IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 339 OF 2025

M/s. Brewcrafts Micro Brewing Pvt Ltd .. Petitioner

Versus

The Assistant Commissioner of
Sales Tax, Pune & Ors .. Respondents

Mr. Rohan Shah, Senior Advocate, *with Mr.Anay Banhatti, Ankita Vashistha, Siddhant Chhabra, Deepshee Kagra, Advocates for the Petitioner.*

Mr. S. D. Vyas, Addl. G. P., *with Mr.Aditya Devlekar, AGP, for the Respondent/State.*

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

P. C.

1. The above Writ Petition challenges the impugned orders, all dated 12th December 2024 and issued on 16th December 2024 (Exhibits-A, B and C) to the extent it directs the Petitioner to deposit a sum of Rs.20 Lakhs [in “Exhibit-A and Exhibit-C”] and Rs.22 Lakhs [in “Exhibit-B”] as a condition for stay to the recovery of tax assessed by the Assessing Officer (Respondent No.1) for the FY 2016-2017 to 2018-2019. The Assessing Officer (Respondent No.1) passed the assessment orders and imposed a total liability of approximately Rs.6.59 Crores towards tax and Rs.6.48 Crores towards

interest for the year 2016-2017; approximately Rs.7.33 Crores towards tax and Rs.7.13 Crores towards interest for financial year 2017-2018; and approximately Rs.6.57 Crores towards tax and Rs.6.15 Crores towards interest for financial year 2018-2019. In all these cases, by the impugned orders, and which are passed in relation to these three assessment years, the Petitioner has been asked to deposit a sum of Rs.20 Lakhs (for the year 2016-2017); Rs.22 Lakhs for the year 2017-2018; and Rs.20 Lakhs (for the year 2018-2019) as a condition precedent to stay the execution and implementation of the assessment orders passed by Respondent No.1

2. Mr. Rohan Shah, the learned senior counsel appearing on behalf of the Petitioner, submitted that in the facts of the present case, three assessment orders were passed by the Assessing Officer for the years 2016-2017; 2017-2018 and 2018-2019. These assessment orders were subjected to an Appeal along with Stay Applications before Respondent No. 2 (the First Appellate Authority). Respondent No. 2 heard the Stay Applications and directed that as a condition for stay of the implementation and execution of the assessment orders impugned, the Petitioner should deposit a sum of Rs.46 Lakhs [for the assessment period 2016-2017]; a sum of Rs. 51 Lakhs [for the period 2017-2018]; and a sum of Rs.46 Lakhs [for the period 2018-2019]. This order of the First Appellate Authority was challenged before the

Maharashtra Sales Tax Tribunal (for Short ***"MSTT"***). The MSTT reduced the amounts to be deposited by the Petitioner as more particularly set out herein above. Mr. Rohan Shah submitted that it is these orders that are impugned in the present Writ Petition because it the case of the Petitioner that no amount ought to have been directed to be deposited as a condition precedent for granting a stay.

3. According to Mr. Rohan Shah, the short point on which the above orders are challenged is that despite the fact that a strong prima facie case is made out, and which was recorded in an earlier order passed by the same Tribunal in relation to this very Petitioner for the year 2011-2012 to 2014-2015, coupled with the fact that admittedly there is financial hardship on the Petitioner, the Petitioner has been asked to deposit the aforesaid amounts. According to the Petitioner, the strong *prima facie* case is that exemption is denied to the Petitioner completely ignoring the language of the Exemption Notification dated 30th April 2011 and seeks to rely upon the provisions of the *Legal Metrology (Packaged Commodities) Rules, 2011*. It is the case of the Petitioner that even under these Rules for the product of the Petitioner, namely, Craft Beers, the aforesaid Legal Metrology Rules itself provide that the State law has to be looked at. This point has been completely missed by the Assessing Officer, and which is why a strong *prima facie* case is

made out by the Petitioner. Coupled with this, is the hardship faced by the Petitioner as pleaded before the Tribunal (pages 542 and 543 of the Writ Petition). Mr. Shah, therefore, submitted that the direction of depositing the amounts as mentioned above as a condition for stay ought to be dispensed with and the First Appellate Authority ought to be directed to hear the First Appeal filed by the Petitioner as expeditiously as possible.

4. On the other hand, Ms. Vyas, the learned AGP appearing on behalf of the Respondents, submitted that there is an Appeal that lies to the High Court from the order passed by the Maharashtra Sales Tax Tribunal (“***MSTT”***) under Section 27 of the Maharashtra Value Added Tax Act, 2002. Since an Appeal lies, the Writ Petition ought not to be entertained. As far as the merits of the matter are concerned, Ms. Vyas submitted that if one looks at the orders passed by MSTT, they are fair and reasonable, especially considering the amount of tax that is assessed against the Petitioner. Hence, the impugned orders do not suffer from any legal perversity which would require interference under Article 226 of the Constitution of India. Consequently, she submitted that the Writ Petition be dismissed.

5. We have heard Mr. Shah, the learned senior counsel appearing on behalf of the Petitioner as well as Ms. Vyas, the learned AGP appearing for

the State. As far as the preliminary objection is concerned, the same need not detain us any further because the same is covered by a decision of the Division Bench of this Court in the case of ***Bhambhani Shipping Ltd v/s State of Maharashtra & Ors (2017 SCC OnLine Bom 9663)***. In this decision, a Division Bench of this Court was in fact considering the provisions of Section 27 of the MVAT Act, 2002 and came to the conclusion that an order granting or refusing to grant a stay on conditions, is not an appealable order under Section 27 of the MVAT Act, 2002. We are bound by this decision. Hence, as far as the objection to the maintainability of the Writ Petition is concerned, the same stands rejected.

6. As far as the decision relied upon by Ms. Vyas in the case of ***Raj Kumar Shivhare v/s Assistant Director, Directorate of Enforcement & Anr [(2010) 4 S.C.R. 608]*** is concerned, we find that the same is clearly distinguishable on facts. First of all, what the Court was considering were the provisions of Foreign Exchange Management Act, 1999. Further, after going through this decision, we find that the fact situation in the case before the Hon'ble Supreme Court was completely different from the one before us. We, therefore, find that the reliance placed on this decision is of no assistance to Ms. Vyas.

7. As far as the arguments on the merits of the Writ Petition are concerned, we find considerable force in the arguments canvassed by Mr. Shah, the learned senior counsel for the Petitioner. Indeed, we find that a strong *prima facie* case is made out and that the Assessing Officer has not taken into consideration certain provisions of the Legal Metrology Rules, and the *Maharashtra Manufacture of Beer and Wine Rules, 1966*.

8. This apart, we find that even the financial hardship is pleaded as more particularly set out at pages 542 and 543 of the paper book. Considering these peculiar circumstances, we are of the opinion that the Petitioner should not be saddled with any pre-deposit as a condition for stay. We, accordingly, direct that the execution and implementation of the Assessment Orders passed by the Assessing Officer for the financial years 2016-2017; 2017-2018 and 2018-2019 shall be stayed pending the hearing and disposal of the challenge to the said orders before the First Appellate Authority.

9. The impugned orders in the present Writ Petition are modified to that extent and the Writ Petition is accordingly disposed of. 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.]**