

- Read :** 1. Appeal petition dt.29.01.2003 for the period 1987-88 filed by M/s. I.B.P. Company Ltd.
2. Assessment order dt.29.01.2003 passed u/s. 6 of the Bombay Sales of Motor Spirit Taxation Act, 1958 by the Asstt. Collector of Motor Spirit Sales Tax, (B-109), Nariman Point Dn., Mumbai.
3. Part payment order No.MIA/13-2002/Adm-5/B-3, Mumbai, dt.23.01.2008 passed under section 16(2) of the Bombay Sales of Motor Spirit Taxation Act, 1958 for the period 1/4/87 to 31/3/88 by the Collector of Motor Spirit Sales Tax.
- Heard:** Sh. P.V. Surte, Advocate alongwith Sh. S Ganesh (DGM, Finance) and Sh. Ajay Jain (GM, Finance).

PROCEEDINGS

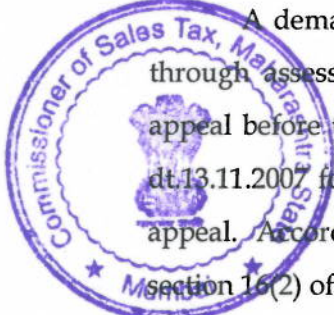
(under section 16 of the Bombay Sales of Motor Spirit Taxation Act, 1958)

No.MIA-13/2003/Adm 5/3/B- 2

Mumbai, dt. 30/3/2016

This is a proceeding in appeal under section 16(3) of the Bombay Sales of Motor Spirit Taxation Act, 1958 by M/s. I.B.P. Company Ltd., holder of License No. MST/IF-15 & 20 (hereinafter referred to as 'the appellant'), situated at Indian Oil Corporation Ltd., Sales Tax Section, Western Region (Finance), Indian Oil Bhavan, 7th Floor, Plot No.C-33, G-Block, Bandra Kurla Complex, Bandra (E), Mumbai-400 051, against the assessment order dt.29.01.2003 passed under section 6 of the Bombay Sales of Motor Spirit Taxation Act, 1958 by the Asstt. Collector of Motor Spirit Sales Tax, (B-109), Nariman Point Dn., Mumbai.

02. FACTS OF THE CASE:



A demand of Rs.1,33,89,935/- was raised by the assessing officer for the period 1987-88 through assessment order dt.29.01.2003. Against this order, the appellant has preferred this appeal before the Collector of Motor Spirit Sales Tax. The matter was taken up for hearing on dt.13.11.2007 for decision as regards the amount payable as part payment for admission of the appeal. Accordingly, an order No.MIA/13-2002/Adm-5/B-3, Mumbai, dt.23.01.2008 under section 16(2) of the Bombay Sales of Motor Spirit Taxation Act, 1958 (MST Act) was passed in the present case fixing part payment of Rs.93,72,955/- as a pre-condition for admission of the appeal. The part payment was fixed at 70% of the total dues (amount including tax, interest & penalty). Against this order of part payment, the appellant preferred an appeal before the Hon. Maharashtra Sales Tax Tribunal (Hon. MSTT). The Hon. MSTT through a common order dt.29.04.2008, alongwith other revision applications, in Revision Applications No.1, 2 and 3 of 2008 reduced the part payment as fixed in the appellant's case at 20% of the net taxes payable and accordingly, directed to pay an amount of Rs.5,86,830/- within a period of two months from the date of communication of the Tribunal's order. The decision of the Hon. MSTT was served on the appellant on dt.19.06.2008 and the payment has been made on dt.07.08.2008.

The grounds of appeal are being reproduced verbatim thus :

"The Appellant is a Govt. of India Undertaking which buy & sells petroleum products. It holds a Licence in accordance with the provisions of the Bombay Sales of Motor Spirit Taxation Act, 1958. It has filed returns and paid a sum of Rs. 5,98,46,865/- along with the statements furnished.

2) The assessment proceedings were initiated after more than 12 years. The Assistant Commr. of Sales Tax, (Assessment), Nariman Point Div. Mumbai, called the appellant 16.9.2002. The appellant attended from time to time and objected to the initiation of assessment proceedings, after more than 12 years without prejudice, he produced evidence on the basis of which an order of assessment was passed on 21.1.2003.

3) Perusal of the assessment order shows that the Asstt. Collector disallowed claim for exemption amounting to Rs. 2,44,51,199/- for sales effected to Kore Machhimar Co. op. Society Ltd. Kore, Tal. Palghar, Dist. Thane, on the ground that the Licence held by the said society was not renewed during the F.Y. 1987-88, and therefore it was not in force.

