**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1190 OF 2023

Bafna Motors India Ltd.
Through its Manager
Suhas Vasant Mahajan .. Petitioner

Versus

The State of Maharashtra and another.. Respondents

Shri Rajat V. Patodi, Advocate for the Petitioner.
Shri P. K. Lakhotiya, A.G.P. for the Respondent Nos. 1 and 2.

**CORAM : RAVINDRA V. GHUGE AND
Y. G. KHOBRAGADE, JJ.
DATE : 27TH JUNE, 2023.**

PER COURT :

1. We have considered the submissions of the learned advocate for the respective sides on 05.06.2023 and yesterday. On the request of the learned advocate for the petitioner, this matter is adjourned to this date.

2. The learned advocate for the petitioner submits on instructions that as a verdict has been delivered by the Maharashtra Sales Tax Tribunal at Pune in the matter lodged by **M/s B. U. Bhandari Auto Pvt. Ltd. V/S State of Maharashtra** vide judgment dated 06th March, 2023 delivered at Mumbai, the petitioner is not pressing prayer clauses "B" and "C" at this stage and, therefore, seeks deletion of the said prayers. Deletion is

permitted.

3. In so far as the prayers of the petitioner put forth at Clauses "D" and "E", identically placed matters were listed at the Principal Seat in Modi Care Agencies Pvt. Ltd. Vs. State of Maharashtra and others and group of petitions (W. P. No. 2512 of 2021 and group of petitions). By a judgment dated 12.04.2023, those petitions have been partly allowed. It would be relevant to refer to paragraph Nos. 7 and 10 to 13, which read as under :

> 7. We note that there has been no challenge to the decision of the Tribunal in M/s. B.U.Bhandari Auto and we have not been informed of any such challenge. Therefore, we proceed based on the Tribunal's decision to consider its implications for the Petitioners. Furthermore, it has not been debated before us that the Tribunal's decision in the case of M/s. B.U.Bhandari Auto has not changed the nature of the litigation following the challenge to the assessment orders passed against each Petitioner, directly or indirectly.
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> 10. After considering the arguments, we agree with the Respondents that the decision of the Tribunal in the case of M/s. B.U.Bhandari Auto, though it provides relevant legal guidance for the Petitions under consideration, this decision cannot be applied directly to each Petitioner to quash the assessment orders. It is necessary to conduct an enquiry to determine whether the Petitioners can be considered similarly situated persons. The Assessing Officers based their decision on the law the Advance Ruling Authority laid down in the case of M/s. B.U.Bhandari Auto. If this order is reversed, the implication of the order passed by the Tribunal will have to be considered in each case of the Petitioners. Therefore, an enquiry must be conducted to determine whether the facts of each Petitioner case warrant similar treatment.
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> 11. In light of the above discussion, we dispose of the Writ Petitions by quashing and setting aside the impugned

> assessment orders in each of these Petitions. The assessment proceedings are restored to file before the concerned Commissioner of Sales Tax. The Commissioner would examine the issue pending before the Commissioner in light of the decision rendered by the Tribunal in the case of M/s. B.U.Bhandari Auto and in the context of the provisions of Section 55 of the Act referred to above and take the decisions as per law.
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> 12. We make it clear that we have not concluded on other aspects that may arise during the assessment proceedings other than the decision of the Tribunal in the case of M/s. B.U.Bhandari Auto and the Commissioner would examine the facts of each case and pass the order as per law. Needless to state, the contentions of the Petitioners and the department are expressly kept open.
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> 13. In the light of setting aside the impugned assessment orders as above, the consequential effects of the setting aside of the impugned orders would follow and be given effect to by the concerned.

4. In view of the above, **this petition is partly allowed**. The impugned assessment order dated 31.01.2022 is quashed and set aside only to facilitate an opportunity of hearing to the petitioner. The assessment proceedings are restored to the file before the concerned Commissioner of Sales Tax who shall examine the issue as per the directions set out in paragraph Nos. 11 and 12 reproduced hereinabove. Needless to state, if there is any development in law after delivery of the judgment in **M/s B. U. Bhandari Auto Pvt. Ltd.** (supra), the parties are at liberty to cite the latest position of law. All contentions are kept open.

[Y. G. KHOBRAGADE, J.] **[RAVINDRA V. GHUGE, J.]**

bsb/June 23