IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

15 MAH. VALUE ADDED TAX APPEAL NO.01 OF 2023

M/s. Sunder Cement House,
through its Prop.
Sunil s/o Bansilalji Mundada ... **APPELLANT**

VERSUS

1. Dy. Commissioner of Sales Tax,
NAN-INV-E-001, Nanded,
Dist. Nanded
2. The State of Maharashtra ... **RESPONDENTS**

AND
16 MAH. VALUE ADDED TAX APPEAL NO.02 OF 2023

M/s. Sunder Trading Company,
through its Prop.
Nandkishore s/o Kishanrao Dilerao ... **APPELLANT**

VERSUS

1. Dy. Commissioner of Sales Tax,
NAN-INV-E-001, Nanded,
Dist. Nanded
2. The State of Maharashtra ... **RESPONDENTS**

WITH
MAH. VALUE ADDED TAX APPEAL NO.03 OF 2023

M/s. Sunder Cement House,
through its Prop.
Sunil s/o Bansilalji Mundada ... **APPELLANT**

VERSUS

1. Dy. Commissioner of Sales Tax,
NAN-INV-E-001, Nanded,
Dist. Nanded
2. The State of Maharashtra ... **RESPONDENTS**

...

Advocate for Appellant/s : Mr. A.M. Gholap
AGP for Respondent/State : Mr. R.S. Wani

...

CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.

DATE : 08.07.2024

PER COURT:

We have heard both the sides.

2. The petitioner company is aggrieved by the order passed by the Maharashtra Sales Tax Tribunal Mumbai, Nagpur Bench in respective VAT SA under Section 26 (2) of the Maharashtra Value Added Tax Act for different assessment periods, which appeals the learned Members have refused to entertain for its failure to deposit 10% of the disputed tax amount.

3. The issue as regards mandate of such deposit of 10% embarked upon by the division benches of this Court and ultimately resulting in full bench decision in the matter of **United Projects Vs. State of Maharashtra**, has been put at rest by the Supreme Court in Civil Appeal Nos.1628/2023 **the State of Telangana and Ors. M/s Tirumala Constructions** and connected appeals by the judgment and order dated 20.10.2023.

4. To the extent of the Maharashtra Tax Laws (Levy, Amendment and Validation) Act, 2017 the issue has been settled in following words :

> *"116. In view of the foregoing discussion and conclusions, the findings of the court in these cases are:*

(i) Section 19 of the Constitution (101 Amendment) Act, 2016 and Article 246A enacted in exercise of constituent power, formed part of the transitional arrangement for the limited duration of its operation, and had the effect of continuing the operation of inconsistent laws for the period(s) specified by it and, by virtue of its operation, allowed state legislatures and Parliament to amend or repeal such existing laws.

(ii) Since other provisions of the said Amendment Act, had the effect of deleting heads of legislation, from List I and List II (of the Seventh Schedule to the Constitution of India), both Section 19 and Article 246A reflected the constituent expression that existing laws would continue and could be amended. The source or fields of legislation, to the extent they were deleted from the two lists, for a brief while, were contained in Section 19. As a result, there were no limitations on the power to amend.

(iii) The above finding is in view of the vacuum created by the coming into force of the 101" Amendment, which resulted in deletion of the heads of legislation in the two lists aforesaid.

(iv) The amendments in question, made to the Telangana VAT Act, and the Gujarat VAT Act, after 01.07.2017 were correctly held void, for want of legislative competence, by the two High Courts (Telangana and Gujarat High Court). The judgment of the Bombay High Court is, for the above reasons, held to be in error; it is set aside; the amendment to the Maharashtra Act, to the extent it required pre-deposit is held void.

117. The appeals (and any other special leave petitions) filed by the States of Telangana and Gujarat are hereby dismissed in the above terms; the appeals of the assessees against the judgment of the Bombay High Court (i.e., Civil Appeal No. 2730-2733/2023 & SLP (C) No. 7776/2023), succeed and are allowed. There shall be no order on costs.”

5. The upshot, the impugned orders are liable to be quashed and set aside and it would be for the Appellate Tribunal to decide the appeals on merits without insisting for 10% deposit.

6. The appeals are allowed partly. The impugned orders are quashed and set aside. The matters are remanded back to the Tribunal

for decision of the appeals on merits. The petitioner shall appear before the tribunal on 29.07.2024.

(SHAILESH P. BRAHME, J.) **(MANGESH S. PATIL, J.)**

habeeb