

IN THE HIGH COURT OF BOMBAY AT GOA

LD-VC-CW NO. 265 OF 2020

Blue Ocean Beverages Pvt. Ltd & anr. Petitioners

V e r s u s

State of Goa & Ors. Respondents

Mr. D. Lawande, Mr. P. Dangui and Mr. A. Kuncoliencar, Advocates for the Petitioners.

Mr. D. Pangam, Advocate General with Ms. Maria Correia, Additional Government Advocate for the Respondent nos. 1 and 4.

Coram :- M. S. SONAK &
M. S. JAWALKAR, JJ.

Date : 14th October, 2020

ORAL ORDER

1. Heard Mr. Lawande, learned Counsel for the petitioners and Mr. D. Pangam, learned Advocate General for the respondent nos.1 and 4.
2. The challenge to this petition is to the notice dated 20.05.2020 issued by the Entry Tax Officer, South Goa, Margao, seeking to re-assess the

returns of the petitioner for the assessment years 2013-14, 2014-15 and 2015-16.

3. The petitioners have responded to this order pursuant to the same, even attended the hearings towards reassessment on 18.05.2020 and 30.09.2020.

4. In this petition, Mr. D. Lawande, the learned Counsel, pointed out that the petitioners have made a representation to the respondents which remains unresponded till date. He pointed out that the petitioners may not have bonafidely paid the entry tax for the relevant years but the petitioners have paid the entire VAT without claiming any input credits for these relevant years. He therefore submits that both the VAT assessment and the re-assessment which has commenced in pursuance of the impugned notices ought to proceed together. He also submits that this is a revenue neutral situation, no show cause notice ought to have been issued in this matter. Mr. Lawande, learned Counsel, expresses the apprehension that all these

defences might not be considered during the re-assessment proceedings which have commenced in pursuance of the impugned notices.

5. The learned Advocate General pointed out that there is absolutely no jurisdictional error or any other infirmity of the issue of impugned notices. He pointed out that the petitioners have already responded to such notices and the hearings to the re-assessment proceedings cannot be interrupted by the petitioner by instituting a petition.

6. Having considered the rival contentions, we find that there is no reason for the petitioners to entertain any apprehension, legal or factual, that the defences as may be open to the petitioners, will not be considered in the course of the re-assessment proceedings in pursuance of the impugned notices.

7. Since, the assessment proceedings in respect of payment of VAT have already concluded, obviously, no direction can be issued for re-opening the said assessment and proceeding with the same alongwith re-assessment proceedings for entry tax. However, it is always open to the petitioner to

point out in these proceedings that entire VAT has been paid without claiming any input credit.

8. In short, this is not the case where any lack of jurisdiction is made out so as to warrant interference in the impugned notices. In case the petitioners have any legitimate defence, no doubt, they are at liberty to adopt the same. The apprehension that such defences may not be considered in accordance with law, is really not justified. That the representation is not disposed of, cannot be basis for such apprehension. When re-assessment proceedings have commenced, it cannot be said that there is any statutory obligation on the part of the authorities to respond to any representation which the assessee may have filed.

9. In the absence of any jurisdictional error in the issue of impugned notices, we do not deem it appropriate to entertain this petition. However, we make it clear that we have not gone into any rival contentions because, we believe that, these rival contentions will have to be gone into in the course of the re-assessment proceedings.

10. Accordingly, all contentions of all parties including contention based upon revenue neutrality are expressly left open for adjudication in the re-assessment proceedings.

11. Petition is disposed off in the aforesaid terms. There shall be no orders as to costs.

M. S. JAWALKAR

M. S. SONAK, J.

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