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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.12191 OF 2013

M/s Sagar Enterprises. Through Prop.
Mr.Nitin Morarji Kapadia.

..Petitioner

-Versus-

The State of Maharashtra and others.

..Respondents

.....
Mr.Ratan Samal, for the Petitioner.

Mr.A.B. Vagyani, Government Pleader, for the Respondents.

Mr.Mr.Shivaji Divte, Sales Tax Officer, present in person.
.....

**CORAM: S.C. DHARMADHIKARI
AND
B.P. COLABAWALLA, JJ.**

DATE :- 15th July, 2014

PC.:

1 In this Writ Petition under Article 226 of the Constitution of India the Petitioner is seeking a writ of mandamus or any other appropriate writ, order or direction directing the Respondents to withdraw the circular No.7T/2011 dated 04.05.2011 which has been issued by the Commissioner of Sale Tax, Maharashtra State.

2 The claim of the Petitioner is for refund. That arises in the backdrop of the returns for the Financial Years 2009-2010 and 2010-2011 under the Maharashtra Value Added Tax Act, 2002. The Petitioner claims that as per Section 61 of the Maharashtra Value Added Tax Act, 2002 the Audit Report was filed before the due date prescribed. The Audit Report for the aforesaid period resulted in refund to the tune of Rs.17,51,801/- and Rs.07,24,218/- respectively.

3 The Petitioner claims that he approached the Authorities for refund being a dealer covered by the Act, but what has been brought to his notice is the circular under which the Commissioner notified that all such applications and to seek refund ought to be within the period prescribed by sub-section (7) of Section 51 of the Act. It is urged that the circular insists that the Maharashtra Act No.XV/2011 by which Section 16(4) was inserted w.e.f. 01.05.2011 would govern the claim. Meaning thereby that an application for refund cannot be entertained unless it is made within 18 months from the end of the year containing the period to which the return relates.

4 The learned counsel appearing for the Petitioner states that the words "18 months" were substituted for the original words "03 years" by the Maharashtra Act No.XV/2011 w.e.f. 01.05.2011. This cannot govern the claim for refund for the prior period. In fact the Assessment Orders passed by the Deputy Commissioner of Sales Tax, Business Audit Branch, Mumbai and the Assistant Commissioner of Sales Tax, Refund Audit Branch are referred to in the petition. Thus, it is submitted that so long as the claim of the Petitioner pertains to the Accounting Years 2009-2010 and 2010-2011 the applications for refund could have been filed within a period of three years and not the curtailed period. The circular, therefore, travels much beyond the legal provision and in any event the circular cannot govern and control interpretation of the subject legal provision, is the submission of the Petitioner's Advocate.

5 Mr.Vagyani, learned Government Pleader appearing on behalf of the Respondents, on instructions, states that though such stand has been taken and reiterated in the affidavit filed by the Joint Commissioner (Respondent No.3) in reply to this Writ Petition, now he has received instructions to state before this Court that the Petitioner's refund applications shall be processed after they being treated as filed under the

unamended provision. The refund applications shall be processed and an order will be passed thereon as expeditiously as possible and before 31st August, 2014.

6 We accept these statements made by Mr.Vagyani on instructions, as undertakings given to this Court. We direct that the refund applications of the Petitioner be processed and disposed of accordingly. No further extension will be granted under any circumstances.

7 At this stage, the Petitioner's Advocate states that in terms of the oral directions issued by the Court on the earlier occasion, he has been able to collect the data and which demonstrates that in 252 cases the Assessment Orders have till not been passed though in the self assessment these entities/ parties/ dealers have shown as to how the excess payments were made and they are entitled to refund.

8 Let the Petitioner file an affidavit and annexing therewith all relevant details with regard to these cases and it is only thereafter we can call upon the learned Government Pleader to take instructions.

9 At the request of the Petitioner's Advocate, stand over to 05th August, 2014.

(B.P. COLABAWALLA, J.)

(S.C. DHARMADHIKARI, J.)