit for filing appeals against the assessment orders pertaining to all the goods after 16th September 2016 that is post 101 Constitutional Amendment Act, 2016?" is answered in affirmative and in favour of the Revenue.

(ii) Question of Law (b) i.e."whether Explanation to Section 26 of the MVAT Act introduced with effect from 15th April 2017 by the Maharashtra Tax Laws (Amendment and Validation) Act, 2019 takes away the right of the assessee to file an appeal without statutory deposit in respect of orders passed for the assessment years prior to 15th April 2017 and whether the Explanation nullifies the decision of the Division Bench of this Court (Nagpur Bench) in the case of Anshul Impex Pvt. Ltd. Vs. State of Maharashtra in Sales Tax Appeal No.2/2018?" is answered in negative and in favour of Revenue.

(iii) The question of law (c) as to whether the Explanation nullifies the decision of the Division Bench of this Court (Nagpur Bench) in the case of Anshul Impex Pvt. Ltd. Vs. State of Maharashtra in Sales Tax Appeal No.2/2018 is answered in negative and in favour of the Revenue.

(iv) Question of Law (c) i.e. "whether the decision of the Division bench in the case of Anshul Impex Pvt. Ltd. Vs. State of Maharashtra laying down that right of filing appeal accrues on the date of order of assessment and requirement of mandatory pre-deposit introduced by way of amendment does not apply to the orders passed in the assessment years prior to 15th April, 2017, is a correct proposition since the right of appeal can be made conditional by the Legislature with express indication" is answered in negative and in favour of the Revenue and is thus declared not a good law.

(v) It is declared that the explanation inserted in 2019 amendment w.e.f. 15th April, 2017 would apply to those orders which are passed after 15th April, 2017 and not to the prior orders. All earlier orders are governed by the original provisions of Section 26(6) and not by the amendment. Both the provisions i.e. old Section 26(6) and the amendment introduced by Sub Section 6A, 6B and 6C to Section 26 and the explanation thereto will apply and co-exist.

(vi) Office is directed to place these matters before the Division Bench having assigned these matters for passing further orders.

2 In the circumstances, nothing would survive in these petitions.

3 Petitions dismissed. Consequently, interim applications also stand disposed.

4 Should petitioner wish to file an appeal before the MVAT Appellate Authorities, petitioner may do so within four weeks from today.

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