**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**NAGPUR BENCH, NAGPUR.**

**SALES TAX APPEAL NO. 02 OF 2025**

M/s. Arora and Company, Nagpur
**Vs.**
Assistant Commissioner of State Tax & Ors.

| Office Notes, Office Memoramda of Coram, appearances, Court's orders of directions and Registrar's Orders. | Court's or Judge's orders. |
|---|---|

Mr. Kapil A. Hirani, Advocate for the Appellant.
Mr. K.R. Lule, AGP for Respondent No.2/State.

**CORAM : ANIL L. PANSARE AND RAJ D. WAKODE, JJ.**
**DATE : 14th NOVEMBER, 2025.**

Heard both the sides.

2. The appellant is a proprietary concern and an assessee under the provisions of the Maharashtra Value Added Tax Act, 2002 (for short, ‘the Act of 2002’). The subject matter of assessment is for the period 2013–14. Respondent No.1 passed an assessment order on 1st July, 2020 under Section 23(5) of the Act of 2002.

3. The appellant challenged the said assessment order before the First Appellate Authority under Section 26(1) of the Act of 2002. The appeal came to be partly allowed on account of mismatch in ITC. Thus, post the order of the First Appellate Authority, the demand on the appellant remained is on account of mismatch in ITC, pertaining to VAT.

4. The appellant approached the Second Appellate Authority under Section 26 of the Act of 2002 and raised a

ground of rectification of mistake in filing the returns. The Second Appellate Authority refused to entertain the said ground in the following terms:

> *"We heard rival submissions. It is seen that nowhere in assessment proceeding or in appeal proceeding, the appellant has taken the ground of rectification of mistake in filing the returns. It is the first time that the appellant had taken up the issue of wrong filing of tax-collection amount in the returns. It is interesting to note that the appellant had also filed the Annual Returns, without raising the issue of any error or its rectification. Since the subject matter in this appeal was not before First Appellate Authority, there is no finding on it. New issue at this stage of appeal, can't be allowed. Appeal being not against the order it is not maintainable, liable to be rejected."*

5. Thus, the Second Appellate Authority took a view that since the aforesaid ground was not raised before the First Appellate Authority, there is no finding and therefore the new issue cannot be allowed in second appeal.

6. The counsel for the appellant submits that this finding is not in consonance with the procedure applicable to decide second appeal. He has invited our attention to sub-section (5) of Section 26 of the Act of 2002, which provides for powers of the First Appellate Authority and the Second Appellate Authority i.e. the Tribunal. The Appellate Authority is empowered to confirm, reduce, enhance, or annul the assessment. The Explanation to sub-section (5) of Section 26 of the Act of 2002 provides that, while doing so, the Appellate

Authority may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before it by the appellant or that no order was made in the said proceedings regarding such matter.

7. The counsel for the appellant submits, and rightly so, that the Second Appellate Authority is empowered to consider and decide the matter which was not raised before the First Appellate Authority. The Second Appellate Authority, however, refused to do so, ignoring the provisions of law.

8. Learned AGP initially made an attempt to justify the order; however, when confronted with the Explanation to sub-section (5) of Section 26 of the Act of 2002, he fairly submits that the Second Appellate Authority could have entertained the new ground.

9. Having not done so, the impugned order will have to be set aside, and the matter remanded back. Since there is no dispute as regards the scope of the Second Appellate Authority to entertain a new ground, we do not find that any substantial question of law is involved. The order impugned is apparently bad in law. Hence, following order is passed:

**<u>O R D E R</u>**

(i) The appeal is partly allowed.

(ii) The order dated 11th June, 2024 passed by the Maharashtra Sales Tax Tribunal, Nagpur Bench in VAT Second Appeal No.05/2024, is quashed and set aside. The Second

Appeal is remanded back to the Tribunal to consider afresh in accordance with law and what has been noted in the body of the order. The parties shall appear before the Tribunal on 1st December, 2025.

(iii) The petition is disposed of in above terms. No order as to costs.

(RAJ. D. WAKODE, J.) (ANIL L. PANSARE, J.)

Vijaykumar

Signed by: Mr. Vijay Kumar
Designation: PA To Honourable Judge
Date: 15/11/2025 18:37:42