

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
MAHARASHTRA VALUE ADDED TAX APPEAL
NO.43 OF 2016
IN
VAT SECOND APPEAL NO.188 OF 2011

The Addl. Commissioner of Sales Tax,
Vat-III, Maharashtra State, Mumbai Appellant

Vs.

M/s. Gangadhar Narsingdas Agarwal (HUF) Respondent

Mr. V.A. Sonpal, Special Counsel, for the Appellant.
Mr. C.B. Thakar for the Respondent.

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

DATE : NOVEMBER 15, 2016

P.C:

1. Having heard both sides and finding no substance in the preliminary objection raised by Mr. Thakar based on the Judgment of the Hon'ble Supreme Court in the case of **Boving Fouress Ltd. Vs. Commissioner of Central Excise, Chennai**, reported in 2006 (202) E.L.T. 389 (SC), so also the appeal raising substantial questions of law, we proceed to **admit** it on

the following substantial questions of law:-

I. Whether the Tribunal was right in law and on facts holding that, the provisions of Rule 53(7B) providing reduction in set off at the rate of 3% in case of a generating company not applicable to the period starting from 1.4.2005 to 31.10.2007 since the amendment in Rule 53(7B) came with effect from 31.10.2007, ignoring the wording of the amended Rule 53(7B) which states that reduction in set off under Rule 53(7B) is applicable in respect of any period starting on or after the 1st April, 2005 in case of a dealer holding a licence for transmission or as the case may be, distribution of electricity or is a generating company as defined under the Electricity Act, 2003?

II. Whether the Tribunal was right in law and on facts in holding that the reduction of 3% under Rule 53(7B) cannot be made for the period from 1.4.2005 to 31.10.2007 for a generating company since the amendment in Rule 53(7B) to reduce set off also in case of generating companies came with effect from 31.10.2007?

2. The respondent appearing through counsel waives service.

(B.P. COLABAWALLA, J.)

(S.C. DHARMADHIKARI, J.)