IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13088 OF 2019
WITH
WRIT PETITION NO.13094 OF 2019

Armstrong Infrastructure Through
Director S.A. Kesarkar .. Petitioner
v/s.
The State of Maharashtra Through
Commissioner of State Tax And Anr. .. Respondents

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Mr. Sandip D. Ghaterao, i/b. Mr. N.V. Tapare, for the Petitioner.

Ms. Shruti D. Vyas, "B" Panel Counsel, for Respondent State.

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CORAM: G.S. KULKARNI &
JITENDRA JAIN, JJ.

DATE : 11th SEPTEMBER, 2023

P.C:-

This petition under Article 226 of the Constitution of India has prayed for the following reliefs:

(a) this Hon'ble Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India, for calling for the records of the present case and after going through the legality and validity thereof be pleased to quash and set aside the refund adjustment order dated 25/07/2019 issued by the Respondent No.2;

(b) this Hon'ble Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India, for calling for the records of the present case and after going through the legality and validity thereof be pleased to quash and set aside the Amnesty rejection order dated 21/08/2019 passed by the Respondent No.2;

(c) this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ or order or direction under Article 226 of the Constitution of India ordering and directing the Respondent No.2 to grant benefit of Amnesty Scheme to the petitioner."

2. The primary contention as urged on behalf of the Petitioner in assailing the impugned order dated 21st August 2019 passed by the Deputy Commissioner of State Tax rejecting the application filed by the Petitioner under Section 7 of the Maharashtra Settlement of Arrears of Tax, Interest, Penalty or Late Fee Ordinance 2019 is that same is passed in mechanical manner without assigning any reasons. Our attention is drawn to the operative portion of the short order as impugned, which reads thus:

"ORDER OF REJECTION

(Under sub-section (2) of section 12 of the Settlement Ordinance)

1. WHEREAS, M/s. ARMSTRONG INFRASTRUCTURE has filed an application under section 7 of the Maharashtra Settlement of Arrears of Tax, Interest, Penalty or Late Fee Ordinance, 2019 for settlement of tax, interest, penalty or late fee under the SCPT Act against the (a) Amount payable as per statutory order.

2. The period and financial year for which settlement is sought is as under :-

(1) Period for which settlement is sought																	
From	D	D	M	M	Y	Y	Y	Y	To	D	D	M	M	Y	Y	Y	Y

	0	1	0	4	2	0	1	2		3	1	0	3	2	0	1 3

(2) Financial year for which settlement is sought	2	0	1	2	-	1	3

3. I have gone through the application for settlement and I am prima-facie of the opinion that the application for settlement of arrears of tax, interest, penalty or late fee is not in accordance with the provisions of this Ordinance. Therefore, a show-cause notice was issued on 02-08-2019 which was properly served on 02-08-2019. Shri Kabra (C.A.) of M/s. ARMSTRONG INFRASTRUCTURE PV attended and submitted a written reply or attended and made oral submission as reduced in writing by me.
4. In view of the facts of the case, I have come to the conclusion that the application for settlement of arrears of tax, interest, penalty or late fee is not in accordance with the provisions of this Ordinance and therefore same is rejected.

Date:21/08/2019
Place : MALEGAON"

3. It is, thus, the contention of the Petitioner that none of the contentions as urged by the Petitioner in support of the settlement application have been considered and no reasons are set out. The impugned order needs to be rendered as bad and illegal.

4. The second contention raised on behalf of the Petitioner is that the Deputy Commissioner has no authority to adjust under Rule 51 of the Bombay Sales Tax Rules, 1959 against dues payable under the Maharashtra Purchase Tax on Sugarcane Act, 1962 (for short, 1962 Act) for the period 2012-13 amounting to Rs. 20,04,467/-. The contention in this regard is that the Sales Tax Officer as well as Tax Officer, who was purportedly functioning at the appropriate time

exercising jurisdiction under the MVAT Act and, thereafter, under the Maharashtra Goods and Service Tax Act, 2017 would not have jurisdiction to adjust the dues under the 1962 Act. There cannot be intermixing of jurisdiction. These are the primary contentions, on the basis of which it is contended that prayers made by the Petitioner are required to be granted. On the other hand, the Revenue placed reliance on the reply affidavit in opposing the present petition.

5. We have perused the reply affidavit. However, the reply affidavit does not justify order dated 21st August 2019 passed by the Deputy Commissioner of State Tax in rejecting the Petitioner's application under Section 7 of the Maharashtra Settlement of Arrears of Tax, Interest, Penalty or Late Fee Ordinance, 2019. It does not furnish any reasons whatsoever to disentitle the Petitioner for such settlement. Insofar as the refund adjustment order is concerned, it also appears that the Deputy Commissioner has proceeded to issue such orders patently without jurisdiction as he could not have assumed jurisdiction of an authority under the 1962 Act. On such count, in our opinion, the impugned refund adjustment order is rendered bad and illegal.

6. It appears that although such refund order is passed on 25th July 2019, the Deputy Commissioner has proceeded to exercise jurisdiction under Rule 51 of the Bombay Tax Rules, 1959 (the 1959

Rules), whether it was at all permissible to invoke the provisions of the 1959 Rules is another question, which also goes to the root of the matter. Be that as it may, the refund adjustment order cannot be sustained for want of jurisdiction. We have not been shown any provision that the Deputy Commissioner under the provisions of MVAT Act or the CGST Act could exercise jurisdiction under the 1962 Act. In the light of the above, in our opinion, the petition needs to succeed.

7. Hence, the following order:

(i) The impugned order dated 21st August 2019 is quashed and set aside. The refund application of the Petitioner would be required to be restored to the Deputy Commissioner to be decided in accordance with law;

(ii) However, at this stage, learned Counsel for the Petitioner submits that the Petitioner would now intend to apply under the subsequent enactment namely, the Maharashtra Settlement of Arrears of Tax, Interest, Penalty or Late Fee Act, 2023. If it is so, we permit the Petitioner to make a fresh application, which shall be decided independently and in accordance with law;

(iii) Impugned refund application of Deputy Commissioner of

State Tax is bad in law;

(iv) In the event the Petitioner files an application under the 2023 Act, the same be decided in accordance with law;

(v) All contentions of parties in that regard are expressly kept open;

(vi) Petition stands disposed of in the above terms. No costs.

<u>Writ Petition No.13094 of 2019</u>

Insofar as Writ Petition No.13094 of 2019 is concerned, the petition is covered by our order in Writ Petition No.13088 of 2019, namely, in the Petitioner's case.

2. Learned Counsel for the Revenue would also not disagree to such contention as urged by the learned Counsel for the Petitioner.

3. Accordingly, petition disposed of in view of the decision rendered in our order in Writ Petition No.13088 of 2019.

(JITENDRA JAIN, J.) **(G.S. KULKARNI, J.)**