

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
SALES TAX APPLICATION NO. 1 OF 2017  
WITH  
SALES TAX APPLICATION NO. 2 OF 2017

M/s. Graphite India Limited } Applicant  
versus  
The State of Maharashtra } Respondent

Mr. Subhash Surte with Mr. Prakash V.  
Surte for the applicant.

Mr. V. A. Sonpal - Special Counsel for the  
State.

CORAM :- S. C. DHARMADHIKARI &  
PRAKASH. D. NAIK, JJ.  
DATED :- APRIL 4, 2017

P.C. :-

1. These two applications seek reference of a question of law for answer and opinion by this court. We take the facts from Sales Tax Application No. 2 of 2017.

2. The applicant before us is a public limited company. It obtained registration under the Bombay Sales Tax Act, 1959. It claims that it is situated in a backward area of the State and therefore, the State Industrial and Investment Corporation of Maharashtra Limited granted an eligibility certificate. We are not concerned with questions 1, 2 and 3 and which are proposed by the applicant. In the opinion of the applicant, these are also questions of law. However, on the attention of Mr. Surte being

invited to a Division Bench judgment of this court in Writ Petition No. 2517 of 2016, decided on 24<sup>th</sup> January, 2017 between the same parties, it is fairly stated by Mr. Surte that he is not insisting on the question nos. 1, 2 and 3 appearing at page 34 of the paper book being referred to this court. These three questions are already answered against the applicant dealer by the Division Bench judgment.

3. However, Mr. Surte would submit that question no. 4 at page 35 is equally a question of law. The tribunal erred in not referring it for answer and opinion by this court.

4. Mr. Sonpal, on the other hand, would submit that this is not a question of law for any remission of the whole or any part of the interest payable in terms of the first proviso to section 36(3)(b) of the Bombay Sales Tax Act, 1959 is only when there is financial hardship. The remission cannot be claimed when the legal position, according to the applicant, as in this case, is not clear until there is an authoritative pronouncement of a court, namely, the Hon'ble Supreme Court of India or this court.

5. After having perused the paper book and particularly the order of the tribunal on reference application nos. 46 and 47 of 2016 dated 30<sup>th</sup> November, 2016, we are of the clear opinion that

the question arises out of the tribunal's own order in Second Appeal Nos. 156 and 157 of 2015 decided on 7<sup>th</sup> May, 2016. Though it is purported to be answered in the main judgment delivered in the appeals, but from the reasoning in paras 18 and 19 of the same, this question clearly arises. Hence, these applications succeed.

6. The tribunal's order on reference application nos. 46 and 47 of 2016 dated 30<sup>th</sup> November, 2016 is partially quashed and set aside. We direct the tribunal to refer to this court the following question of law for opinion and answer by this court:-

“4. Whether the tribunal was justified in ignoring the submission made to the effect that section 38 creates a fiction that tax payable as per return shall be deemed to have been paid by a dealer who has opted for deferral and in confirming the interest charged for a period of 5 years, when tax due as per returns is deferred for a period of 10 years?”

7. These two sales tax applications are allowed accordingly. The tribunal shall take the consequential steps of preparing a statement of case forwarding the question to this court within a period of four weeks from the date of receipt of a copy of this order. The necessary paper book shall also be forwarded to this court.

(PRAKASH.D.NAIK, J.)

(S.C.DHARMADHIKARI, J.)