

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
MAHARASHTRA VALUE ADDED TAX
APPEAL NO.69 OF 2016
IN
VAT SECOND APPEAL NO.22 OF 2012

The Additional Commissioner of Sales
Tax, VAT-III, Maharashtra State,
Mumbai

.... Appellant

Vs.

M/s. Burhani and Sons

.... Respondent

Mr. V.A. Sonpal, Special Counsel, for the Appellant.

Mr. Deepak Bapat with Ms Sonali Bapat for the Respondent.

CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.

DATE : NOVEMBER 22, 2016

P.C.:

1. Having heard both sides and perusing the order of the Tribunal, we are of the opinion that the appeal raises substantial questions of law. It is **admitted** on the following substantial questions of law:-

(i) Whether on true and correct interpretation of *Section 61 of MVAT Act, 2002* was

the Tribunal right in law and on facts in holding that penalty u/s 61(2) is not leviable on the respondent since the respondent is not liable to tax for that year viz. 2008-09?

(ii) *Whether the Tribunal was right in law and on facts in holding that the basic requirement for filing of audit report is that the dealer should be liable to pay tax, ignoring the provisions of Section 3(1) and 3(3) of the MVAT Act, 2002 which mandates that every dealer who has become liable to pay tax under this Act, shall continue to be so liable until his registration is duly cancelled?*

(iii) *Whether on true and correct interpretation of Section 61 of the MVAT Act, 2002 was the Tribunal right in law and on facts in holding that the respondent dealer is not liable to file audit report he was not liable to pay tax during that particular year viz. 2008-09, completely ignoring the fact that the dealer shall also become liable to file audit report in an eventuality of his purchase turnover exceeding the prescribed limit of turnover provided therein?*

2. The respondent appearing through Advocate waives service.

3. Liberty to apply for an early date of hearing after the record and proceedings are received from the Tribunal.

(B.P. COLABAWALLA, J.)

(S.C. DHARMADHIKARI, J.)