IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 576 OF 2025

M/s. Gemini Enterprises,
A Partnership Firm having its,
Office at 306, D. K. Building,
Ground Floor, Princess Street,
Marine Lines, Mumbai – 400 002,
Through their erstwhile Partners,
Shri. Bhavesh Shah,
Shri. Rajesh Umershi Ganatra. .....Petitioner

Vs.

1. The Finance Secretary,
Small Saving and State Lottery,
Government of Maharashtra,
Having Office at Mantralaya,
Mumbai – 400 032.

2. The Commissioner,
Small Savings and State Lottery (FD),
Government of Maharashtra,
Having office at 8th Floor,
New Administrative Building,
Opposite Mantralaya,
Mumbai 400 032.

3. The Deputy Directors/
Deputy Commissioner,
Lottery Tax,
Maharashtra State Lotteries,
Y-A-1, APMC Complex,
Sector 19 "B" Vashi,
Navi Mumbai – 400 705.

4. The Sate of Maharashtra,
Through the Ministry of
State Finance. .....Respondents

Mr. R.D. Soni with Mr. V. R. Kasle & Mr. Tushar R. Momaiyah, i/b. Ram & Co., for the Petitioner.
Mr. Vishal Khanavkar, AGP, for the Respondent Nos.1 to 4.

CORAM : REVATI MOHITE DERE &
DR. NEELA GOKHALE, JJ.
DATE : 21st MARCH 2025.

P.C.:-

1. The Petitioner seeks quashing of the Assessment Order passed by the Assessing Officer ('AO'), Maharashtra State Lottery, Sewree for the period 15th April 2007 to 30th June 2009. The Petitioner also seeks quashing of order dated 25th November, 2021 passed by the Government Appellate Authority, Minister of State (Finance), Government of Maharashtra in Appeal No. MRL-2016/C.R.225/Lott-2 and also demand/recovery notices dated 16th September 2024 and 9th October 2024 respectively.

2. Vide the Assessment Order based on 'Best Judgment', demand notice was issued against the Petitioner. The Petitioner appealed against the same before the Appellate Authority. Vide the impugned order dated 25th November, 2021, the Assessment Order was confirmed. Consequently, the Authorities concerned were directed

to initiate recovery of the lottery tax arrears amounting to Rs.3.995 Crores from the Petitioner under the provisions of the Maharashtra Tax on Lotteries Act, 2006.

3. The Petitioner was represented by Mr. R. D. Soni, learned counsel and Mr. Vishal Khanavkar, learned AGP represented the Respondents.

4. The thrust of the challenge mounted by the Petitioner to the Assessment Order and the order passed by the Appellate Authority was that his firm was dissolved with effect from 31st December 2007; the communication received by the Maharashtra State Government from the State of Arunachal Pradesh and the State of Mizoram was not considered; the Petitioner has already paid whatever tax was due from it and the impugned orders were passed on a presumption of draws marketed by the Petitioner after the firm was dissolved.

5. The learned AGP pointed out provisions of Section 10 of the Maharashtra Tax on Lotteries Act ('Act') and contended that the Petitioner failed to provide relevant documents, evidence and accounts. The Petitioner had stated that certain documents were

destroyed in a fire incident in his office but failed to corroborate the same with evidence of the fire. In the absence of relevant documents, tax payable was assessed on a 'Best Judgment' basis and on consideration of the documents and information received from the State of Arunachal Pradesh and the State of Mizoram. He also submitted that the Petitioner had not even paid the amount of arrears admitted by him. He thus, prayed that the Petition be dismissed.

6. During the course of hearing, Mr. Soni, on instructions, stated that the admitted amount of tax due and payable was for a lot of 51 draws amounting to approximately Rs.25 Lakhs and he was ready and willing to deposit the same with the authorities. Considering that the issue in the controversy is very limited, we deem it appropriate to remit the matter to the Appellate Authority for consideration afresh on the following terms:

(i) The Petitioner shall deposit an amount of Rs.25 Lakhs with the concerned Authority within a period of two weeks from the date of uploading this order.

(ii) The issue pertaining to the calculation and payment of interest and penalty shall be considered and determined by the Appellate Authority, while deciding the issue afresh on merits.

(iii) The Petitioner is permitted to file additional documents and provide additional information pertaining to the proof of fire, further communications, if any, from the two States and any other information on which he seeks to place reliance.

(iv) The Respondents are at liberty to call for additional documents and/or information from the Petitioner as well as the two States of Arunachal Pradesh and Mizoram.

(v) The Appellate Authority shall give a personal hearing to the Petitioner and decide the matter afresh, expeditiously and preferably within a period of eight weeks from the date of uploading this order, uninfluenced by the order of the Assessing Officer and its own order, which is impugned herein.

7. The matter is thus remitted to the Appellate Authority, Ministry of State (Finance), Government of Maharashtra to consider and decide the matter afresh on the aforesaid terms.

8. The Petition is disposed off accordingly.

9. All parties to act on an authenticated copy of this order.

(DR. NEELA GOKHALE, J.) **(REVATI MOHITE DERE, J.)**

SHAMBHAVI NILESH SHIVGAN

Digitally signed by SHAMBHAVI NILESH SHIVGAN
Date: 2025.03.28 18:37:01 +0530