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

WRIT PETITION NO. 2236 OF 2023

Diageo North America Inc. & Anr. … Petitioners

Versus

The State of Maharashtra & Ors. …Respondents

Mr. Rohan Shah a/w. Mr. Prathamesh Chavan, Ms. Surabhi Prabhudesai, Ms. Chandni Tanna i/b. India Law Alliance for the petitioners.
Ms. Jyoti Chavan, Addl. G.P. a/w. Mr. Himanshu Takke, AGP and Ms. Nazia Shaikh, AGP for the State.

CORAM: G. S. KULKARNI & FIRDOSH P. POONIWALLA, JJ.
DATED: 05 March, 2024

P.C.

1. We have heard Mr. Shah, learned counsel for the petitioners and Ms. Chavan, learned Additional Government Pleader for the respondent-State.

2. This petition under Article 226 of the Constitution is filed praying for the following substantive reliefs:

> "i) This Hon'ble Court be pleased to declare that -
>
> a) the levy of VAT by the respondents on the royalty in question received by petitioner no. 1, on which Service Tax has already been paid, is without the authority of law and in excess of jurisdiction;
>
> b) Respondent no. 2 (Kalyan Division) and respondent no. 3 (Mazgaon Division) cannot both contemporaneously seek to pass orders to levy VAT on the royalty payment in question;
>
> c) Respondent no. 2 (Kalyan Division) had no jurisdiction to pass the three Impugned Orders dated 2nd March, 2017, 7th June, 2017 and 7th June, 2017 in respect of petitioner no. 1;

d) the three Impugned orders dated 2nd March, 2017, 7th June, 2017 and 7th June, 2017 passed by the respondent no. 2 (Kalyan Division) are statutorily barred by limitation.

e) the three Impugned Orders dated 2nd March, 2017, 7th June, 2017 and 7th June, 2017 have been passed in breach of principles of natural justice and are non est in law.

ii) issue a writ of certiorari or a writ in the nature of certiorari to call for and examine the records of the proceedings before respondent nos. 1 and 2, and after examining the same, quash and set aside the three Impugned orders dated 2nd March, 2017, 7th June, 2017 and 7th June, 2017;

iii) issue a writ of mandamus or a writ in the nature of mandamus directing -

a) Respondent no. 2 to forthwith withdraw the three Impugned orders dated 2nd March, 2017, 7th June, 2017 and 7th June, 2017;

b) Respondent no. 2, or any officers of the respondents, not to act on or in consequence of the impugned orders dated 2nd March, 2017, 7th June, 2017 and 7th June, 2017."

3. On behalf of the respondents a reply affidavit has been filed. On the contentions as urged on behalf of the parties on the pleadings, we are of the opinion that the petition can be disposed on the reasons which we discuss.

4. This Writ Petition was filed on 11 November, 2022. It appears from the record that the contentions as urged on behalf of the petitioners that the Maharashtra Value Added Tax Act, 2002 in relation to the assessment orders passed by the Assessing officer for the period 2008-09, 2009-10, 2010-11, 2011-12, 2012-13 and 2013-14 the Assessing Officers who exercise jurisdiction to pass the assessment orders are from the Kalyan jurisdiction and also from the Mazgaon (Mumbai) jurisdiction.

5. It is not in dispute that for the year 2008-09 assessment order dated 2 March, 2017 and for the year 2009-10 assessment order dated 7 June, 2017 were passed by the Assessing Officer under the Kalyan jurisdiction. Although such orders are passed on such dates, the case of the petitioners is that the orders were received by the petitioners on 23 September, 2022 and the same are assailed in this petition, which immediately came to be filed on 11 November, 2022 as noted by us.

