

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SALES TAX APPLICATION NO.19 OF 2016
IN
REFERENCE APPLICATION NO.01 OF 2015

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

... Applicant

Vs.

Vijay Industrial Electricals

... Respondent

Mr. V.A. Sonpal, Special Counsel, for the Applicant.
Mr. Sandip D. Ghaterao with Mr. N.V. Tapare for
the Respondent.

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

DATE : DECEMBER 06, 2016

P.C:

1. Heard Mr. Sonpal, appearing on behalf of the
applicant in this application.

2. Mr. Sonpal would submit that when the respondent
filed Second Appeal No.182 of 2008 before the Tribunal against
the order dated 23-1-2008 passed by the First Appellate

Authority, the Tribunal allowed the appeal by the impugned order dated 11-9-2014. It remanded the matter back to the First Appellate Authority to delete the tax levied on out and out sale of Rs.7,84,182/- with consequential interest.

3. According to Mr. Sonpal, this order and direction of the Tribunal takes the Revenue by surprise. That is because the appellant before the Tribunal and the respondent before this Court was allowed to raise a new ground for the first time. It was allowed to change the nature of its claim for exemption under Section 6(2) of the Central Sales Tax Act, 1956 from that of out and out sale under Section 4 of the said Act. That was without any sufficient proof or documentary evidence. During the arguments, when this was pointed out to the Tribunal, it refused to refer the question of law as formulated for answer and opinion by this Court. Hence, Mr. Sonpal would submit that the questions at page 3 of the paper-book are all questions of law. The reference application, therefore, be allowed.

4. With the assistance of Mr. Sonpal, we have perused

the Assessment Order, copy of which is at annexure-A on page 12. The Assessment Order records that the general turnover of sales under Section 75 is determined and which includes central sales tax collection in the course of the inter-state sales under Section 6(2). They were allowed because they were supported with "E-1" and "C" Forms as well as bills, etc.. However, the dealer could not produce "C" Forms for the volume of sales to the extent of Rs.7,84,184/-. Hence, that was disallowed and brought to tax.

5. Before the First Appellate Authority, in the grounds of appeal which are summarised at page 14 would indicate as to how there was an argument that referred to the movement of goods between two States. In this background, when this matter was taken to the Tribunal by the assessee, it was urged that even though the claim at the time of assessment was shown as Section 6(2) transaction, the "C" Form could not be produced from the dealer to whom the respondent sold the goods. Therefore, this claim was rejected as sale in transit for want of "C" Form. The tax was levied. The appellant before the Tribunal

and respondent before us produced a chart showing out and out sale and the relevant documents. These documents were perused by the Tribunal with the assistance of both the Advocates appearing for the dealer and the Revenue. No objection was raised to the course adopted by the Tribunal. The Tribunal had before it the entire set of documents, including the purchase order and the details of supply. It found that the goods were despatched from Madhya Pradesh to Hyderabad on 22-3-2004 in pursuance of a purchase order dated 2-3-2004. All the documents evidencing this were produced. Therefore, the Tribunal concluded, as a matter of fact, that the goods have directly gone to the purchasing party at Hyderabad, without entering the State of Maharashtra. Hence, the appellant before it and the respondent before us was not obliged to produce the "C" Form. It was found, as a matter of fact, that the State of Maharashtra cannot levy, assess and recover the central sales tax as the goods have not moved from Maharashtra. That is how the levy of tax to the extent of Rs.1,19,980/- was deleted.

6. The entire exercise is factual in nature. Based on the

undisputed factual position, the claim was granted. We do not see how such an exercise can raise any question of law and for the opinion and answer by this Court. The direction to delete the tax in the light of the admitted documentary evidence, therefore, cannot be faulted. This application is devoid of merit and is dismissed.

(B.P. COLABAWALLA, J.)

(S.C. DHARMADHIKARI, J.)