4) It was brought to the notice of the Asstt. Collector that the Society has certified that it holds a Certificate and a licence which are valid and in force on the date of purchase. The Asstt. Collector rejected the claim and levied tax at 15% & 12% and raised a demand of Rs. 29,34,143/- . To the said amount he added interest u/s. 6A(1) & (2) at Rs. 10,243/- & Rs. 1,04,45,549/- and issued a notice of demand for Rs. 1,33,89,935/-. Being aggrieved by the assessment order, the appellant has filed the present appeal on the following grounds.

GROUND OF APPEAL

1) The Asstt. Collector has erred in initiating assessment proceedings after more than 12 years, and in completing them after 15 years.

2) He has erred in disallowing claim for exemption to the tune of Rs. 2,44,51,199/- in the case of M/s. Kore Machhimar Co. op. Society Ltd. on the ground that the Licence was not renewed by the said society. As per the appellant the Licence held by the said society was not only renewed but it is in force even today. The society has been recognized by the Finance Department of Govt. of Maharashtra.

3) The said officer has erred in charging interest under section 6A (1) & (2) of the Act. There was no provision to charge interest in F.Y. 1987-88 & interest cannot be charged because of retrospective amendment after a period of 15 years.

PRAYER

The Appellant therefore prays :-

- (a) The assessment order may be set aside on the ground limitation. In the alternative,
- (b) Sales effected to Kore Machhimar Co.op. Society Ltd. be allowed, and
- (c) The interest charged u/s. 6A(1) & (2) of the Act, be deleted or remitted in full."

03. HEARING

A hearing in the matter of appeals for the periods from 86-87 to 95-96 was held on dt.09.03.2005 before the then Collector of Motor Spirit Sales Tax. Sh. P. V. Surte (Advocate) attended and submitted thus :

- The point in the appeals is the supplies of diesel to six fishermen's co-operative societies involving a turnover of 80cr. From amongst them Kore Machhimar to whom sales worth Rs.54 cr. are involved. The license under Motor Spirit Tax Act were renewed subsequently with retrospective effect. These renewal orders were cancelled by AC(Adm). The renewal of licence and payment of fees of Rs.2/- each year is a technical error. Subsequently, the Government has given a quota of diesel to these Societies, as such they are genuine societies. The revision by AC(Adm) does not fit in to the objectives for which exemptions were given to Fishermen Societies.
- Once the case fits in to exemption the liberal interpretation has to be given.

On these grounds, it was submitted that the exemption in respect of Fishermen Societies be allowed. The appellant made a written submission dt.09.03.2005 for all the periods together in which it is submitted thus :

"Section 7(A) empowers the State Government to issue a Notification in the public interest granting exemption from payment of tax to specified class of sales. By virtue of the said power vested under section 7A, the above referred Notification has been issued in Public Interest granting exemption from whole of tax subject to the condition prescribed which is to the effect that the cooperative society shall furnish to the selling dealer a declaration in Form 'A' declaring that the goods are intended to be resold to its members or to other cooperative societies of fishermen for use in fishing operation. Allow us to make it

clear that there is no other condition and according to the condition reproduced above, the cooperative societies of fishermen (in all six) have furnished to the appellant declarations in form prescribed Form 'A' certifying that the society holds a certificate granted by the Collector of Motor Spirit Sales Tax, and a licence which are in force on the date of purchase and that the goods are intended to be resold to fishermen members of the society or to other cooperative societies of fishermen. A specimen of the declaration in Form 'A' was shown to you.

It was next submitted that the entire claim disallowed during ten years is in respect of only six societies of fishermen and their names and the amount disallowed were specified in another statement. From perusal of the aforesaid statement it is seen that the total claim disallowed is Rs.80,48,25,596/- and it includes sales amounting to Rs.54,01,58,758/- effected to a single cooperative society viz M/s. Kore Machhimar V. Sahakari Society Ltd. which accounts for 67% of the claim disallowed.

Year wise details relating to the ten appeals pertaining to F.Y. 1986-87 to F.Y. 1995-96 were also filed with the details of claim disallowed society wise. In addition, the aggregate claim disallowed in the case of each society was also filed. On this background, the common grounds raised were in brief as under.

