IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3594 OF 2023

Pfizer Animal Pharma Pvt. Ltd. ...Petitioner
Versus
The State of Maharashtra ...Respondent

Mr. Ishan V. Patkar a/w Mr. Durgesh G. Desai i/b Alaksha Legal, for Petitioner.
Ms. Jyoti Chavan, Addl., G.P., for State.

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

DATE : DECEMBER 13, 2023.

P.C.:

1. We have heard Mr. Patkar, learned counsel for the petitioner and Ms. Chavan, learned counsel for the respondent/State.

2. The challenge in this petition is to an order dated 14 February 2023 passed by the Maharashtra Sales Tax Tribunal, Mumbai being an order on the petitioner's stay application. The petitioner had filed VAT second appeal Nos.60 & 61 of 2023, being aggrieved by the order dated 29 November 2022 passed by the appellate authority, namely, the Joint Commissioner of State Tax, Appeal-VI, Mumbai, which was for the period 1 April 2012 to 31 March 2013.

3. At the outset, we note the operative part of the Tribunal's order (at page 104) which reads thus:

> "(I) Appellant is directed to deposit 100% of the amount as part payment.
>
> (II) Appellant has already deposited 10% amount as part payment. Appellant is directed to deposit the remaining amount of part payment within two months from the date of receipt of order and produce the proof of payment before the Tribunal.
>
> (III) If the appellant fails to comply the same, these Second Appeals shall stand dismissed.
>
> (IV) No order as to costs."

4. The primary grievance of the petitioner is in regard to the observations as made by the Tribunal in paragraph 6 of the impugned order in regard to the application of provisions of Section 26(6B) of the MVAT Act. The contention as urged on behalf of the petitioner is to the effect that it was clear from the proceedings of the appeal before the tribunal that the provisions of Section 26(6B)(c) were applicable. In this regard, our attention is drawn to the observations of the Tribunal as made in paragraph no.3.6 wherein the petitioner's contention to that effect has been recorded.

5. The Tribunal considering such contention as urged on behalf of the petitioner has observed thus:

> "6. The provisions of Section 26(6) of MVAT Act are very clear and unambiguous. As per Section 26(6B) of MVAT Act, it is clear that if the dealer could not produce the wanting declarations, the dealer is required to deposit 100% of the amount of tax dues. In this case, the appellant has deposited 10% of the disputed dues as part payment, which is not acceptable. The provisions of Section 26(6B) are mandatory in nature, and therefore, we do not accept the prayer of the appellant to accept the part payment deposited by the appellant as

> sufficient compliance of the provisions of Section 26(6) of MVAT Act. We are not discussing the authorities relied on by the appellant, as those are not relevant in the facts and circumstances of the present case."

6. In our opinion, in the facts of the case, the applicability of Section 26(6B)(c) has not been examined in the perspective as contended by the petitioner before the Tribunal.

7. In this view of the matter, we are of the opinion, that the order directing the appellant to deposit 100% of the amount as part payment would require reconsideration of the Tribunal and after taking into consideration, the petitioner's case in this regard, a fresh order needs to be passed. The petition is accordingly disposed of by the following order:-

ORDER

I. The impugned order dated 15 March 2023 passed by the Tribunal is set aside. The proceedings are remanded to the Tribunal to be decided afresh on the stay application as filed by the petitioner, after considering the contentions as being urged by the petitioner and as permissible in law.

8. All contentions of the parties are expressly kept open.

9. Disposed of in the above terms. No costs.

[JITENDRA JAIN, J.] [G. S. KULKARNI, J.]