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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.398 OF 2022

Mystical Technoplast Pvt. Ltd.,
A Company registered under the
Indian Companies Act,
Having its registered office at
9 Hempadma Apartment,
Paranjape Scheme B,
Road No. 3, Villeparle (E),
Mumbai.
Represented herein by its Authorized representative
& Goa Unit Manager,
Mr. Sushant Kulkarni,
44 years of age,
Having office at Goa Unit:
Plot No. 6, Survey No. 25/1,
C A Corlim, Tiswadi,
North Goa, Goa. … Petitioner

Versus

1. The Asst. Commissioner Of Commercial Taxes
& Appellate Authority,
Commercial Tax Department,
Commercial Tax Office,
Panjim Ward, Panjim – Goa.

2. The Assistant Commercial Tax Officer,
Panjim Ward,
Having office at Commercial Tax Office,
Panjim – Goa. ... Respondents

Mr Ashwin D. Bhobe, Advocate *for the Petitioner.*

Mr Deep Shirodkar, Additional Government Advocate *for the Respondents.*

CORAM: M.S. SONAK &
BHARAT P. DESHPANDE, JJ.

DATED: 14th February 2023

ORAL JUDGMENT: *(Per M.S. Sonak, J.)*

1. Heard Mr Ashwin D. Bhobe for the Petitioner and Mr Deep Shirodkar learned Additional Government Advocate for the Respondents.

2. Rule. The Rule is made returnable immediately at the request and with the consent of the learned Counsel for the parties.

3. The Petitioner challenges orders dated 04.08.2020 in Appeal Nos. 62/2016 and 63/2016 made by the Assistant Commissioner of Commercial Taxes and the Appellate Authority under Section 35 of the Goa Value Added Tax Act, 2005.

4. The Petitioner had instituted Appeal Nos.62/2016 and 63/2016 to challenge the Assessment Orders made by the Assessing Officer. These appeals were filed on 29.08.2016. Admittedly, at the time of filing/institution of these appeals, there was no requirement to pre-deposit the undisputed dues or ten per cent of the disputed dues.

5. However, by the Goa Value Added Tax (Ninth Amendment) Act, 2016, Section 35 of the principal Act was amended. For Sub-Section 4 of Section 35, the following Sub-Sections came to be substituted.

> *"(4) No appeal under sub-section (2) shall be entertained by the Appellate Authority, unless such appeal is accompanied by a satisfactory proof of the payment of whole of the undisputed*

amount of tax, interest and penalty and ten percent of the disputed amount of tax, interest and penalty, that may be due;

(4A) The provisions of sub-section (4) shall be applicable also to any appeal pending before the Appellate Authority on the date of coming into force of the Goa Value Added Tax (Ninth Amendment) Act, 2016 and the appellant shall make payment as aforesaid within a period of 120 days from such commencement, failing which, such appeal shall stand abated."

6. Since the Petitioner had not instituted any appeal under Section 35(2) of the principal Act, the above-substituted provisions did not apply to the appeals instituted by the Petitioner. The above-substituted clauses applied only to appeals instituted under Section 35(2) of the principal Act.

7. However, Section 35 of the principal Act was further amended by the Goa Value Added Tax (Tenth Amendment) Act, 2017. This amendment was published 31.08.2017 in the Official Gazette. By this amendment, in Section 35(4), for the expression "sub-section (2)", the expression "this section" was substituted. As a result of this amendment, which was given a retrospective effect, the provisions substituted by the Ninth Amendment became applicable to all appeals instituted under Section 35 of the principal Act.

8. Relying upon the Ninth and Tenth Amendment Acts referred to above, the impugned orders have been made declaring the Petitioner's appeals as abated for want of a deposit of ten per cent of the disputed amount. The impugned orders were made without affording the Petitioner any opportunity of hearing. However, Mr Shirodkar has pointed out that a notice was duly served upon the Petitioner. Mr Bhobe, learned Counsel for the Petitioner, disputes this position. Be that as it may, the record bears out that no hearing as such was factually granted before the impugned orders were made.

9. The Petitioner, even before the institution of the present petition, as of 18.05.2021, deposited ten per cent of the disputed amount with the concerned Respondent. As such, the requirement, even in terms of the amended provision, stands complied with, though beyond the time limit prescribed in the amendment.

10. The facts, in this case, are somewhat peculiar because the appeals, as instituted originally, complied with all the conditions prescribed under the principal Act. Even after the Ninth Amendment to the principal Act, the appeals were duly compliant. Only after the Tenth Amendment was a requirement for a deposit of ten per cent of this amount because such a requirement was made applicable even to pending appeals.

11. Considering the above peculiar facts, we think that the Petitioner should be granted an opportunity of having its appeals heard on merits, particularly now that the Petitioner has fully complied with the requirement of a pre-deposit of ten per cent of the disputed amount. Therefore, even without going into the disputed issue of natural justice failure, we think this is a fit case where an additional opportunity should be granted to the Petitioner now that the Petitioner has already deposited ten per cent of the disputed amount before the concerned authorities.

12. Accordingly, both the impugned orders dated 04.08.2020, beginning at pages 34 and 38 of the paper book, are set aside and Appeal Nos. 62/2016 and 63/2016 are restored to the file of the Assistant

Commissioner of Commercial Taxes and Appellate Authority. Accordingly, the Assistant Commissioner/Appellate Authority must now dispose of the two appeals on merits and in accordance with the law.

13. The Petitioner is to appear before the Assistant Commissioner/Appellate Authority on 27.02.2023 at 11:00 a.m. and file an authenticated copy of this order.

14. The Rule is made absolute in the above terms without any order for costs. All concerned are to act on an authenticated copy of this order.

BHARAT P. DESHPANDE, J. **M.S. SONAK, J.**

JOSE FRANCISCO DSOUZA Digitally signed by JOSE FRANCISCO DSOUZA Date: 2023.02.15 10:22:02 +05'30'