Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8704 OF 2025

Priyanka Motors …Petitioner
Versus
State of Maharashtra & Ors …Respondents

Mr Sriram Sridharan, *for the Petitioner.*
Ms Shruti Vyas, Addl. GP, *with Aditya R Deolekar, AGP, for the Respondent-State*

CORAM **M.S. Sonak &**
Jitendra Jain, JJ.
DATED: **30th June 2025.**

ORAL JUDGMENT *(Per M. S. Sonak, J.):*

1. Heard learned counsel for the parties.

2. Rule. The rule is made returnable immediately at the request and with the consent of the learned counsel for the parties.

3. The Petition challenges the order dated 29th August 2024 made by the Maharashtra Sales Tax Tribunal, Mumbai (**"Tribunal"**) dismissing the Petitioner's Appeal on the ground of the absence of the Consultant and the order dated 24th

October 2024 declining the restoration of the Petitioner's VAT Second Appeal No. 219 of 2023.

4. Mr Sridharan, learned counsel for the Petitioner, submits that under Section 26(5)(a) of the Maharashtra Value Added Tax Act, 2002 (**"MVAT"**), the Tribunal has no power to dismiss an Appeal for default or non-prosecution but must decide the matter on its merits. He relies on the ***M/s. National Building Construction, Nagpur & Anr vs State of Maharashtra & Ors***[1] and ***Balaji Steel Re-rolling Mills vs Commissioner of Central Excise and Customs.***[2]

5. In paragraphs 6 and 7 of the **National Building Construction (Supra),** a coordinate Bench of this Court after quoting Section 26(5)(a), made the following observations:

> *"6. The provisions of Section 26(5)(a) of the Maharashtra Value Added Tax Act, 2002, read as under -*
> ***"26. Appeals***
> *(5) Subject to such rules of procedure as may be prescribed, every appellate authority (both in the first appeal and the second appeal) shall have the following powers, namely:-*
> *(a) in an appeal against an order of assessment, it may confirm, reduce, enhance or annual the assessment.*
> ***Provided that,*** *where the appeal is filed before the Tribunal, the Tribunal may set aside the assessment and refer the case back to the assessing authority for making a fresh assessment in accordance with the direction given by it and after making such further inquiry as may be necessary; the assessing authority shall thereupon proceed*

[1] 2024 (11) TMI 198, Bombay High Court.

[2] (2014) 16 SCC 360.

> *to make such fresh assessment and determine, where necessary, the amount of tax payable on the basis of such fresh assessment;"*
>
> *7. It is a settled position of law, that between a Statute and a Rule, it is the Statute, which has primacy and therefore, prevails upon the Rule. In that view of the matter, while deciding the appeal, the Authority will have to be governed by the mandate of Section 26(1)(a) of the Maharashtra Value Added Tax Act and decide the appeal in the manner as indicated therein, the Rule being subservient to it. The position in this regard has been considered in* ***Balaji Steel Re-rolling Mills v. Commissioner of Central Excise and Customs, (2014) 16 SCC 360*** *in which considering similar provisions as contained in the Central Excise Act and Rule 20 of the Rules framed thereunder, which provided for dismissal of an appeal on account of the absence of the petitioner, it has been held that the substantive provisions of the Act would prevail and would be the manner in which the appeal has to be decided.*"

6. Given the above legal position, the Tribunal could not have dismissed the Petitioner's Second Appeal on the ground of absence of the Petitioner's Advocate/ Consultant or for non-prosecution. The Tribunal was obliged to decide the Second Appeal in the manner indicated in Section 26(5)(a), i.e., on merits. This having not been done, the impugned orders are liable to be set aside, and we do hereby set aside the same.

7. In **National Building Construction (Supra),** in similar circumstances, the Petition was allowed, subject to the petitioner paying the costs. In this matter as well, we are allowing this Petition subject to the Petitioner paying costs of Rs. 25,000/- to the Bar Council of Maharashtra and Goa within four weeks from the date of uploading of this order and filing a proof of payment to be filed in the Registry. If costs are not paid within the time indicated, this Petition shall be deemed dismissed without further reference to this Court.

8. If costs are paid, the restored Appeal will have to be decided on merits by the Tribunal. We clarify that we have not adverted to the rival contentions on merits because those are for the Tribunal to consider.

9. The Rule is made absolute with costs as indicated above.

10. All concerned are to act on an authenticated copy of this order.

(Jitendra Jain, J) **(M. S. Sonak, J)**