

Assessee couldn't be directed to pay part of demand during pendency of stay application: Bombay HC

Summary – The High Court of Bombay in a recent case of Bhupendra Murji Shah, (the Assessee) held that where assessee was directed to pay 20 per cent of tax demand during pendency of appeal, in view of fact that right of appeal vested in assessee by virtue of Statute would be rendered illusory and nugatory if said demand was enforced and executed during pendency of appeal, impugned direction deserved to be set aside

Facts

- For relevant assessment year, the assessee filed an appeal before the Commissioner (Appeals) challenging the demand raised in assessment order.
- The assessee also filed an application for stay of demand during pendency of appeal. The Deputy Commissioner rejected assessee's stay application and communicated to assessee that it should pay 20 per cent of the outstanding amount failing which collection and recovery would continue.
- On writ:

Held

- It is not disputed that in terms of Chapter XX styled as appeals and Revision, the order of the Assessing Officer is appealable under section 246(1). Once it is an appealable order and the appeal has been filed, it is pending, then, the petitioner/appellant should have been given either an opportunity to seek a stay during the pendency of the appeal, which power is also conferred admittedly in the Commissioner or this Deputy Commissioner should have held the demand in abeyance as prayed by the assessee. He does neither, but proceeds to communicate to the assessee that his application for stay is dismissed. The assessee should pay 20 per cent of the outstanding amount as prescribed in some Circulars of the revenue and produce the challan and seek stay of demand again, failing which collection and recovery will continue.
- If the demand is under dispute and is subject to the appellate proceedings, then, the right of appeal vested in the assessee by virtue of the Statute should not be rendered illusory and nugatory. That right can very well be defeated by such communication from the revenue/department as is impugned herein. That would mean that if the amount as directed by the impugned communication being not brought in, the assessee may not have an opportunity to even argue his appeal on merits or that appeal will become infructuous, if the demand is enforced and executed during its pendency. In that event, the right to seek protection against collection and recovery pending appeal by making an application for stay would also be defeated and frustrated. Such can never be the mandate of law.

- In the circumstances, the petition is disposed of with directions that the Appellate Authority shall conclude the hearing of the appeal as expeditiously as possible and during pendency of these appeals, the assessee shall not be called upon to make payment of any sum, much less to the extent of 20 per cent under the Assessment Order/Confirmed Demand or claim to be outstanding by the revenue.