



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6547 OF 2024

B. G. Exploration and Production
India Limited-J.V.,
BG House, Lake Boulevard
Hiranandani Business Park, Powai,
Mumbai – 400 076
Through the Authorized Representative
Mr. Shreeram Deshpande

...Petitioner

Versus

1. The State of Maharashtra,
Through the Secretary,
Department of Revenue,
Government of Maharashtra,
Mantralaya, Madam Cama Road,
Hutatma Rajguru Chowk,
Nariman Point, Mumbai – 400 032
2. The Deputy Commissioner of State Tax,
E-002, Nodal – 13, Bandra (E),
Mumbai – 400 013.

...Respondents

Mr. Rohan P. Shah a/w Ms. Sheeja John and Ms. Surabhi Prabhudesai
i/b. M P Savla & Co. for Petitioner.
Ms. S. D. Vyas, Addl. G. P. a/w Mr. Prashant P. More, AGP for
Respondent-State.
Mr. Rahul Dhanawal, Deputy Commissioner of State Tax present.

CORAM : K. R. SHRIRAM &
JITENDRA JAIN, JJ.

DATED : 30th JULY 2024

ORAL JUDGMENT : (Per K. R. Shriram, J.)

1. **Rule.** Rule made returnable forthwith. By consent of the parties, heard finally.

2. Petitioner is impugning an assessment order dated 28th March 2024 and the notice of demand also dated 28th March 2024 on various grounds.

3. Petitioner is in the business of exploration of petroleum resources in 'Panna and Mukta' and 'Mid and South Tapti' fields off the coast of Mumbai. The area where Petitioner operates is situated at a distance ranging from 60 to 120 nautical miles from the territorial baselines of India. Based on the exploration in the contract areas, Petitioner sells petroleum crude and natural gas to the nominated agencies of the Government of India. It is Petitioner's case that title in respect of crude and natural gas is transferred in favour of the Government nominee at the delivery point in the contract areas of the oil fields. According to Petitioner, therefore, it will not fall within the jurisdiction of Respondent No.2, i.e., the Deputy Commissioner of State Tax exercising the jurisdiction under the Maharashtra Value Added Tax Act, 2002 ("**MVAT Act**").

4. It is Petitioner's case that a show cause notice dated 7th December 2023 without any details was issued calling upon Petitioner to attend the office of Respondent No.2. Petitioner was called to show cause as to (a) why Petitioner should not be assessed under Section 23(3) of the MVAT Act, (b) why Petitioner should not be assessed under Section 23(4) of the said Act, (c) why interest under Section 30 of the

Act in respect of the period from 1st April 2019 to 31st March 2020 should not be imposed and (d) why penalty under sub-section (8) of Section 29 of the Act in respect of the same period should not be imposed. This show cause notice, as anybody could see, is in a printed format without any details. For ease of reference, the said show cause notice as scanned is re-produced below:-

Exhibit - "F"

Received 498
08/12/2023 #

FORM 301
(See Rule 21 of the Maharashtra Value Added Tax Rules, 2005)
Notice under Sub-section (2), (3) or (4) of section 23 of the
Maharashtra Value Added Tax Act, 2002

To,
M/S BG EXPLORATION AND PRODUCTION INDIA LIMITED-JV.
BG HOUSE, BG EXPLORATION AND P RODUCTION INDIA LIMITED , HIRANANDANI BUSINESS
PARK , LAKE BOULEVARD ROAD , POWAI 400076.

R.C. No. MVAT Act 2002: 27160283391V

R.C. No. CST Act 1956 :27160283391C

Nodal-13 (E-002)/ Notice/ B-No-667 /DT: 07-12-2023.

*Whereas I desire to ensure that in the return furnished by you in respect of the period from 01/04/2019 to 31/03/2020, turnovers of sales and purchases are properly admitted, deduction are correctly claimed, tax has been calculated at the proper rates, set-off has been correctly claimed and the due tax in respect of the said period has been admitted to be payable and has been paid is correct.

*Whereas being a registered dealer, you have not furnished by the prescribed date return or returns in respect of the period from 01/04/2019 to 31/03/2020.

