

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4089 OF 2015

Hindustan Platinum Private Limited } Petitioner
versus
The State of Maharashtra and Ors. } Respondents

WITH
WRIT PETITION NO. 901 OF 2015

M/s. Indoswe Engineers Pvt. Ltd. } Petitioners
and Anr. } Respondents
versus
The Deputy Commissioner of Sales Tax } Respondents
and Ors. }

Mr. V. Sridharan-Senior Advocate with Mr.Prakash Shah, Mr.Rahul Thakar, Mr.Puneeth Ganapathy and Mr. Jas Sanghavi i/b. M/s. PDS Legal for the Petitioner in WP/4089/2015.

Mr. V. A. Sonpal-Special Counsel with Mr. P. G. Sawant-AGP for Respondent Nos. 1 to 4 in WP/4089/2015.

Mr. V. Sridharan-Senior Advocate with Mr. C.B. Thakar, Mr. Rahul Thakar, Mr. Puneet Ganapathy i/b. Mr. Mukund M. Vaidya for the Petitioners in WP/901/2015.

Mr. V. A. Sonpal-Special Counsel with Mr. P. G. Sawant-AGP for Respondent Nos. 1 to 3 in WP/901/2015.

Mr. Pradeep S. Jetly with Mr. M. S. Bharadwaj for Respondent No. 5.

**CORAM :- S. C. DHARMADHIKARI &
G. S. KULKARNI, JJ.**

DATED :- JUNE 30, 2015

P.C. :-

In these Writ Petitions, the Petitioners are manufacturers registered under the Central Excise Act, 1944. These are also registered dealers under the Central Sales Tax Act, 1956 and the Maharashtra Value Added Tax Act, 2002.

2) The claim of the Petitioners is that they undertake job work of reprocessing spent/used catalysts into recharged catalysts. For this job work activity, the Petitioners receives the spent catalyst from various customers and thereafter undertake the works and activities, more particularly set out in para 5.2 of the Writ Petition (WP/4089/2015). The Petitions concern the transactions, wherein such job work and as described in the above paragraph is undertaken. The Petitions also relate to the taxability of the returned goods in the form of catalysts to its owners, namely the customers of the Petitioners. The Petitioners have set out the process and activities in details, but we are not required to refer to it for the simple reason that we propose to pass a workable order and which would enable the Petitioners and equally the Respondents to reexamine the issues and which are raised in the Writ Petitions, both, on facts and law.

3) The argument of the Petitioners' Senior Counsel is that the activities have been undertaken and for several years. The Petitioners have been filing regularly the returns with the Sales Tax Authorities under the erstwhile Bombay Sales Tax Act, 1959 and presently the Central Sales Tax Act, 1956, showing these activities and for the period up to 2004-05. After the Maharashtra Value Added Tax Act, 2002 came into force, the returns have been filed under that Act and the Central Sales Tax Act, 1956. These returns were assessed and on prior occasions without raising any objections for these job works/activities. Reliance is placed upon the same to urge that the position continued up to the year 2009-10. In the financial year 2010-11, the orders impugned in these Writ Petitions have been made and in which, the Assessing Officer has proceeded to levy tax on the transaction of return of processed goods under the Central Sales Tax Act, 1956 in his order dated 4th February, 2015 (in WP/4089/2015) and dated 6th March, 2014 (in WP/901/2015). The Assessing Officer treats these activities as inter State sale of goods and on the footing that the Petitioners have failed to obtain the requisite 'F' Form, which is claimed to be mandatory as per section 6A of Trade Circular No. 2T of 2010. Since the Petitioners were unable to produce this Form, the transactions have been treated as inter State sale transactions and Central Sales Tax has been levied on the same. Annexure 'T' to Writ Petition No. 4089 of 2015 is the copy of this

order and we have been shown as to how the order based on the Circular is illegal and unconstitutional. It is urged that the authorities have failed to consider the nature of the transactions and the requisite powers enabling them to levy the tax in their proper perspective.

4) On the earlier occasion and after hearing both sides, we found that though the contentions which are canvassed before us are stated to have been raised, but the Assessing Officer does not seem to have dealt with them. The argument that evidence in the Form 'F' was only directory and not mandatory has been also canvassed on the basis of the letter written by the Government of India dated 28th September, 1967. Our attention is also invited to section 6A and the decisions interpreting the same. The Writ Petitions contain extensive reference to the amendments brought to the statute and from time to time and their interpretation by Courts of law. We found that when the matter was at the stage of assessment, the Petitioner has the remedy of filing of an Appeal, then we would not ordinarily interfere in our Writ Jurisdiction at such a stage. We had also indicated to the Revenue on the earlier occasion that if the questions which have been raised by the Petitioner go to the root of the case, could they be now urged and before the Assessing Officer.

5) Mr. Sonpal-learned Special Counsel appearing for the Revenue, after taking instructions, conveyed his inability to withdraw the assessment orders, which are impugned in the present Writ Petitions, because as per his submission, that would raise several complications including a vital issue of time bar. Thereupon, reassessment would not be permissible. He submits that once the order is passed by the Assessing Officer, it is no longer open to him to review or recall it. However, he submits that the Assessing Officer is not averse to giving a fresh hearing to the Petitioners in the event this court holds that the earlier assessment orders suffer for breach of principles of natural justice and failure to consider the afore referred questions and contentions based thereon.

6) After hearing both sides and finding that even the Petitioners are agreeable to go back to the Assessing Officer, but by keeping open all questions and contentions raised in the Writ Petition, then, we are of the view that interest of justice would be subserved if the following order is passed:-

“(i) The impugned orders dated 4th February, 2015 (in WP/4089/2015) and dated 6th March, 2014 (in WP/901/2015) are quashed and set aside.

(ii) The Petitioners shall be heard by the Assessing Officer, who is competent and has jurisdiction over the Petitioners and he shall pass a fresh assessment orders on merits and in accordance with law. However, before passing the same, he shall allow the Petitioners to appear before him and raise all contentions including that the Assessment shall not be made only in terms of Circular being Trade Circular No. 2T of 2010 dated 11th January, 2010 (Annexure 'A'), but shall abide by Circular Nos.16T of 2007 dated 20th February, 2007 and 5T of 2009 dated 29th January, 2009.

(iii) The Petitioners shall also be permitted to contend that the Judgment and order of Alahabad High Court does not bind them and equally the Revenue and the Assessment must be made independent thereof. Further, the view taken by the Alahabad High Court has not been confirmed by the Hon'ble Supreme Court of India is also a contention which can be raised.”

7) We are of the opinion that this Course would serve the ends of justice. It shall not be treated as a precedent in any future case. We are passing this order in facts peculiar to this case, because we find that the orders passed by the Assessing Officers fail to take note of any objections nor does it make a proper and complete reference to the

Circulars in the field. It is in these circumstances and parties like the Petitioner should not be deprived of a fair and reasonable opportunity of placing their version that the present order has been passed.

8) We dispose of this Writ Petition by quashing the impugned assessment orders and permitting the Assessing Officers to pass fresh speaking orders on merits and in accordance with law without being influenced by the earlier orders or any observations therein. Before passing such an order and before communicating it, the Assessing Officer must give an opportunity of being heard to the Petitioners/their representatives and place their complete version before him. Needless to clarify that the issue of section 6A being ultra vires the constitutional mandate enshrined in Articles 14, 19(1)(g) and 265 etc. is kept open and for being raised in an appropriate case.

(G.S.KULKARNI, J.)

(S.C.DHARMADHIKARI, J.)