The assessment made for the F.Y. 1986-87 to F.Y. 1993-94 are barred by limitation as prescribed under section 33(4A) of the Bombay Sales Tax Act, 1959. The delay in framing the assessment order is between four years to fifteen years. Section 38A was added to the Motor spirit Taxation Act, 1958 by Maharashtra Act No.30 of 1997 dt.2nd May, 1997 with effect from 1.4.1984. Subsection (2) of section 38A states that all the provisions of the Bombay Sales Tax Act, 1959, shall with necessary modifications apply in relation to the assessment, re-assessment, collection and enforcement of payment of any tax under the Act. It is thus clear that in view of the aforesaid provisions, the assessment framed for the F.Y. 1986-87 to 1993-94 are barred by limitation. In terms of Section 33(4A) of the Bombay Sales Tax Act, 1959 where all the returns are filed by a registered dealer for any year ending on or before the notified day by the prescribed dates or on before the date prescribed for filing the last return of that year, no order of assessment in respect of that year shall be made after a expiry of three years from the end of the said year and if for any reason such order is not made within the period aforesaid, then, the returns so filed shall be deemed to have been accepted as correct and complete for assessing the tax due from such dealer. Applying the aforesaid provisions, it is respectfully submitted that the assessments pertaining to F.Y. 1986-87 to F.Y. 1993-94 are barred by limitation with the result that appeals pertaining to F.Y. 1994-95 and 1995-96 alone are required to be considered on merits.

Without prejudice to the submissions made above, the appellant submits that his claim for deduction has been erroneously disallowed in the case of M/s. Kore Machhimar S.S. Ltd. on the sole ground that the society had failed to renew the licence within the prescribed time by having failed to pay a sum of Rs.2/- being fees for renewal of licence as provided by rule 6 read with rule 8 of the Motor Spirit Taxation Rules, 1958. In this connection, we tender a xerox copy of the licence issued under section 9 of the Act to the said society on 13.9.1975. On the back side of the said licence, entries and endorsements relating to the date of renewal, and the licence fee levied appear under the seal and signature of the licensing authority which in the present case is the Sales Tax officer, Palghar, Dist Thane. A perusal of the dates of renewal clearly shows that all along in the past the payment of licence fee of Rs.2/- was paid after the date prescribed and mere failure to renew the licence before the date prescribed was not considered as fatal. The very idea in applying for renewal from year to year was to check the existence of the society and not the collection of Rs.2/- as renewal fee. This provision relating to renewal of licence was done away with on 1.4.1991 vide section 10 which was substituted by Maharashtra Act No.11 of 1991 with effect from 1.4.1991, and one time payment of Rs.1,000/- was accepted by the Sales Tax officer. In the circumstances, the Sales Tax Officer, has erred in disallowing the claim on the ground that the society had failed to renew the licence and therefore, it did not hold a licence. Allow us to point out that the said society holds the same licence No.MST-19K-29 granted on 13.9.1975 till 9.3.2005 notwithstanding the delay in renewal prior to 1.4.1991.

That apart, the society has furnished the declaration in Form 'A' certifying that it held a valid licence and a valid certificate issued by the Commissioner of Sales Tax, as on the date of sale. Under the circumstances, it was wrong on the part of the Asstt. Commr. of Sales Tax (Adm) Palghar, to set aside the renewal made by the S.T.O. Palghar, only on the ground that he had no power to renew the licence if it was not renewed before 31st day of March each year. It is respectfully submitted that the authority which has power to grant licence has the power to renew the same even though the payment of fee of Rs.2/- is delayed. In fact, the said society has filed an appeal against the order of the Asstt. Commissioner (Adm) passed on 4.6.1996 under section 17 of the Act and the said appeal is still pending before the Dy. Commissioner of Sales Tax, for the last ten years.

Now in respect of the following four societies the reason for disallowance is that the society does

not hold a certificate granted by the Collector. The authority granting licence and the authority granting certificate is the Collector of Motor Spirit and this power has been delegated to the Sales Tax Officer, within whose jurisdiction the society is situated. This means the licence was granted by the Sales Tax Officer, and he was the authority to issue a certificate in addition to a licence. The case of the department is that the societies did hold a licence but they were not granted a certificate by the Sales Tax officer. The concerned societies and the total sales effected to them during the ten years as follows.

