



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

WRIT PETITION NO.972 OF 2020

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by PRACHI  
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Date: 2024.06.14  
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PRACHI  
NANDIWADEKAR

Karvy Innotech Limited )  
(Earlier known of HCL Services Limited) )  
a company incorporated )  
under the Companies Act, 1956 )  
and having its registered office )  
at Flat No. 502 & 503, )  
5<sup>th</sup> Floor, Arunachal Building 19, )  
Barakhamba Road, )  
New Delhi-110001 ) ....Petitioner

V/s.

1. State of Maharashtra )  
Through Government Pleader High Court, )  
Bombay. )
2. Commissioner of State Tax )  
1st Floor, GST Bhavan, )  
State Tax Office Mazgaon, )  
Mumbai – 400 010. )
3. Deputy Commissioner of State Tax )  
F Wing, 3<sup>rd</sup> Floor, New Building, )  
GST Bhawan State Tax Office )  
Mazagaon, Mumbai – 400 010. ) ....Respondents

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Mr. Gopal Mundhra a/w Mr. Parth Parikh and Mr. Darshan Madekar i/by  
Economic Laws Practice for petitioner.

Ms. Jyoti Chavan, Addl. G.P. for respondent-State.

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CORAM : K.R. SHRIRAM &  
JITENDRA JAIN, JJ.  
DATED : 11<sup>th</sup> JUNE 2024

**ORAL JUDGMENT (PER K. R. SHRIRAM, J.) :**

1            Since pleadings are completed, we decided to dispose this petition at the admission stage itself.

                 Rule.

                 Rule made returnable forthwith.

2            Petitioner is a dealer engaged in the business of trading of IT and electronic equipment and provision of services. Petitioner is registered under the Maharashtra Value Added Tax Act, 2002 ('MVAT Act').

3            Petitioner is impugning an order and notice of demand which were digitally signed by respondent no.3, i.e., Deputy Commissioner of State Tax, on 23<sup>rd</sup> June 2020 and issued on 24<sup>th</sup> June 2020 for financial year 2015-16.

4            It is petitioner's case, *inter alia*, that the impugned order is barred by limitation. It is also petitioner's case that respondent no.3 has not followed the principles of natural justice by not giving a personal hearing despite petitioner seeking a personal hearing.

5            It is petitioner's case that sub-section (2) of Section 23 of the MVAT Act provides that no order of assessment under the said sub-section shall be made after the expiry of four years from the end of the year

containing the period to which the return relates.

6           Mr. Mundhra submitted that the return related to 1<sup>st</sup> April 2015 to 31<sup>st</sup> March 2016 and, therefore, four years period would expire on 31<sup>st</sup> March 2020. Mr. Mundhra submitted that any order passed after 31<sup>st</sup> March 2020 shall be barred by limitation. In this case, according to petitioner, the order was made only on 23<sup>rd</sup> June 2020 and hence, is barred by limitation.

7           It was also submitted that even intimation dated 16<sup>th</sup> October 2018 reflected non application of mind by respondent no.3 because petitioner was called upon to show cause as to why it should not be assessed under sub-section (3) of Section 23 of the MVAT Act whereas sub-section (3) applies only to cases where a registered dealer has not filed the return in respect of any period by the prescribed date whereas in the notice itself, it is stated that petitioner has filed its return but the Officer wanted to ensure that the return furnished by petitioner is correct.

8           Mr. Mundhra also submitted that in the letter dated 27<sup>th</sup> February 2020, which summarises the documents petitioner had submitted in response to the intimation dated 16<sup>th</sup> October 2018, petitioner had sought an opportunity of personal hearing which was not granted and the impugned assessment order has been passed.

9           Petitioner also raised another ground that the assessment order could not have been passed without giving another intimation as required under sub-section (5A) of Section 23 of the MVAT Act which intimation should have been given not later than six months before the date of expiry of period of limitation for assessment and, therefore, the assessment order is bad in law.

10           Ms. Chavan strongly opposed the petition and submitted, at the outset, that sub-section (5A) of Section 23 of the MVAT Act is not applicable to the facts and circumstances of the case since the said sub-section is applicable only where the Assessing Authority decides that the assessment proceedings is fit for closure on filing of revised return. Ms.Chavan submitted that if the Assessing Officer comes to such a decision then, he shall intimate to the dealer his observation about tax liability and interest payable. If dealer agrees with all the observations and files revised return within 30 days from the date of receipt of intimation by him and also pays tax and interest applicable till date within the period of 30 days, in such situation, sub-section (5A) would be applicable.

11           On the point of limitation raised by petitioner that the assessment order has not been made within four years from the end of the year containing the period to which return relates, Ms.Chavan submitted,

relying upon an affidavit of one Sambhaji Kisan Yadav affirmed on 14<sup>th</sup> November 2022, that the impugned order was passed on 19<sup>th</sup> March 2020 and only for the purpose of service of said order in electronic form, the digital sign was placed on copy of the order on 23<sup>rd</sup> June 2020 for service purpose. Hence, the order has been passed within limitation.

