IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4811 OF 2023

Archana Textile Corporation .. Petitioner

Versus

The State of Maharashtra & Ors. .. Respondents

UTKARSH KAKASAHEB BHALERAO
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Mr.Rahul Thakar i/b C.B. Thakar, Advocates for the Petitioner.

Ms.S.D.Vyas, Addl.G.P. a/w Aditya Deolekar, AGP for State/Respondents.

CORAM :B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.
DATE : JANUARY 14, 2025

P. C.

1. Rule. Respondents waive service. With the consent of the parties, Rule made returnable forthwith and heard finally.

2. The above Writ Petition challenges the impugned assessment order dated 26th March 2020 passed by Respondent No.3 as well as the rectification order dated 10th November 2020 passed by the very same Respondent.

3. Short point on which the aforesaid reliefs are sought and canvassed before us was that in the facts of the present case, a show cause notice was issued to the Petitioner on 12th March 2020 for the assessment year 2015-16. By this show cause notice, the Petitioner was informed that the hearing was fixed on 23rd March 2020. Since the entire country was under lock-down on the date when the hearing was fixed (i.e. 23rd March 2020) the Petitioner could not attend the hearing and the impugned assessment order was passed by Respondent No.3 on 26th March 2020. To rectify this mistake, the Petitioner filed a Rectification Application under Section 24 of the Maharashtra Value Added Tax Act, 2002 (for short "**the MVAT Act, 2002**"). This Rectification Application was also rejected on 10th November 2020 *inter alia* on the ground that there was no apparent mistake on the record and the grounds in the Rectification Application were actually the grounds of Appeal and not grounds for Rectification. It is on this basis the learned counsel appearing on behalf of the Petitioner prays that the impugned order passed under Section 9(2) of the Central Sales Tax Act, 1956 read with Section 23(2) of the MVAT Act, 2002 dated 26th March 2020 as well as the Rectification Order passed under Section 24 of the MVAT Act, 2002 dated 10th November 2020 be quashed and set aside and the matter be remanded back to Respondent No.3 to re-adjudicate the show cause notice dated 12th March 2020, after giving an opportunity to the Petitioner to file a reply as well as hearing in the matter.

4. Ms.Vyas, the learned Addl.G.P. appearing on behalf of the Respondents submitted that in the facts of the present case notice in Form VI(B) under Rule 9A of the Central Sale Tax Rules, 1957 was issued to the dealer (the Petitioner) on 15th November 2018. This was for the assessment year 2015-16. Pursuant to this notice, the Petitioner's legal representatives attended the hearing on different occasions namely on 6th December 2018, 18th July 2019 and 22nd January 2020 and submitted documents in support of his claim. According to Ms.Vyas, the Petitioner was heard at all these hearings. On the basis of the submitted documents in the above mentioned hearings, the Petitioner was issued a detailed show cause notice on 12th March 2020 and asked to submit a reply to the show cause notice by 23rd March 2020. Ms.Vyas submitted that the Petitioner did not file any reply to the show cause notice and did not even communicate to the office of Respondent No.3 that he was not able to do so because of the lock-down or otherwise. It is in these circumstances, and considering that the assessment for the period 2015-16 was getting time barred on 31st March 2020, Respondent No.3 passed the assessment order under Section 9(2) of Central Sales Tax Act, 1956 read with Section 23(2) of the MVAT Act, 2002 on 26th March 2020. Ms.Vyas submitted that the Petitioner also filed a Rectification Application but which was dismissed by an order dated 10th November 2020 because no grounds for Rectification were made out. Ms.Vyas submitted that from the impugned assessment order, the Petitioner has an alternate remedy of an Appeal and therefore the Writ Petition be dismissed and the Petitioner be relegated to avail the alternate remedy.

5. We have heard the learned counsel for the parties. We have also perused the papers and proceedings in the above Writ Petition. In the facts of the present case, it is not in dispute that for the assessment year 2015-16, a show cause notice was issued to the Petitioner on 12th March 2020 fixing a hearing of the case on 23rd March 2020. It is also not in dispute that by 23rd March 2020, due to the Covid-19 pandemic, the entire country was under lock-down. Once this is the case, it was impossible for the Petitioner to attend the hearing that was fixed on 23rd March 2020. Despite this, Respondent No.3 has proceeded ahead and passed the impugned assessment order. Looking at the peculiar facts of the present case we have no hesitation in holding that the assessment order has been passed in complete breach of the principles of natural justice. We, therefore, find considerable force in the arguments canvassed on behalf of the Petitioner that the impugned assessment order be set aside and the matter be remanded back to the 3rd Respondent for re-adjudicating the show cause notice dated 12th March 2020 after the Petitioner is given an opportunity to file a reply to the show cause notice as well as a personal hearing in the matter.

6. In view of the following discussion, we pass the following order:-

(A) The impugned assessment order dated 26th March 2020 for assessment year 2015-16 is hereby quashed and set aside. The matter is now remanded back to Respondent No.3 to re-adjudicate the show cause notice dated 12th March 2020. In view of the fact that we have set aside the assessment order itself, the challenge to the dismissal of the Rectification Application filed by the Petitioner would not survive.

(B) Before adjudicating the show cause notice and passing any order thereon, the Petitioner shall file a reply to the show cause notice within a period of 2 weeks from the date of this order being uploaded on the website of the High Court. Once the reply is filed, the 3rd Respondent shall fix a date for giving a personal hearing to the Petitioner. It is only after the reply is filed and a personal hearing is given, the 3rd Respondent can pass a fresh assessment order for the assessment year 2015-16. This entire exercise shall be conducted within a period of 12 weeks from the date of this order being uploaded on the High Court website.

7. It is needless to clarify that if the Petitioner does not file a reply to the show cause notice as directed by this order, the 3rd Respondent is then free to fix the matter for hearing and pass whatever orders it deems fit.

8. We further clarify that we have not opined on the merits of the matter one way or the other and which shall be decided by the 3rd Respondent in accordance with law. All contentions in that regard are kept open.

9. Rule is made absolute in the aforesaid terms and the Writ Petition is also disposed of in terms thereof. However, there shall be no order as to costs.

10. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.] **[B. P. COLABAWALLA, J.]**