IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 27 OF 2025

Smt. Tarannum Arshad Syed	.. Petitioner
Versus	
The Value Added Tax Officer VAT Department & Ors.	.. Respondents

Adv. Mr. Prakash Nichani, Mr. Prabhat Kumar J. Dubey, Mr. Vikash Kumbhar, Ms. Aarti E. Yadav & Ms. Nikita Pandey for the Petitioner.

Adv. Mr. Harsh Dedhia a/w Mr. Shantanu Thorat h/f Mr. H.S. Venegavkar for Respondent Nos. 1 to 6.

CORAM: B. P. COLABAWALLA & FIRDOSH P. POONIWALLA, JJ.

DATE: JANUARY 3, 2025

P. C.

1. The above Writ Petition has been urgently moved because the Respondent No. 5 Authority have issued a notice dated 28th December 2023, attaching the immovable property of the Petitioner for recovery of tax which is approximately Rs. 9.26 Crores. The property attached is more particularly mentioned in the Schedule of the said notice. Pursuant to this notice, the office of the Mamlatdar and Executive Magistrate, Silvassa has addressed a letter to the Executive Engineer (PWD Silvassa) to provide a valuation of the structures on land bearing Plot No. 358/1/2/ plot Gamthal admeasuring 0-14 Hectars of Village Silvassa. This valuation is requested as the property attached is now sought to be sold, pursuant to the attachment notice dated 28th December, 2023.

2. The learned Advocate appearing on behalf of the Petitioner, submitted that the present matter has quite a chequered history. He submitted that the Petitioner-Assessee is an individual carrying on the business as a trader for resale of Petrol, Diesel and Oil from her proprietary concern.

3. The first Respondent is the Assessing Officer and has been delegated the power of framing an assessment under the Dadra and Nagar Haveli Value Added Tax Regulations, 2005 and the Dadra and Nagar Haveli Value Added Tax Rules, 2005. In the facts of the present case, the learned counsel submitted that the first Respondent has passed an Assessment Order and raised a demand on the Petitioner.

4. According to the Petitioner, the Assessment Order raised was completely incorrect because there are different rates of tax for sale of oil, Diesel and Petrol. He submitted that for the sale of oil, the tax is 12.5%, for

Diesel is 15% and for Petrol it is 20%. According to the Petitioner, the bulk of their sale is of Diesel, which would be taxed at 15%. Instead, in the Assessment Order, the Assessing Officer has charged a flat rate of 20% by taking the entire turn over into account. He submitted that because of this mistake, the Petitioner has also filed a Rectification Application before the Respondent Authorities. To be on the safe side, the Assessment Order was also challenged by way of an Appeal before the Appellate Authority. That Appeal was decided against the Petitioner. Accordingly, the Petitioner approached this Court by filing Writ Petition No. 13104 of 2017. This Writ Petition [filed by the Petitioner herein] was clubbed with other similar Petitions and were disposed of by this Court by its Order dated 9th January 2018. By this Order, a Division Bench of this Court qaushed the order passed in Appeal and inter alia, directed that the Rectification Application filed by the Petitioner be heard and liberty was granted to file a fresh Appeal after the same was disposed of, or even revive the existing Appeal. The learned Advocate brought to our attention the relevant portion of this order which read thus :

> *9] The Appellate Authority in a cryptic and short order disposed of the appeal but without adverting to all the contentions. We find that there is a specific contention raised that the oral hearing before the Appellate Authority as well it was urged that the flat rate should not be applied as the major purchases are of diesel. The Appellate Authority says that all taxes assessed by the*

Assessing Authority have to be deposited and the grounds cannot be considered as it is not possible to ascertain whether the difference between the sale and purchase is mostly diesel and not petrol hence calculation of VAT at 20% is correct.

10] We find that in matters of this nature, the Appellate Authority was the last fact finding authority, as it is conceded by Mr. Deshmukh before us that for the region in question there is no tribunal unlike the State of Maharashtra. Therefore, the Appellate Authority was the last fact finding authority and it ought to have ascertained as to whether the assessment is correctly framed, whether the appellant / petitioner before us had ample opportunity of being heard and put across her case with supporting documents, whether the record indicates and justifies imposition of flat rate of 20%. We do not see any application of mind to these vital matters and issues raised both in rectification application as also in the appeal proceedings.

11] We therefore put to Shri Deshmukh that it will not be possible to sustain such orders and there is no alternate but to quash and set aside the same. Since the orders speak for themselves and for what they are Mr. Deshmukh finds it difficult to support at least the conclusions in the appellate order. We therefore called upon Shri Gandhi to decide as to whether the petitioner would press her rectification application first and in the event that is not entertained the remedy of appeal to challenge the initial order can be availed for. We made it clear that we will quash the appellate order and allow the petitioner to press the rectification application and to file a fresh Appeal after the same is disposed of or to revive the existing appeal by quashing and setting aside the appellate order.