12 On the issue of non grant of personal hearing, Ms.Chavan presumed because it was not so stated in the affidavit in reply, that in view of Covid period no personal hearing was given. But that makes us wonder why the Officer could not have given a virtual hearing.

13 Section 23 of the MVAT Act reads as under :

“23. Assessment

(1) .....

(2) *Where the return in respect of any period is filed by a registered dealer by the prescribed date and if the Commissioner considers it necessary or expedient to ensure that return is correct and complete, and he thinks it necessary to require the presence of the dealer or the production of further documents, he shall serve on such dealer, a notice requiring him on a date and at a place specified therein, either to attend and produce or cause to be produced all documents on which such dealer relies in support of his return, or to produce such documents or evidence as is specified in the notice.*

*On the date specified in the notice, or as soon as may be thereafter, the Commissioner shall, after considering all the documents or evidence which may be produced, assess the amount of tax due from the dealer:*

*Provided that, if a registered dealer fails to comply with the terms of any notice issued under this sub-section, the Commissioner shall assess, to the best of his judgment the amount of tax due from him:*

*Provided further that, no order of assessment under this sub-section shall be made after the expiry of four years from the end of the year containing the period to which the return relates.*

*(3) .....*

*(4) .....*

*(5) .....*

*(5A) After initiation of proceedings under sub-section (2), (3), (4) or, as the case may be, under sub-section (5), the Commissioner may, after considering all the documents or evidence produced by the dealer or, as the case may be, available with the Department, send his observations about the tax liability, by an intimation in the prescribed form, to the dealer before passing an assessment order under the respective sub-section. Such intimation shall be communicated in the prescribed manner to the dealer not later than six months before the date of expiry of the period of limitation for assessment under the respective sub-section under which the assessment order could be passed. If the dealer agrees with all the observations in the intimation and files the return or, as the case may be, a revised return under clause (c) of sub-section (4) of section 20 and also makes the full payment of tax as per such returns and also applicable interest, then a confirmation order shall be passed in the prescribed manner under this sub-section and the assessment proceedings shall be deemed to have been closed.*

*.....”*

14           Sub-section (2) of Section 23 very clearly provides that where the return in respect of any period is filed by a registered dealer by the prescribed date and if the Commissioner considers it necessary or expedient to ensure that return is correct and complete and he thinks it necessary to require the presence of the dealer or the production of further documents, he shall serve on such dealer, a notice requiring him on a date and at a place specified therein, either to attend and produce or cause to be

produced all documents on which such dealer relies in support of his return or to produce such documents or evidence as is specified in the notice.

It is not in dispute that petitioner was a registered dealer and petitioner had filed a return in respect of financial year 2015-16 by the prescribed date.

Sub-section (2) further states that on the date specified in the notice, or as soon as may be thereafter, the Commissioner shall, after considering all the documents or evidence which may be produced, assess the amount of tax due from the dealer. Second proviso, however, states that no order of assessment under this sub-section shall be made after the expiry of four years from the end of the year containing the period to which the return relates.

15           Short issue here is whether the impugned assessment order under sub-section (2) was made within a period of four years from the end of the year containing the period to which return relates. As correctly submitted by Mr. Mundhra the last day of limitation would be 31<sup>st</sup> March 2020.

16           Undisputedly, the digital signature on the impugned order served on petitioner has been put on 23<sup>rd</sup> June 2020 at 18:33:54. In the

order filed with the reply, the date typed is 19<sup>th</sup> March 2020. The digital signature has been put by Sambhaji Kisan Yadav, same Officer who filed the affidavit in reply dated 14<sup>th</sup> November 2020. The Officer states in the reply that although the digital signature was put on copy of the order to be served on petitioner on 23<sup>rd</sup> June 2020, same cannot be construed as date of passing order which in fact was passed on 19<sup>th</sup> March 2020. According to said Sambhaji Kisan Yadav, it was only for the purpose of service of the said order in electronic form, that is to say service through SAP system, the digital signature was placed on the copy of the order on 23<sup>rd</sup> June 2020 for service purpose.

