

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**TAX APPEAL NO. 392 of 2014****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE M.R. SHAH****and****HONOURABLE MR.JUSTICE K.J.THAKER**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

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GADHVI AND CO....Appellant(s)

Versus

STATE OF GUJARAT....Opponent(s)

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Appearance:

MR. APURVA N MEHTA, ADVOCATE for the Appellant(s) No. 1

MR JAIMIN GANDHI AGP for the Opponent(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE M.R. SHAH
and
HONOURABLE MR.JUSTICE K.J.THAKER**Date : 04/07/2014****ORAL JUDGMENT**

(PER : HONOURABLE MR.JUSTICE M.R. SHAH)

1.00. Present Tax Appeal has been preferred by the appellant – original appellant – dealer challenging the impugned judgement and order dated 4/3/2014 passed by the learned Gujarat Value Added Tax Tribunal, Ahmedabad [hereinafter referred to as “the Tribunal” for convenience] in Second Appeal No.828 of 2013 for the year 2007-08, by which the learned tribunal has partly allowed the said appeal preferred by the appellant and has remanded the matter partly to the first appellate authority by quashing and setting aside the orders passed by the Assessing Officer as well as Appellate Authority to the extent of addition in turn over and the order of penalty and directed the first appellate authority to decide the said issue of penalty and issue of addition after hearing the appellant, afresh.

2.00. Feeling aggrieved and dissatisfied with the Assessment Order passed by the Assessing Officer, the appellant preferred appeal before the first appellate authority along with a request to waive pre-deposit. It appears that the first appellate authority directed the appellant to deposit a total sum of Rs.1,05,400/- against total liability of tax, interest and penalty at Rs.5,27,036/-. It appears that the appellant did not comply with the order of pre-deposit and therefore, by order dated 23/8/2013, the first appellate authority dismissed the said appeal on non-compliance of the order of pre-deposit.

2.01. Feeling aggrieved and dissatisfied with the order passed by the first appellate authority dismissing the appeal on non-payment of pre-deposit, the appellant preferred an appeal before the learned tribunal. It appears from the Appeal

Memo that the appellant set out the grounds on merits also. However, basically the order challenged before the learned tribunal was the order passed by the first appellate authority dismissing the appeal on non-compliance of the order of pre-deposit. It appears that in the second appeal the appellant also submitted application for waiver of pre-deposit. It was pointed out that the appellant had already deposit a sum of Rs.35,000/- by way of deposit and subsequently the department recovered a further sum of Rs.10,000/- by attaching the Bank Account of the appellant. Thus, the appellant deposited total sum of Rs.45,000/-. At the time when his application for waiver of pre-deposit was taken up by the tribunal, it appears that by order dated 13/11/2013, the tribunal directed the appellant to pay balance amount of Rs.60,400/- by way of pre-deposit within a period of one month and further directed that on payment of the aforesaid amount, the appeal stands admitted. That for compliance of the said order and for production of the Chalan, the hearing of the appeal was adjourned to 13/12/2013. It appears that thereafter as directed by the learned tribunal, the appellant deposited further sum of Rs.60,400/- as pre-deposit. That thereafter the appeal came up for hearing before the learned tribunal. It is the case on behalf of the appellant that as such the learned advocate appearing on behalf of the appellant requested the learned tribunal to remand the matter to the first appellate authority as its earlier appeal for the earlier assessment year was pending before the first appellate authority. It is also the case on behalf of the appellant that as the Second Appeal before the learned tribunal was against the order passed by the first appellate authority dismissing the appeal on non-deposit of pre-deposit, and as the amount of

pre-deposit was already deposited, it was requested to remand the matter to the first appellate authority. Despite the above, the learned tribunal has gone into the merits of the case and has partly allowed the appeal and has quashed and set aside the Assessment Order to the extent of addition in turn over and penalty and has remanded the matter to the first appellate authority to decide the issue of penalty and issue of addition afresh.

2.02. Feeling aggrieved by and dissatisfied with the impugned order passed by the learned tribunal, the appellant has preferred the present Tax Appeal.

3.00. Having heard Mr.Apurva Mehta, learned advocate appearing on behalf of the appellant and Mr.Jaimin Gandhi, learned Assistant Government Pleader appearing on behalf of the respondent – State and in the facts and circumstances narrated hereinabove, more particularly when the appeal before the learned tribunal was against the order passed by the first appellate authority dismissing the appeal on non-deposit of pre-deposit and all through out the learned advocate appearing on behalf of the appellant requested the learned tribunal to remand the matter to the first appellate authority and more particularly when as per the order passed by the tribunal, the appellant deposited the entire amount of pre-deposit i.e. Rs.1,05,400/- and as first appeal preferred by the appellant for the earlier assessment year was pending before the first appellate authority, in the facts and circumstances of the case, more particularly when as such the learned tribunal has remanded the appeal to the first appellate authority to the extent of penalty and addition made

by the Assessing Officer, we are of the opinion that the impugned judgement and order passed by the learned tribunal dismissing the appeal with respect to duty deserves to be quashed and set aside and the matter is required to be remanded to the first appellate authority on all the grounds rather than restricting the remand to the extent of penalty and addition made by the Assessing Officer only.

4.00. In view of the above and for the reasons stated above, and in the facts and circumstances stated hereinabove and not treating the same as precedent, the impugned judgement and order passed by the learned tribunal is hereby quashed and set aside to the extent dismissing the appeal partly and in remanding the matter to the first appellate authority to the extent of addition in turn over and penalty and the matter is hereby remanded to the first appellate authority and the first appellate authority is directed to decide all the issues inclusive of total tax liability assessed by the Assessing Officer, addition in turn over and order of penalty, after hearing the appellant, afresh in accordance with law and on merits. The aforesaid exercise shall be completed by the first appellate authority within a period of six months from the date of receipt of the present order. Present appeal is allowed to the aforesaid extent. No costs.

Sd/-
(M.R.SHAH, J.)
Sd/-
(K.J.THAKER, J)

Rafik.