Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.145 OF 2019

RADIO MUNDIAL, THR. ITS SOLE PROP., SHEKHAR VERNEKAR ... APPELLANT

Versus

THE STATE OF GOA, THR. ITS CHIEF SECRETARY AND 2 ORS. ... RESPONDENTS

Mr Abhijeet Kamat, Advocate *for the Appellant*.
Mr Pravin Faldessai, Additional Government Advocate *for Respondents No.1 to 3*.

CORAM: M. S. SONAK, J.

DATED: 13th April 2023

P.C.:

1. When this matter was heard on the last occasion, this Court made the following order on 09.03.2023:

> *'P.C.:*
>
> *1. Mr Kamat, based on instructions from the Petitioner, states that the Petitioner will deposit 10% of the demanded amount within four weeks from today, in this Court.*

2. The Petitioner will have to abide by the said statement.

3. In terms of the provisions of Section 35(4) of the Goa Value Added Tax Act, 2005, an amount of 10% of the demanded amount is required to be deposited for maintaining an appeal before the Appellate Authority.

4. Stand over to 13th April 2023. It is made clear that no further extension of time will be granted in this matter."

2. In terms of the above order the petitioner has deposited 10% of the demanded amount in this Court. As noted in the earlier order, in terms of Section 35(4) of the Goa Value Added Tax Act, 2005, the deposit of 10% of the demanded amount is a prerequisite for maintaining an appeal to the appellate authority.

3. Now that 10% of the demanded amount is deposited, it would be appropriate to relegate the petitioner to the remedy of appeal. Mr Abhijeet Kamat, learned counsel for the petitioner states that if leave is granted, the appeal will be instituted within two weeks from today. Mr Pravin Faldessai, learned Additional Government Advocate states that if the appeal is indeed instituted within two weeks from today, then, issue of limitation will not be raised and the appeal to be disposed of on merits. This is appropriate because the petitioner's application seeking leave to amend this petition and challenge the vires of Section 29(4) of the Goa Value Added Tax Act, 2005 is also pending. Normally, the issue of vires is considered as a last resort. Therefore, if the petitioner succeeds in his appeal, then, there may be no necessity to go into the issue of vires.

4. Considering all the above aspects this petition is disposed of by relegating the petitioner to the remedy of appeal under the Goa Value Added Tax Act, 2005. If such appeal is instituted within two weeks from today, then, the appellate authority to dispose of the appeal on merits without going into the issue of limitation. The petitioner was bonafide pursuing this petition all this while.

5. The amount deposited by the petitioner in this Court should be transferred by the Registry to respondent no.2 i.e. the Commissioner of Commercial Taxes as early as possible and in any case within two weeks from today. This transferred amout will abide by the orders in the appeal. Mr Abhijeet Kamat, learned counsel for the petitioner states that he will pursue the matter with the Registry.

6. In case the petitioner fails to secure relief before the authorities under the Goa Value Added Tax Act, 2005, the petitioner will be at liberty to raise the challenge to the vires of

Section 29(4) of the said Act. All contentions in this regard are explicitely kept open.

7. The petition is disposed of in the above terms without any order for costs.

M. S. SONAK, J.

SUCHITRA NANDAN SINGBAL Digitally signed by SUCHITRA NANDAN SINGBAL Date: 2023.04.15 10:16:09 +05'30'