IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
MAHARASHTRA VALUE ADDED TAX
APPEAL NO.75 OF 2016
IN
VAT APPEAL NO.107 OF 2016

Lilavati Hospital & Research Centre .... Appellant
Vs.
The State of Maharashtra .... Respondent

Ms Nikita Badheka for the Appellant.
Mr. V.A. Sonpal, Special Counsel, with Ms Jyoti Chavan, AGP, for the Respondent-State.

CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.

DATE : DECEMBER 06, 2016

P.C:

1. This appeal has been brought challenging an order passed by the Maharashtra Sales Tax Tribunal at Mumbai, dated 30-3-2016.

2. This order was passed on a stay application. The Value Added Tax (VAT) Appeal before the Tribunal was directed

against an order of interim stay. That order was passed by the First Appellate Authority on 29-1-2016. The period in question is 2011-2012. The total liability determined by the Assessing Officer was Rs.2,83,53,666/-. The First Appellate Authority fixed a sum of Rs.87,71,618/- as part-payment. Against such an order, the appeal to the Tribunal was filed.

3. The Tribunal found that the First Appellate Authority has determined the part-payment amount on the basis of alternate submission and tax working given by the dealer. After considering the set off, the VAT amount is fixed at Rs.59,46,184/-. The First Appellate Authority added interest to this sum.

4. All that the Tribunal has done is to delete this sum of interest and has determined the part-payment amount as Rs.59,46,184/- as against the total sum payable under the Assessment Order, namely, Rs.2,83,53,665/-

5. The Tribunal found, on consideration of the rival

submissions, that prima facie this is not a matter where the conditional interim order can be vacated. Meaning thereby, unconditional stay can be granted. In para 10 of the impugned order certain observations are made.

6. Ms Badheka, appearing in support of this appeal, would submit that in the light of these observations in para 10 on running page 70 and internal page 7 of the impugned order, substantial questions of law would arise for determination of this Court. She would submit that the Tribunal has proceeded on an erroneous footing that even when dispensing drugs and medicines so as to treat indoor patients, the hospital, namely, the dealer before us, sells the same at the maximum retail price. Maximum retail price includes the tax and the Tribunal, according to Ms Badheka, has drawn a presumption that taxes included in the price would mean the value added tax as well. Therefore, that component has to be secured. She would submit that there is no such presumption in law and in that regard she relied upon a Judgment of the Hon'ble Supreme Court rendered in the case of ***Deputy Commissioner of Commercial Taxes***

(Vigilance) Vs. M/s. Hindustan Lever Limited, {Civil Appeal No.656 of 2008}, decided on 30-6-2016. She would also rely upon a Division Bench order passed by the Allahabad High Court in the case of ***International Hospital Pvt. Ltd. Vs. State of U.P. and others***, reported in (2014) 71 VST 139 (All). She would also rely upon a Judgment of the High Court of Gujarat at Ahmedabad in Tax Appeal No.1673 of 2009 {***Bhailal Amin General Hospital Vs. State of Gujarat***} and companion appeals, decided on 1-8-2016.

7. We have perused with her assistance the entire paper-book. Though reliance is placed upon a circular clarifying the legal position according to Ms Badheka, we do not think that we should pronounce upon the contents of this circular or the merits of the controversy.

8. Eventually, it is from the facts and circumstances in a particular case that the Tribunal or the Court of law can deduce as to whether a transaction of sale has taken place, or not, during the course of administering treatment to an indoor

patient. During the course of such a treatment, medicines are prescribed by the Doctors and Surgeons/Consultants. Those are indented and thereafter the list is sent down to the pharmacy of the hospital. The supply is effected from such pharmacy and though a separate bill or invoice is not provided to the patients' relatives, eventually the details are provided in the final bill under the caption “medicines consumed”. Therefore, according to Ms Badheka, in every such case the medicines being provided by the pharmacy and the pack of the medicine reflecting the maximum retail price, does not mean a sale has taken place and taxes included in it would necessarily denote the inclusion of the VAT. She would submit that the purpose for which the maximum retail price is displayed is compliance with certain Orders and Notifications under the Standards of Weights and Measures Act and now designated as the Legal Metrology Act. This would not be determinative. In any event, she would submit that now nothing remains for adjudication as a final opinion is rendered in the impugned order by the Tribunal.

9. On a perusal of all the materials, we are unable to agree with her. This is not a case where the Tribunal was called upon to pass a lengthy order. Merely because detailed submissions were canvassed, the Tribunal noted them and in para 10 it has concluded that the tax component is included, prima facie, in the maximum retail price. The case of the Revenue based on the Assessment Order, which is a speaking order, has not been finally accepted. Merely because a reference is made to a submission on the part of the Revenue that there would be set off to which the dealer would be entitled to, that alone has not gone in determining the part-payment. The Tribunal has brought down the sum. It has brought it down from Rs.87 lakh and odd as determined by the First Appellate Authority to a sum of Rs.59,46,184/-. At the stage at which the matter was brought, it has deleted the quantum of interest. It has merely directed the appellant to secure the quantum of tax. To our mind, all the observations and findings in the impugned order are tentative and prima facie. They can never influence the Tribunal in the final determination of the matter.

9. At the final hearing stage, the dealer would be in a position to rely upon the dictum of the Hon'ble Supreme Court in the case of **Hindustan Lever Limited** (supra). There the facts were that Brooke Bond India Limited, engaged in manufacture of blended packed tea, was sold to the respondent-company before the Supreme Court. It was amalgamated with the respondent-company. The dealer was granted sales tax exemption benefit for five years from the date of commencement of production in accordance with exemption eligibility certificate. It is in relation to the benefits and flowing from this executive Notification that the Court considered the controversy. The Court found that the consideration of sales tax in fixing the price of the goods and sale of such goods along with identical goods on which taxes are collected along with price has not resulted in an implied collection of tax in respect of such sales tax exempted goods also. That controversy having been considered and the submissions appreciated in that light, that the observations have been made. Whether they would govern the set of facts brought before us in the present matter has to be

determined at the hearing of the appeal. Equally, whether this is a case on par with a treatment during the course of which a stent is inserted in the body or not should equally be determined at the stage of final hearing. Whether drugs or medicines sold from the pharmacy and the case of a stent being fixed or inserted in the body are similar or not must be determined by the Tribunal.

10. It would be wholly unsafe to make any conclusive remarks or observations. In the absence of complete materials, we do not think we would be justified in doing so. Equally, the Tribunal was not called upon to do so at the stage at which the matter was brought.

11. We do not think that with the above clarification, any substantial question of law would arise enabling us to entertain the appeal. The appeal is dismissed.

12. The time to deposit the amount is extended by four weeks. Since this matter pertains to a hospital and similar issues

may crop up given the advance in science and technology and particularly in the field of medicine and surgery, it would be desirable if the First Appellate Authority takes out some time and gives this matter a priority. It may be decided expeditiously. We would not fix any outer time limit but expect the First Appellate Authority to decide the issue within a period of three months from the date of receipt of a copy of this order.

(B.P. COLABAWALLA, J.) (S.C. DHARMADHIKARI, J.)