IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

MAHARASHTRA VALUE ADDED TAX APPEAL NO.10 OF 2024
IN
VALUE ADDED TAX SECOND APPEAL NO.20 OF 2020

The Additional Commissioner of
State Tax Vat-I, M.S. Mumbai .. Appellant

Versus

M/s.Delta Electro Machanical
Works Pvt Ltd .. Respondent

UTKARSH KAKASAHEB BHALERAO
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Date: 2025.03.29 10:25:18 +0530

Ms. Jaymala Ostwal, Addl. G.P. for the Appellant.

Mr. C.B. Thakar, Advocate for the Respondent.

CORAM :B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.
DATE : MARCH 26, 2025

P. C.

1. The above Appeal is filed by the Revenue seeking to challenge the impugned order dated 7th August 2023 passed by the Maharashtra Sales Tax Tribunal, Mumbai (MSTT). By the impugned order, the MSTT held that the works contract executed by the Respondent for supply, installation, testing and commissioning of

HVAC etc, is ancillary to the Building contract. Consequently, the Tribunal held that the Building being a construction contract, the same is covered by Part "B" of the Notification dated 30th February 2006 and levy of composition rate of tax on the contract would be as per Section 42 (3) (a) and the rate applicable would be 5%. According to the Revenue, the impugned order gives rise to five questions of law as more particularly stated in paragraph 8 of the memo of Appeal.

2. Before we decide if any substantial question of law arises from the impugned order, it would be appropriate to set out some brief facts.

3. The Respondent herein is engaged in the business of undertaking works contract for supply, testing, installation and commissioning of HVAC and Electrical Projects. The Respondent had entered into a contract with M/s. Sahara Hospitality Ltd for supply, installation, testing and commissioning of HVAC and electrical works. During the construction of the hotel project, the Respondent was to carry out works contract of central installation work of air conditioning (supply, installation, testing and commissioning of HVAC and electrical

project). This work was carried out when the construction of the hotel was going on and before the completion of the hotel construction work.

4. The Respondent had filed returns and paid taxes under the composition scheme for works contract under Section 42 (3) (a) of the MVAT Act, 2002 as prescribed in the scheme @ 5%. It was the case of the Respondent that the works carried out by them under the contract entered into with M/s. Sahara Hospitality Ltd was covered by the Notification of the Government of Maharashtra dated 30th November 2006 issued under Explanation (i) to Section 42 (3), and therefore the 5% tax rate was applicable.

5. The Assessing Authority did not agree with the submission of the Respondent and held that the works contract executed by the Respondent did not fall under the ambit of the said Notification dated 30th November 2006. In other words, the Assessing Authority did not accept the case of the Respondent that the contract entered into with M/s. Sahara Hospitality Ltd was a "Construction Contract". The Assessing Authority, accordingly, passed an order dated 30th September 2015 determining the tax liability @ 8% and also levied interest and

penalty and issued a demand notice to pay a sum of Rs.95,65,059/- towards tax, interest and penalty.

6. Being aggrieved by the Assessment Order dated 30th September 2015 the Respondent preferred an Appeal before the First Appellate Authority. The First Appellate Authority also by its order dated 19th September 2019 dismissed the Appeal filed by the Respondent. In the order of the First Appellate Authority it was observed that the Respondent had failed to remain present for final hearing in spite of issuance of notices and also failed to produce any documentary evidence to justify their contention. It was on this basis that the First Appellate Authority dismissed the Appeal. The Respondent thereafter filed a restoration application before the First Appellate Authority. However the same was also dismissed on 6th December 2019.

7. It is in these circumstances, that the Respondent preferred a Second Appeal before the MSTT being VAT Second Appeal No.20 of 2020 on various grounds, and contending that the decision of the First Appellate Authority levying tax on turnover of Rs.17,00,77,033/- @ 8% for execution of the contract under Section 42 (3) (b) of the MVAT Act,

2002 was erroneous. In support of this contention the Respondent relied upon a decision of this Court in the case of *M/s. Painterior India V/s State of Maharashtra* (Reported in 84 Tax Man 159 Bombay). It was the further case of the Respondent that the stand taken by the department to include the amount of service tax charged by the Respondent in the "Sale Price" or included in the "Total Contract Value" of the works contract was contrary to Section 2 (25) of the MVAT Act which defines the word "Sale Price". It was the further case of the Respondent that this issue was already decided by the Tribunal in its judgment in *M/s. Sujata Painters V/S State of Maharashtra* while deciding the Second Appeal No.63 of 2014 (and which was decided on 9th March 2015). It was also contended that the interest and penalty charged was also on a completely erroneous basis.

8. The MSTT, after hearing the Respondent - Assessee as well as the the Appellant before us (the Revenue), allowed the Respondent's Appeal partly. Vide the impugned order, the MSTT held that the works contract executed by the Respondent for supply, installation, testing and commissioning of HVAC and electrical work was ancillary to the Building contract. Building being a construction contract, the works contract entered into by the Respondent with M/s. Sahara Hospitality

Ltd was covered by Part "B" of the Notification dated 30th November 2006 and levy of composition rate of tax on such contract would be as per Section 42 (3) (a), and the rate applicable would @ 5%. The Tribunal also deducted the levy of service tax quantum of Rs.72,25,567/- and penalty under Section 29 (3) of the MVAT Act. It is being aggrieved by this order of the MSTT that the Revenue is in Appeal before us.