17 We cannot accept this explanation of Sambhaji Kisan Yadav. This is because, pursuant to the order dated 15<sup>th</sup> November 2022, petitioner was given liberty to take inspection of PDF maintained by respondents in its SAP system. Petitioner took inspection and thereafter filed the affidavit in rejoinder through one Bhushan M. Bandekhar affirmed on 2<sup>nd</sup> January 2023. Paragraphs 18 to 23 of the said affidavit read as under :

*“18. In light of two different orders viz the Impugned Order which was served on the Petitioner and the Purported Order dated 19.03.2020, this Hon'ble Court vide Order dated 15.11.2022 directed the Petitioner to inspect the files including the PDF maintained in the ERP System (hereinafter referred to as the 'SAP System') of Respondent No. 3.*

*19. The Petitioner conducted the inspection of SAP System of the*



*Respondent No. 3 on 22.11.2020. A PDF copy of the assessment order as available in SAP System was provided to the Petitioner on a pen drive. The pen drive is annexed to this Rejoinder and marked as Exhibit A. The printout of the assessment order as available in SAP System is annexed and marked as Exhibit B to this Rejoinder.*

*20. The Petitioner submits that order available in the SAP System of the Respondent No. 3 was digitally signed on 23.06.2020 and is bearing the same number as that of the Impugned Order which was served upon the Petitioner. The Petitioner submits that on physical verification of SAP System it was observed that the Purported Order dated 19.03.2020 was not available in the SAP System of the Respondent No. 3. Therefore, it is established that even as per the SAP records of Respondent No. 3, Impugned Order dated 23.06.2020 is the only order issued by the Respondent No. 3.*

*21. Further, the Petitioner submits that on verification of properties of the soft copy of the order provided by the Respondent No.3, it is revealed that the said order was created on 23.06.2020 at 14:15:15 hrs, and modified on 23.06.2020 at 18:33:54 hrs. This is in stark contrast to the submission of the Respondent No. 3 in the Affidavit in reply wherein it has been stated that the order was created on 19.03.2020, Screenshots of the file properties is annexed and marked as Exhibit C.*

*22. It is therefore submitted that the Purported Order dated 19.03.2020 is not a valid order of assessment as it is not available in the permanent electronic records maintained in the SAP System of the Respondent No. 3. Therefore, the contention of the Respondent No. 3 that the assessment order was issued on 19.03.2020 has no leg to stand.*

*23. It is further submitted that since the Impugned Order has been digitally signed on 23.06.2020 which is the beyond the period of four years as prescribed in the Section 23(2) of the MVAT Act, the said order is time barred and therefore without jurisdiction. The Petitioner further reiterates the submission made in paragraph 7 to paragraph 9 of this Rejoinder.”*

that the order available in SAP system also indicates that the order was signed digitally by respondent no.3 only on 23<sup>rd</sup> June 2020 and SAP system does not show any order dated 19<sup>th</sup> March 2020. There is no response filed to the said rejoinder by the said Sambhaji Kisan Yadav. The said Sambhaji Kisan Yadav has, in his affidavit in reply at paragraph 7, stated that he had put the digital signature on 19<sup>th</sup> March 2020, for the purpose of physical record, he downloaded the copy of the order and digitally signed it and kept it on record which order is an integral part of the office record. A copy of the said order has been annexed to the affidavit in reply. It does say 19<sup>th</sup> March 2020. At the same time, the reference number says it pertains to 2019-2020. Further in the affidavit in reply, the Officer states that for the limited purpose of service of the assessment order electronically it was digitally signed on 23<sup>rd</sup> June 2020. The same was served through SAP to the registered email ID of the dealer. He has not explained why he could not have served the same order which was allegedly digitally signed by him on 19<sup>th</sup> March 2020 and why a fresh digital signature had to be put on 23<sup>rd</sup> June 2020. It is also pertinent to note that the order which he had served by email on 24<sup>th</sup> June 2020 in the reference states 2020-21. Therefore, it is obvious that both are different documents. In view thereof, the only conclusion that can be arrived at is the order which has been made is dated 23<sup>rd</sup> June 2020. In the affidavit in rejoinder,

it is categorically stated that even the MVAT portal shows only this order of 23<sup>rd</sup> June 2020 and there is no order of 19<sup>th</sup> March 2020.

19 In these circumstances, we hold that the impugned assessment order having been passed after expiry of four years from the end of the year containing period to which return relates, is not a valid order and same is quashed and set aside. In view of these categorical findings of ours, we are not devoting time to deal with the submissions of the parties with regard to sub-section (5A) of Section 23 of the MVAT Act.

20 Rule made absolute in terms of prayer clause (c) which reads as under :

*“(c) this Hon'ble Court be pleased to issue a writ of Certiorari or a writ in the nature of Certiorari under Article 226 of the Constitution of India, calling for the records pertaining to the Petitioner's case and after going into the legality and validity thereof forthwith quash and set aside the Order No.MUM-VAT- E-631/27951017780V/MVAT/231/2020-21/2382945 and Notice of Demand, both purportedly dated 19.03.2020 (but signed on 23.06.2020 and issued on 24.06.2020 only) passed for the period FY 2015-16 by the Respondent No. 3;”*

(JITENDRA JAIN, J.)

(K.R. SHRIRAM, J.)