*Whereas being liable to pay tax under the Maharashtra Value Added Tax Act- 2002 in respect of the period from 01/04/2019 to 31/03/2020, you have failed to apply for registration under Section 16 of the said Act.

You are hereby directed to attend at Office of Dy. Commr. Of Sales Tax (E-002), Wing-A, 1 Floor Bandra (E), Mumbai-400051. (Place) at 11:30 AM on 08/01/2024 and

1) To produce or cause to be produced any evidence on which you rely in support of the said return or returns and at the same time to produce or cause to be produced the following documents and accounts.

And to furnish or cause to be furnished the following information:

2) To show cause as to why you should not be assessed under section 23(3) of the Said Act.

3) To show cause as to why you should not be assessed under section 23(4) of the Said Act.

* You are also required to show cause as to why interest under section 30 of the said Act in respect of the period from 01/04/2019 to 31/03/2020, should not be imposed on you.

* You are also required to show cause as to why penalty under sub section (8) of section 29 of the said Act in respect of the period from 01/04/2019 to 31/03/2020 should not be imposed on you.



RAHUL Digitally signed
by RAHUL
TARACHAND TARACHAND
DHANAWAT DHANAWAT

(Rahul T. Dhanawat)
DY. COMMISSIONER OF STATE TAX,
Nodal-13 (E-002), Bandra (E) Mumbai
Rahul T. Dhanawat
Deputy Commissioner of State Tax
E-002, NODAL-13,
Bandra (E), Mumbai-51.

TRUE COPY

For M/s. M.P. SAVLA & CO.

M. P. Savla

Proprietor

Advocates for Plaintiff(s)/Defendant(s)/
Petitioner(s)/Respondents(s)/Appellant(s).

Received
08/12/2023

489

Dy. Commissioner of State Tax E-002,
Nodal Unit-13, Wing-A, 1 Floor,
Bandra (E), Mumbai-400051
Tel-02226591747 Extn-4100
Email Id: dce002nodal13@gmail.com

FORM VI (B)

Notice under Rule 9-A of the Central Sales Tax (Bombay) Rules, 1957

To,

M/S BG EXPLORATION AND PRODUCTION INDIA LIMITED-JV.

BG HOUSE, BG EXPLORATION AND PRODUCTION INDIA LIMITED, HIRANANDANI BUSINESS PARK, LAKE BOULEVARD ROAD, 400076.

Central Sales Tax Registration No. 27160283391C.

Nodal-13 (E-002)/ Notice/ B-No-668 /Mumbai DT: 07-12-2023.

* Whereas I desire to satisfy myself that the returns furnished by you in respect of the period from 01/04/2019 to 31/03/2020 are correct and complete.

* Whereas being a registered dealer you have not furnished by the prescribed dates returns in respect of the period from 01/04/2019 to 31/03/2020.

* Whereas being liable to pay tax under the Central Sales Tax Act, 1956, in respect of the period from 01/04/2019 to 31/03/2020 you have failed to apply under section 7 of the said Act for registration.

* Whereas I am satisfied that your turnover in respect of the following sales, namely:-

For the period from ----- to ----- has * escaped assessment/been under assessed/been assessed at a lower rate and deductions for the following sales namely:-

----- have been wrongly made from your turnover for the period from ----- to -----

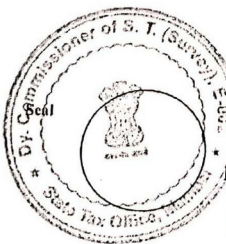
You are hereby directed to attend in person or by a legal practitioner or by an agent authorised in writing at Above address at 11-30 A.M. on 08/01/2024 and to produce any evidence on which you rely in support of the said returns † and to show cause as to why you should not be assessed */reassessed to tax and penalty under section 9 of the Central Sales Tax Act, 1956, in respect of the said period /* said sales † and produce or cause to be produced the following documents and accounts:-
All books of accounts etc.

and to furnish the following information:-

You may also produce any other evidence for determining the correct amount of tax payable by you for said period.

Place: Mumbai- 10

Date: 07-12-2023.