9. We have carefully gone through the order passed by the MSTT. The main issue raised before the MSTT was whether the contract entered into by the Respondent herein with M/s. Sahara Hospitality Ltd was a works contract which fell within the Notification dated 30th November 2006. The MSTT, after carefully going through and analyzing the context of the documents available before it, came to the conclusion that the works contract executed by the Respondent, was basically air conditioning work in a centralized Air Conditioned building mostly inside the building. All the wiring, cabling had to be concealed. It had to be done along with civil work, if a new building was being constructed, or if the work was being given along with other repairs and maintenance of the building. Finally, the said work had to be completed before finishing, plastering and civil work of the building. In a nutshell, the MSTT came to the conclusion that the work was basically going hand in

hand with the civil work and the completion of the civil work was dependent on the completion of the air conditioning work. It is on this basis that the Tribunal came to the conclusion that the works carried out by the Respondent (the Appellant before the MSTT) had a direct nexus with the ongoing construction work of M/s. Sahara Hospitality Ltd, and therefore, the contract entered into by the Respondent with M/s. Sahara Hospitality Ltd was squarely covered under the Notification dated 30th November 2006.

10. We find that if one was to accept the facts as are mentioned in the impugned order as correct, and which are not really disputed before us, then the present Appeal does not give rise to any substantial question of law. We say this because if the facts as narrated by the Tribunal are accepted, then the contract entered into by the Respondent with the M/s. Sahara Hospitality Ltd would squarely be covered by the Notification dated 30th November 2006. For the sake of convenience the said Notification is reproduced hereunder:-

"Notification dated the 30th November 2006

NOTIFICATION

THE MAHARASHTRA VALUE ADDED TAX ACT, 2002.

No VAT.1506/CR-134/Taxation-1-In exercise of the powers conferred by clause (i) of the Explanation to sub-section (3) of section 42 of the Maharashtra Value Added Tax Act, 2002 [Mah. IX of 2005], the Government of Maharashtra hereby notifies the following works contracts to be the 'Construction Contracts' for the purposes of the said sub-section, namely:-

(A) Contracts for construction of,-

(1) Buildings
(2) Roads,
(3) Runways,
(4) Bridges, Railway overbridges,
(5) Dams,
(6) Tunnels,
(7) Canals,
(8) Barrages,
(9) Diversions,
(10) Rail tracks,
(11) Causeways, Subways, Spillways,
(12) Water Supply Schemes,
(13) Sewerage Works,
(14) Drainage,
(15) Swimming pools,
(16) Water Purification plants and
(17) Jettys

(B) Any works contracts incidental or ancillary to the contracts mentioned in paragraph (A) above, if such work contracts are awarded and executed before the completion of the said Contracts."

(emphasis supplied)

11. As can be seen from this Notification the works contracts mentioned in the Notification were to be treated as construction contracts for the purposes of Section 42 (3) of the MVAT Act. Item (1) in this Notification is Buildings. However what is important for our purposes is Clause (B) of the said Notification which stipulates that any works contract incidental or ancillary to the contracts mentioned in

paragraph (A) above, if such work contracts are awarded and executed before the completion of the said contracts, would also be covered. In other words, if the works contract was incidental or ancillary to the Building contract, then the same would be covered by this Notification.

12. As mentioned earlier, the Tribunal, being the last fact finding authority, has come to the conclusion that the work carried out by the Respondent was going on hand in hand with the civil work of M/s. Sahara Hospitality Ltd and completion of civil work was dependent on the completion of the air conditioning work. Once this is the case, we find that the order of the MSTT in so far as it relates to applying the Notification dated 30th November 2006 to the works contract executed by the Respondent with M/s. Sahara Hospitality Ltd does not give rise to any substantial question of law.

13. Even as far as the issue of including the service tax in the total contract turnover value is concerned, we find that the Tribunal has correctly dealt with this issue in paragraph 9 of the impugned order. The Tribunal took note of the fact that this issue has been squarely dealt with in a judgment of the Tribunal in the case of M/s. Sujata Painters decided on 9th March 2015, and which decision has not been challenged

before this Court by the Revenue. The Tribunal, in our view, therefore correctly ruled in favour of the Respondent on this issue. What is important to note is that the Tribunal has clearly noted that the Revenue has not made any contention against the argument of the Respondent in that regard and not pressed the issue any further.

14. Even as far as the penalty is concerned and which was deleted by the impugned order, is correctly done so because if the principal challenge succeeds there is no question of any penalty being levied on the Respondent.

15. For all these reasons, we do not find that the above Appeal raises any substantial question of law. It is accordingly dismissed. However, there shall be no order as to costs.

16. 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.]**