

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

WRIT PETITION NO.2883 OF 2018
WITH
NOTICE OF MOTION NO.521 OF 2018
IN
WRIT PETITION NO.2833 OF 2018

United Projects : Petitioner.
Versus
The State of Maharashtra and anr. : Respondents.

WITH
WRIT PETITION NO.2900 OF 2018
WITH
NOTICE OF MOTION NO.533 OF 2018
IN
WRIT PETITION NO.2900 OF 2018

F. A. Constructions : Petitioner.
Versus
The State of Maharashtra and anr. : Respondents.

WITH
WRIT PETITION NO.2144 OF 2019

NAM Technologies Pvt. Ltd.
Formerly known as Areva Infosystem Pvt. Ltd. : Petitioner.
Versus
State of Maharashtra and anr. : Respondents.

WITH
WRIT PETITION NO.1150 OF 2019

Tristar Cars Private Limited : Petitioner.
Versus
The Joint Commissioner of Sales Tax & ors. : Respondents.

WITH
WRIT PETITION NO.1147 OF 2019

Tristar Cars Private Limited : Petitioner.

Versus
The Joint Commissioner of Sales Tax & ors. : Respondents.

WITH
WRIT PETITION NO.1148 OF 2019

Anshul Impex Private Limited : Petitioner.
Versus
The Joint Commissioner of Sales Tax & ors. : Respondents.

WITH
WRIT PETITION NO.1149 OF 2019

Anshul Impex Private Limited : Petitioner.
Versus
The Joint Commissioner of Sales Tax & ors. : Respondents.

WITH
WRIT PETITION NO.1151 OF 2019

Soneraj Distributors : Petitioner.
Versus
The State of Maharashtra : Respondent.

WITH
WRIT PETITION NO.2842 OF 2018

Associated Brothers : Petitioner.
Versus
The Commissioner of Sales Tax and ors. : Respondents.

WITH
WRIT PETITION NO.2902 OF 2018

F. A. Constructions : Petitioner
versus
The State of Maharashtra and anr. : Respondents.

WITH
WRIT PETITION NO.2901 OF 2018
WITH
NOTICE OF MOTION NO.519 OF 2018
IN

WRIT PETITION NO.2901 OF 2018

F. A. Infrastructure : Petitioner
versus
The State of Maharashtra and anr. : Respondents.

WITH
WRIT PETITION NO.2927 OF 2018

United Projects
Through is Partner
Nisar Fateh Mohd. Khatri : Petitioner.
Versus
The State of Maharashtra and anr. : Respondents.

WITH
WRIT PETITION NO.2979 OF 2018
WITH
NOTICE OF MOTION NO.520 OF 2018
IN
WRIT PETITION NO.2979 OF 2018

Nircon Construction : Petitioner.
Versus
The State of Maharashtra and anr. : Respondents.

WITH
WRIT PETITION NO.3103 OF 2018
WITH
NOTICE OF MOTION NO.531 OF 2018
IN
WRIT PETITION NO.3103 OF 2018

Nircon Construction
Through its Partner
Irfan Nisar Khatri : Petitioner.
Versus
The State of Maharashtra and anr. : Respondents.

Mr. Prithwiraj Choudhuri with mr. Sandip D Ghaterao for Petitioners in Writ
Petition Nos. 2883/2018, 2900/2018, 2901/2018, 2902/2018, 2927/2018,
2979/2018 and 3103/2018.

Mr. Sunil Chaturvedi with ms. Kalyani Wagle i/by T N Tripathi & Co. for Pitioner in Writ Petition No.2842/2018.

Mr. Manohar Samal i/by Mr. Ratan Saal for Petitioner in Writ Petition No.2144 of 2019.

Mr. S B Lolge, “A’ Panel Counsel a.w Ms. Jyoti Chavan, AGP and Mr. Himanshu Takke, AGP for Respondent-State.

CORAM : K. R. SHRIRAM &
A.S. DOCTOR, JJ.
DATED : 10th AUGUST 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 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

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

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.
- 5 Stay granted earlier to continue for four weeks from today.

[A.S. DOCTOR, J]

[K. R. SHRIRAM, J]