12] On taking instructions, Mr. Gandhi states that the petitioner would prefer to press her rectification applications since they are on file of the Assessing Officer and let him first pass order on the same. He would submit that in the event the rectification application is not entertained then an opportunity be given to the petitioner to revive her appeals which are directed against the initial order.

13] On perusal of the petition and all the annexures it is apparent to us that looked at from either angle and in any which way, there is complete non application of mind as to the tax liability. The nature of the business, the transactions whether in petrol, diesel and other oil would have to be noted completely and segregated or if it is not possible to segregate the same on petitioner's record then to reason out and justify the assessment on a flat rate. That having not been done, we quash and set aside the appellate order. Since the rectification applications are on file of the Assessing Officer and the petitioner desires to first press the same, we direct that the Assessing Officer shall consider the rectification application in accordance with law. We at once clarify that we have not said whether this rectification application is maintainable or otherwise. We leave it open to the Assessing Officer to decide whether such rectification application be entertained and if at all can any reliefs in terms thereof be granted. In the event the rectification application is allowed then nothing would survive in the appeal which is filed before the Appellate Authority and depending upon the modifications or changes effected in the assessment order, the petitioner would have to decide whether to further challenge it. In that event a fresh appeal can be filed by the petitioner. In the event the rectification applications are dismissed or disposed of as

> *not maintainable then the petitioner is allowed to press the existing appeals and when those are pressed, we direct that the petitioner, either in person or through her representative, should be granted a personal hearing, allowed to produce and rely upon all the records and make oral submissions. On all these materials, a fresh order will have to be passed by the Appellate Authority assigning reasons. That speaking order shall be passed uninfluenced by any earlier observations, finding and conclusions. We clarify that we have not expressed any opinion on the merits of the controversy.*

5. The learned counsel submitted that despite this order, the Rectification Application filed by the Petitioner has not been heard till date and now the Petitioner has to face not only with the attachment notice, but also the fact that the property of the Petitioner is going to be sold in an auction.

6. We have heard the learned counsel appearing on behalf of the Petitioner as well as the learned Advocate appearing on behalf of the Respondents. Considering the order passed by this Court on 9th January 2018, we enquired from the learned Advocate appearing on behalf of the Respondent, as to why the Rectification Application had not been heard till date. In answer to this query, the learned Advocate brought to our attention the letter dated 6th February 2018, addressed to the Petitioner calling upon her to furnish separate details of Petrol and Diesel in the "C" Forms for the

financial years 2013-14, 2014-15, 2015-16, alongwith the audit report for the aforesaid years. Since, these documents were not furnished, the department has not been able to assess the actual tax as directed by this Court. It is for this reason that the Rectification Application has not been heard.

7. We inquired from the learned Advocate appearing on behalf of the Petitioner whether the Petitioner was in a position to deposit any amount towards the arrears of tax due, which comes to approximately Rs. 9.26 Crores. On taking instructions, the learned Advocate stated that his client is willing to deposit a sum of Rs. 50,00,000/-. We are afraid that such a paltry amount cannot be a condition for granting a stay of the recovery proceedings initiated by the Rectification Authorities.

8. Considering the facts as narrated above, we are of the view that the Respondent Authorities shall hear and decide the Rectification Application filed by the Petitioner in a time bound manner. If any documents are called for from the Petitioner [and which are not in the possession of the Respondent Authorities], and the same are not furnished, the Respondent Authorities are free to reject the Rectification Application or pass whatever Order it deems fit. We have inquired from the parties and they both have stated that the Petitioner would remain present before the Respondent

Authorities on 30th January 2025, for a hearing on the Rectification Application. Once the Rectification Application is heard, the same shall be decided as expeditiously as possible by the concerned authorities.

9. It is needless to clarify that the Respondent Authorities are free to call upon the Petitioner to furnish the requisite documents in order to decide the Rectification Application. If such documents are not furnished, the Authorities are free to take whatever decision they deem fit in the Rectification Application. It is also needless to clarify that if the Rectification Application is decided against the Petitioner, the Petitioner will have her remedies as more particularly set out in the order dated 9th January, 2018.

10. Since, the Petitioner is not in a position to deposit any substantial amount, we are not inclined to grant any stay to the attachment notice or to the sale that is supposed to be conducted in relation to the property attached.

11. The Writ Petition is accordingly disposed of. However, there shall be no order as to costs.

12. 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.]**