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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2939 OF 2021

Equipment Sales & Service ..Petitioner
Vs.
State of Maharashtra & Ors. ..Respondents

Mr. Bharat Raichandani with Mr. Prathamesh Gargate for Petitioner.
Ms. Jyoti Chavan AGP with Mr. Himanshu Takke, AGP for State.
Ms. Sumitra Patil, Deputy Commissioner of State GST, E-702, present.

CORAM : G. S. KULKARNI &
JITENDRA JAIN, JJ.
DATE : JULY 25, 2023

P.C.:

1. We have heard Mr. Raichandani, learned counsel for the petitioner and Ms. Chavan, learned AGP for the State/Respondents.

2. This petition under Section 226 of the Constitution of India is filed praying for the following reliefs:-

> "(a) that this Hon'ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the Petitioner's case and after going into the validity and legality of the provisions quash Assessment Order dated 26.02.2021 passed under MVAT Act, 2002 (Exhibit "A");
>
> (b) that this Hon'ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the Petitioner's case and after going into the validity and legality of the provisions direct the respondents to adjust

the refund claim for F.Y. 2007-08 against the demand confirmed in Assessment Order dated 26.02.2021 and waive of the interest and penalty levied in Assessment Order dated 26.02.2021;

(c) that this Hon'ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the Petitioner's case and after going into the validity and legality of the provisions direct the respondent No. 2 to grant refund of Rs. 12,59,728/- along with interest @ 24% p.a. and waive of the interest and penalty levied in Assessment Order dated 26.02.2021;

(d) that this Hon'ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the Petitioner's case and after going into the validity and legality of the provisions stay the operation of Assessment Order passed under MVAT Act, 2002 dated 23.02.2021 (Exhibit "A");

(e) that this Hon'ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the Petitioner's case and after going into the validity and legality of the provisions direct the respondents to not initiate any coercive action seeking recovery of alleged dues against the Petitioner during the pendency of the present petition."

3. At the outset, Ms. Chavan would submit that the impugned assessment order is an appealable order and against which the petitioner need to exhaust the alternate statutory remedy of filing an appeal.

4. In so far as the contention as urged by the petitioner in regard to the refund application of the petitioner is concerned, Ms. Chavan has fairly stated that although on electronic system the application has been shown to be rejected, however, there is no order to that effect which was passed by the Department. She accordingly would submit that the assessing officer is ready and willing to consider the refund application of the petitioner which is for the financial year 2007-08 on its own merits and after hearing the petitioner, pass an appropriate order on the refund application.

5. Mr. Raichandani considering the contentions as urged by Ms. Chavan, would fairly submit that the petitioner is not averse to take recourse of the alternate remedy of filing an appeal against the impugned assessment order dated 26 February, 2021. He fairly states that the petitioner would also agree that the refund application be decided by the assessing officer afresh and after hearing the petitioner.

6. In this view of the matter, we are of the opinion that the petition would not warrant any further adjudication. It can conveniently be disposed of keeping open all contentions of the parties by the following order:-

ORDER

i. Petitioner is permitted to assail the impugned assessment order dated 26 February, 2021 by taking recourse to the statutory remedy of an appeal before respondent no.4 and the same be filed within two weeks from today and if so, the same be decided on its own merits and without objection on limitation as the petitioner was bonafide pursuing the present proceedings.

ii. In regard to the refund application, it is declared that the same has not been decided and the same be decided within a period of six weeks from today, on its own merits and after granting an opportunity of hearing to the petitioner. All contentions in that regard are also expressly kept open.

iii. At the first instance, the petitioner to appear before the assessing officer on 07 August, 2023 at 02.30 p.m.

iv. The petition is disposed of in the above terms. No costs.

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