# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
# ORDINARY ORIGINAL CIVIL JURISDICTION

## WRIT PETITION NO. 52 OF 2019

Kirloskar Oil Engines Ltd. … Petitioner
vs.
State of Maharashtra and Ors. … Respondents

Mr. V. Raghuraman, Senior Advocate with Ms. Sandhya R., Mr. Shailesh Sheth and Mr. P. K. Shetty for Petitioner.
Mr. Himanshu Takke, AGP for Respondents.

**CORAM : NITIN JAMDAR AND ABHAY AHUJA, JJ.**
**DATE : 28 APRIL 2023**

**P.C. :**

. Heard learned Counsel for the parties.

2. By this Petition, the Petitioner has sought to quash and set aside the order passed by the Maharashtra Sales Tax Tribunal dated 11 July 2017 in Second Appeal No. 12A of 2016. By the impugned order the Tribunal has dismissed the appeal filed by the Petitioner for non prosecution.

3. The Tribunal while dismissing the appeal has noted that the Appellant did not attend the dates fixed for hearing i.e. on 20 June 2016, 11 August 2016, 26 October 2016, 6 December 2016, 9

February 2017 and on 13 April 2017.

4. This Petition had come up on Board on 21 June 2019, wherein the Petition was withdrawn to file an appeal against the order dated 11 July 2017. Thereafter, a Review Petition was filed, which was allowed by order dated 4 December 2019 and Petition was restored.

5. The only question, therefore, is whether the contention of Petitioner that Petitioner was unaware of these dates and therefore could not attend the appeal should be accepted.

6. An affidavit is filed by the Senior General Manager, Corporate Indirect Taxation, of the Petitioner, which is annexed to the Petition. In this affidavit, the officer of the Petitioner Company has asserted on oath that he did not receive notices and therefore, hearing could not be attended. Taking note of this limited submission, we had directed the Respondents to file a reply. Thereafter since reply was not filed, we granted time again putting Respondents Department to notice that if this assertion is not controverted, the Court will proceed on the basis that it is accepted.

5. Today when the matter is called out, the learned AGP sought to tender an affidavit of the Joint Commissioner of Sales Tax. The affidavit deals with the merits of the contentions. As regards the main issue of service of the notices, learned AGP submits that it is

for the Registry of the Tribunal to answer. We do not appreciate this contention. Respondent Department was the party Respondent before the Tribunal. It is contesting this Petition. It was expected that the Respondent Department will comment on the claim of the Petitioner of receipt of the notices. Respondent Department could have applied to the Tribunal to get the record, roznama etc. and then file reply to contest the claim of the Petitioner. Nothing is done in that regard. The proceedings are pending since the year 2016. Any further delay does not inure to anybody's benefit.

7. In light of the above position, we quash and set aside the order passed by the Tribunal dated 11 July 2017 and restore the Second Appeal No. 12A of 2016 to the file of the Tribunal to be considered on its own merits, as per law. The application filed for restoration before the Tribunal will not survive and the order passed thereupon on 28 June 2018 is set aside.

8. Writ Petition is accordingly disposed of.

**(ABHAY AHUJA, J.)** **(NITIN JAMDAR, J.)**