RAHUL Digitally signed
by RAHUL
TARACHAND TARACHAND
DHANAWAT DHANAWAT
(Rahul. T. Dhanawat)

DEPUTY COMMISSIONER OF STATE TAX,
Nodal-13 (E-002), Bandra (E) Mumbai
Rahul T. Dhanawat
Deputy Commissioner of State Tax
E-002, NODAL-13,
Bandra (E), Mumbai-54.

5. Petitioner, though severely handicapped because the show cause notice did not contain any details, by its letter dated 6th January 2024 filed the annual financial statements for FY 2019-20, auditor's report for FY 2019-20, copy of filed VAT and CST returns for FY 2019-20 and acknowledgment of audit report in Form 704.

6. Thereafter, Petitioner was issued a letter dated 11th March 2024 once again calling upon Petitioner to submit assessment compliance within 7 days. We find the letter to be as bald and vague as the show cause notice. In the said letter, there is not even a reference to the documents that Petitioner had, alongwith its letter dated 6th January 2024 submitted. Respondent No.2, thereafter, proceeded to pass the impugned order dated 28th March 2024 under Section 23 of the MVAT

Act. Respondent No.2 has passed order without dealing with any points and simply on the basis of best judgment basis under Section 23(2) of the MVAT Act.

7. Section 23(2) of the MVAT Act reads as under:-

23. Assessment

(1)

(2) Where the return in respect of any period is filed by a registered dealer by the prescribed date and if the Commissioner considers it necessary or expedient to ensure that return is correct and complete, and he thinks it necessary to require the presence of the dealer or the production of further documents, he shall serve on such dealer, a notice requiring him on a date and at a place specified therein, either to attend and produce or cause to be produced all documents on which such dealer relies in support of his return, or to produce such documents or evidence as is specified in the notice.

On the date specified in the notice, or as soon as may be thereafter, the Commissioner shall, after considering all the documents or evidence which may be produced, assess the amount of tax due from the dealer:

Provided that, if a registered dealer fails to comply with the terms of any notice issued under this sub-section, the Commissioner shall assess, to the best of his judgement the amount of tax due from him:

Provided further that, no order of assessment under this sub-section shall be made after the expiry of four years from the end of the year containing the period to which the return relates.”

Under Section 23(2) of the MVAT Act, where the return in respect of any period is filed by a registered dealer by the prescribed date, and admittedly in this case Petitioner has filed by the prescribed date, and if the Commissioner considers it necessary or expedient to ensure that return is correct and complete, and he thinks it necessary to require the presence of the dealer or the production of further documents, he shall serve on such dealer, a notice requiring him, on a

date and at a place specified therein, either to attend and produce or cause to be produced all documents on which such dealer relies in support of his return, or to produce such documents or evidence as specified in the notice. Therefore, the Commissioner should first form an opinion that it is necessary or expedient to ensure that return is correct and complete, and after he forms such an opinion he requires to produce any documents then he shall give notice describing therein the documents which are required to be produced. If one sees the show cause notice it does not mention which are the documents that are required to be produced. The show cause notice is issued in a printed format with only the period and the date and time filled up. It does not give details of the information or documents required to be furnished notwithstanding the fact that Petitioner has vide its letter dated 6th January 2024 furnished the documents mentioned above. Without even referring to those documents, a letter has been issued on 11th March 2024, simply calling upon Petitioner to submit assessment compliance. What more was required to be furnished is not mentioned.

8. Before passing best judgment assessment, Section 23(2) provides that if the registered dealer fails to comply with the terms of any notice issued under the sub-section, the Commissioner shall assess to the best of his judgment the amount of tax due from the assessee. The impugned order only refers to the letter dated 11th March 2024 in

which letter, as noted earlier and also in the show cause notice, no details of documents required to be produced have been given. Therefore, in the present case, pre-conditions required to pass best judgment assessment is not satisfied.

9. Therefore, in our view, the impugned order dated 28th March 2024 is not sustainable. The same is hereby quashed and set aside. Consequently, the demand notice also dated 28th March 2024 is quashed and set aside.

10. Rule made absolute.

[JITENDRA JAIN, J.]

[K. R. SHRIRAM, J.]