

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

CHAMBER SUMMONS NO. 1693 OF 2016

IN

SALES TAX APPLICATION NO. 7 OF 2016

WITH

CHAMBER SUMMONS NO. 1694 OF 2016

IN

SALES TAX APPLICATION NO. 8 OF 2016

The Additional Commissioner }
of Sales Tax } Appellant
versus }
M/s. A. J. Traders Pvt. Ltd. }
and Ors. } Respondent

Mr. V. A. Sonpal - Special Counsel with
Ms. Uma Palsuledesai - AGP for the
applicant/appellant.

Mr. Sudip Mallick i/b. Mr. Rakesh K.
Singh for respondent nos. 1 and 2.

Dr. Abhinav Chandrachud with Mr.
Prathamesh Kamath, Mr. Mustafa
Kachwala i/b. M/s. Kachwala Misar and
Co. for respondent nos. 3 and 4.

CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.
DATED :- NOVEMBER 29, 2016

P.C. :-

1. We have heard both sides.
2. We have also taken the affidavit in reply on record.
3. The essential contention, based on this affidavit in reply is that the deceased having expired on 10th June, 2010, it is not as if

every heir of the deceased was in-charge of or carrying on the business. The proprietary business was not carried on with the aid and assistance or active involvement of these heirs nor can it be said with certainty, particularly in the light of interse dispute that they are all liable for payment of dues of the deceased, the sole proprietor.

4. We do not think that the chamber summonses conclude any of these issues. Even if the joinder is permitted, that would be subject to and without prejudice to the rights and contentions of all the proposed respondents. They can dispute the dues of the Department and equally raise contention that the amount cannot be recovered from all of them as not all of them can be termed as successors in interest of the deceased with regard to the business of the sole proprietor. By clarifying that all contentions of both sides are kept open, we make these chamber summonses absolute in terms of prayer clause (a). There would be no order as to costs.

5. The amendment to be carried out within a period of two weeks from the date of receipt of a copy of this order.

6. Let the added respondents be served with all proceedings, including copies of the sales tax applications.

(B.P.COLABAWALLA, J.)

(S.C.DHARMADHIKARI, J.)