

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

**WRIT PETITION (L) NO. 2711 OF 2017
WITH
WRIT PETITION (L) NO. 2712 OF 2017**

M/s. Neptune Ventures and Developers
Private Limited

....Petitioner

V/s.

The State of Maharashtra & Ors.

....Respondents

Mr. V. Sridharan, Sr. Counsel a/w. Mr. Rahul Thakkar i/b.

Mr. C.B. Thakkar for the petitioner.

Ms. Jyoti Chavan, AGP for the respondents.

**CORAM : S.C. DHARMADHIKARI &
SMT. ANUJA PRABHUDESSAI, JJ.**

DATE : 24TH APRIL, 2018

P.C.:

. Heard both sides. The challenge is to an assessment order passed on 21st June, 2017. The argument is that it is *ex-parte*, without any opportunity of personal hearing or appearance of the petitioner. Our attention is invited to pages 302 to 305 of the paper book to show that the details as sought by the department were furnished by the Chartered Accountant of the petitioners. They submit that no prior notice was issued and the file was transferred to some other officer and the assessment is finalised. In the process, a crucial submission of the petitioners namely that the assessment is time barred in law as there is

a prohibition to assess the petitioners for payment of taxes. In view thereof, it is submitted that the petition be allowed. On the earlier occasion, even today the learned AGP appeared. There is no denial of the factual averments in the petition particularly the factual allegations. To our mind, the authority is in error in holding that the petitioners are not interested in appearing before him nor they are interested in producing the books of account. All documents and books of account have now been produced in terms of the communication addressed by the Chartered Accountants.

2. In the light of the above, both orders of assessment which are *ex-parte* are quashed and set aside. The petitioner shall now appear before Mr. J.V. Gavai, Deputy Commissioner, Sales Tax (E-807), Business Audit-I, Mazgaon, Mumbai - 400010. He shall pass fresh orders of assessment strictly in accordance with the law.

3. The petitioners have stated before us that the time consumed from 21st June, 2017 till the disposal of these Writ Petitions shall not be treated as a bar for passing the fresh order of assessment in terms of our directions. However, we clarify that our order or direction keeps open the issue and which is vital and crucial namely that the

assessment cannot be framed and it is time barred. All contentions of the petitioners therefore are free for being urged before the Deputy Commissioner of Sales Tax. The Writ Petitions are allowed in these terms. The petitioner shall appear before the authorities on 09th May, 2018 at 10:30 a.m.

(SMT. ANUJA PRABHUDESSAI, J.)

(S.C. DHARMADHIKARI, J.)

