

TAX FLASH NEWS

29 July 2019

Non-speaking order passed by the adjudication authority set-aside – Bombay High Court

High Court of Bombay¹, has recently set aside an assessment order passed by revenue under the erstwhile VAT law² on the grounds that no reason was recorded by the authorities while rejecting the submission made by the petitioner.

Facts of the case

Petition challenged the assessment order, on the grounds that the authority having recorded the submissions made by the petitioner³ had provided no reasons in the impugned order as why the contention of the petitioner was not acceptable.

During adjudication proceeding, the petitioner had submitted that they are not dealers under the VAT laws as it only provides an electronic platform which enables buyers and sellers to enter into transactions independently with each other.

High Court order

After observing that the adjudicating order had not dealt with the submission made by the petitioner, the court held that the decision making process is flawed as it does not consider the petitioner's submissions. Unless the petitioner's submission are dealt with at the original stage, the petitioner would be handicapped in pleading its case before the Appellate Authority as it would have no clue as to why the submissions of the petitioner were not accepted.

Thus, it is necessary that the order passed by the adjudicating authority should deal with the submissions made by the parties before it by giving reasons in support of its conclusion, particularly when it does not accept the submissions made.

Consequently, the court directed to restore the assessment to the adjudicating authority for fresh consideration.

Our comments

Similar to the above ruling, the Bombay High Court had previously⁴ set aside the order passed by the appellate authority for advance ruling under the GST law on similar grounds that the contention/submission of the parties was not considered in the order passed by the appellate authority.

The above orders, would entail revenue, to provide a reasonable cause for rejecting, the contention placed by the parties in their order.



¹ TS-558-HC-2019(BOM)-VAT

² Maharashtra Value Added Tax Act, 2002

³ Minkart India Pvt. Ltd.

⁴ TS-515-HC-2019 (BOM)-NT

home.kpmg/in

Ahmedabad

Commerce House V, 9th Floor,
902, Near Vodafone House,
Corporate Road,
Pralhad Nagar,
Ahmedabad – 380 051.
Tel: +91 79 4040 2200

Bengaluru

Maruthi Info-Tech Centre
11-12/1, Inner Ring Road
Koramangala,
Bengaluru – 560 071.
Tel: +91 80 3980 6000

Chandigarh

SCO 22-23 (1st Floor),
Sector 8C, Madhya Marg,
Chandigarh – 160 009.
Tel: +91 172 664 4000

Chennai

KRM Towers, Ground Floor,
1, 2 & 3 Floor, Harrington Road,
Chetpet, Chennai – 600 031.
Tel: +91 44 3914 5000

Gurugram

Building No.10, 8th Floor,
DLF Cyber City, Phase II,
Gurugram, Haryana – 122 002.
Tel: +91 124 307 4000

Hyderabad

Salarpuria Knowledge City,
6th Floor, Unit 3, Phase III,
Sy No. 83/1, Plot No 2,
Serilingampally Mandal,
Ranga Reddy District,
Hyderabad – 500 081.
Tel: +91 40 6111 6000

Jaipur

Regus Radiant Centre Pvt Ltd.,
Level 6, Jaipur Centre Mall,
B2 By pass Tonk Road,
Jaipur – 302 018.
Tel: +91 141 - 7103224

Kochi

Syama Business Centre,
3rd Floor, NH By Pass Road,
Vytilla, Kochi – 682 019.
Tel: +91 484 302 5600

Kolkata

Unit No. 604,
6th Floor, Tower – 1,
Godrej Waterside,
Sector – V, Salt Lake,
Kolkata – 700 091.
Tel: +91 33 4403 4000

Mumbai

1st Floor, Lodha Excelus,
Apollo Mills,
N. M. Joshi Marg,
Mahalaxmi,
Mumbai – 400 011.
Tel: +91 22 3989 6000

Noida

Unit No. 501, 5th Floor,
Advant Navis Business Park,
Tower-A, Plot# 7, Sector 142,
Expressway Noida,
Gautam Budh Nagar,
Noida – 201 305.
Tel: +91 0120 386 8000

Pune

9th floor, Business Plaza,
Westin Hotel Campus, 36/3-B,
Koregaon Park Annex,
Mundhwa Road, Ghorpadi,
Pune – 411 001.
Tel: +91 20 6747 7000

Vadodara

Ocean Building, 303, 3rd Floor,
Beside Center Square Mall,
Opp. Vadodara Central Mall,
Dr. Vikram Sarabhai Marg,
Vadodara – 390 023.
Tel: +91 265 619 4200

Vijayawada

Door No. 54-15-18E,
Sai Odyssey,
Gurunanak Nagar Road, NH 5,
Opp. Executive Club, Vijayawada,
Krishna District,
Andhra Pradesh – 520 008.
Tel: +91 0866 669 1000

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2019 KPMG, an Indian Registered Partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative (“KPMG International”), a Swiss entity. All rights reserved.

The KPMG name and logo are registered trademarks or trademarks of KPMG International.

This document is meant for e-communication only