IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1212 OF 2022

Crescent Polyvinyl Private Limited and anr. … Petitioners

V/s.

The State of Maharashtra and ors. … Respondents

Mr.Rahul Thakar i/by Mr.C.B.Thakar, Advocates for the Petitioners.
Ms.Shruti Vyas, "B" Panel Counsel for the Respondents.

CORAM : NITIN JAMDAR AND
ABHAY AHUJA, JJ.
DATE : 22 FEBRUARY 2023.

P.C.:-

1. On 9 February 2022 following order was passed :

"The learned Counsel for the Petitioners states that the impugned assessment order was passed when the Petitioners could not remain present at the time of final hearing on 27 March 2021 in view of the situation arising out of COVID-19 pandemic. A reference is also made to events of hospitalization of Petitioner No.2's wife, who expired on 21 April 2021. The learned Counsel for the Petitioners states that the Division Bench of this Court in Writ Petition No. 1211 of 2022 in Petitioners' case for the same period however in respect of liability of the Maharashtra Value Added Tax by order dated 16 November 2022

remanded the proceedings taking note of these very events.

2. The learned Counsel for the State seeks time to examine the position. Stand over to 22 February 2023. To be listed under the caption "For Directions".

2. Learned counsel for the Petitioners states that instructions have been taken that the order passed in Writ Petition No.1211 of 2022 is applicable to the facts of the present case. In the order dated 16 November 2022 in Writ Petition No.1211 of 2022 the Division Bench has observed thus :

"3. The officer, who passed assessment order, one Ms.Rohini Ashok Shinde has filed an affidavit, affirmed on 13th September 2022 stating that the order passed was under Section 23(3) and not under Section 23(2) of the MVAT Act. In the affidavit, however, there is no explanation as to why in such situation did she mention 23(2) instead of 23(3). If the order was under section 23(3) of the MVAT Act, we agree with Mr. Thakar's contention that this order could have been passed upto 31st March 2022, because officer would have one more year to complete the assessment. Mr. Thakar pointed out, as averred in the Petition, that Petitioner was fully cooperating with the assessing officer and also attending all hearings except on 23rd March 2021 when the wife of the director, who was attending to the matter, had contacted Covid and therefore the whole office was also closed and an adjournment was sought for. It is also stated in the Petition that the said lady unfortunately died on 21st April 2021.

4. Notwithstanding this request for an adjournment, the assessing officer went ahead and passed the assessment order on 08th April 2021 (31st March 2021) though there was the time when the

> *entire country was reeling under covid wave and when there was no fear of matter getting time barred, the assessing officer could have liberally considered the adjournment request more humanely.*
>
> *5. Therefore, we hereby quash the assessment order with direction to Respondent No.3 to give an opportunity to Petitioner to explain the two items, mentioned in paragraph-1 above, and then pass fresh assessment order."*

3. In the light of the above position, the impugned assessment order is quashed and set aside.

4. The Respondent-Officer will give opportunity to the Petitioners and pass fresh order as per law. We make it clear that the impugned order is set side only on the above ground and the Officer will proceed as per law.

5. Writ Petition is accordingly disposed of.

(ABHAY AHUJA, J.) **(NITIN JAMDAR, J.)**

....