6. Insofar as the year 2010-11 is concerned, there is an order dated 29 March, 2019 passed by the Assessing officer at Mazgaon as also there is an order dated 7 June, 2017 passed by the Assessing Officer having jurisdiction at Kalyan. Also for the next year, i.e., 2011-12, there is an assessment order dated 31 March, 2020 passed by the Assessing Officer from Mazgaon jurisdiction. There was no order passed by the Assessing officer from Kalyan jurisdiction, as the case of the petitioner is that such order have not been served on the petitioner.

7. It is the respondent's contention, as also urged before us by Ms. Jyoti Chavan that the assessment orders dated 29 March, 2019 and 31 March, 2020 could not have been passed by the Assessing officer at Mazgaon jurisdiction and in fact such orders ought to have been passed by the Assessing Officer at the Kalyan jurisdiction. Such fact is clearly averred in the reply affidavit filed

on behalf of the respondent. In this view of the matter, the order dated 29 March, 2019 (for the period 2009-10) and the order 31 March, 2020 (for the period 2011-12) are sought to be withdrawn by the respondents. We accept such statement as made on behalf of the respondents. Insofar as these orders are concerned, already the officer at the Kalyan jurisdiction, according to the respondent, had passed the assessments orders.

8. It is seen that in respect of the said order dated 29 March, 2019 for the period 2010-11 and the order dated 31 March, 2020 for the period 2011-12, the petitioners have already preferred an appeal, which is stated to be pending. The petitioner while filing such appeal, have also made a pre-deposit. As such assessment orders have been withdrawn, adjudication of the appeals is also not called for, and the petitioners would be entitled for refund of the pre-deposit amount. We, accordingly, permit the petitioners to withdraw the appeals. The petitioner accordingly also become entitled for refund of pre-deposit amount, which be released to the petitioner within four weeks from today.

9. Insofar as the assessment orders for the period 2012-13 and 2013-14 are concerned, there appears to be no dispute on the assessment orders which are dated 31 March, 2021 and 13 March, 2022. The petitioners have already preferred appeals which are pending and which needs to be adjudicated in accordance with law.

10. Insofar as the assessment orders dated 2 March, 2017 and 7 June, 2017 in regard to the period 2008-09 and 2009-10, the petitioners have raised several contentions in assailing these orders including the contentions that the said orders are ex-parte orders, as also, notice in Form-301 prior to the assessment was not issued. These contentions are disputed on behalf of the respondents. It is contended by the respondents that the orders were in fact served by speed post and according to them, they were received by the petitioners. It is, however, the case of the petitioners that these orders were received by the petitioners on 23 September, 2022 by email. We would certainly not delve on such factual controversy, suffice it to observe that we would permit the petitioners to assail these assessment orders dated 2 March, 2017 (for the period 2008-09) and 7 June, 2017 (for the period 2009-10) by taking recourse to the remedy of an appeal as provided under the provisions of the said Act and raise all contentions in such proceedings. Let such appeals be filed by the petitioners within a period of six weeks from today.

11. Insofar as the period which was spent by the petitioner in pursuing the present proceedings are concerned, which is the period from 11 November, 2022 till the passing of this order, the petitioners would be entitled to avail of the benefit under the provisions of Section 14 of the Limitation Act.

12. Insofar as the period of limitation for filing the statutory appeal is concerned, all contentions of the respondents in regard to any issue of limitation and more particularly on the question that the assessment orders dated 2 March, 2017 and 7 June, 2017 were not served in September, 2022 but earlier thereto, we keep open the contentions of the parties.

13. Needless to observe that for the period 2010-11, 2011-12 in respect of which assessment orders dated 29 March, 2019 and 31 March, 2020 are sought to be withdrawn, the petitioners would be entitled to file statutory appeal as permissible in law within a period of six weeks from today. If so filed, let the appeals be decided without an objection as to limitation and on merits.

14. In this view of the matter, keeping open all contentions of the parties to be agitated in the statutory appeals, we dispose of this petition. No costs.

(FIRDOSH P. POONIWALLA, J.) **(G. S. KULKARNI , J.)**