- | | | |
|----|--------------------------------------|--------------------|
| 1. | Bharadkhol Machhimar S.S. Ltd. | Rs. 10,89,94,871/- |
| 2. | Konkan Machhimar S.S. Ltd. | Rs. 9,07,17,342/- |
| 3. | Mumbai Sagarputra Machhimar s.s.Ltd. | Rs 67,10,125/- |
| 4. | Sagar Machhimar S.s. Ltd. | Rs. 2,62,08,882/- |

The appellant submits that no form of application was prescribed for grant of a certificate, nor the form of certificate is prescribed under the rules. In such circumstances, filing an application was a mere formality. What was to be certified by the Sales tax Officer, was that it is a cooperative society of fishermen holding a licence. In fact, the licence granted to the society of fishermen by itself was a certificate and therefore, obtaining a certificate was a mere formality. Merely because a separate certificate was not issued by the sales tax officer, will not disentitle the appellant from claiming the deduction. No other reason has been given for disallowing the claim in respect of the aforesaid four societies.

There remains one more society viz. Onanwas Sahakari Machhimar Society Ltd. which has issued the declarations in Form 'A' for sales by the appellant to the said society to the tune of Rs. 3,20,35,618/- during the year 1994-95 and 1995-96. This society issued declaration in form 'A' and mentioned therein the Registration Certificate No. N-30-B-601 held by the society under the BST Act, 1959. We say that the said society paid a sum of Rs. 1,000/- on 28.2.1996 for renewal or for grant of a licence. However, the record of the said society was not shown to the appellant. The said society is in existence even today along with the other societies referred above. This society and the other societies are allotted quota of diesel oil by the Finance Department even for the year 2004-05. It is therefore clear that all the societies referred above, are in existence and are recognized as cooperative societies of fishermen entitled to the quota of diesel oil as fixed from time to time by the Finance Department (vide DC(HQ), MST-2004(1) ADM-10 dated 7.4.2004. The society may have quoted R.C. No. under the BST Act, granted to the society. That does not mean that it was not a cooperative society of fishermen selling diesel to its members. The society was granted a certificate in accordance with entry 1 of Group K of the Notification issued under section 41 certifying that it was a fishermen society selling goods to its members and such sales were exempted from sales tax. Under the circumstances, there was no justification in rejecting the claim in respect of the deduction claimed.

It may not be out of place to refer to Govt. Resolution No. ST-504/CA-23/Taxation-3 dated 2nd December, 2004 whereby the State Govt. was pleased to direct non recovery of tax including interest and penalty in respect of a large number of cooperative societies whose names have been specified in the Annexure if the dues were outstanding as on 30th September, 1997. The said Govt. Resolution further authorised the Commissioner of Sales tax, to inform the Govt. names of other societies eligible for claiming exemption. Pursuant to the said G.R. the Commissioner of Sales Tax, has issued a Trade Circular No. 40-T of 2004 dated 28.12.2004, states that the Commissioner has been authorised to grant exemption to eligible fishermen cooperative societies. Under above circumstances, it is not understood why a technical stand is being set up in order to disallow the exemption claimed by the appellant for having supplied diesel to the cooperative societies of fishermen.

This brings us to another ground of appeal which relates to levy of interest under section 6A(2) of the Act. There was no provision to charge interest on the amount of tax found due on assessment. The Maharashtra Act No. 30 of 1997 dated 2.5.1997 inserted section 6A in the Bombay Sales of Motor Spirit Taxation Act, 1958 for levy of interest on assessed dues with retrospective effect from 1.4.1984. It is therefore, clear that the Act did not provide for levy of interest upto 31.3.1997. All the assessments in the present case are in respect of the period ending 31.3.1996. Therefore, merely because the amendment is retrospective, it would not be just and proper to charge interest under section 6A(2). Retrospective operation covers a period of 13 years. It imposes unreasonable restrictions and therefore, it is liable to be struck down as unconstitutional. In any case, the appellate authority has the power to remit the same as no such law prevailed during the years 1986-87 to 1995-96 and therefore, the appellant prays for remission of entire amount of interest so charged.

The appellant therefore, prays that suitable orders may please be passed as huge amount of tax is involved and no tax is recovered by the appellant from the said societies nor any tax is payable by virtue of the exemption notification issued by the State Government."

Thereafter, the case was taken up for hearing on various dates since the year 2010. However, the same could not take place. A hearing in respect of the periods 88-89 to 95-96 took place on dt.15.02.2011 when Sh. P. V. Surte (Advocate) attended. The present period before me is 1987-88, the same involves the issue of disallowance of sales to fishermen cooperative societies which was also a ground in the periods 88-89 to 95-96. During the assessment proceedings for the period 1995-96, the appellant was granted inspection of records i.e. the certificate/licence of the fishermen's societies. In Appeal/Revision Proceeding in respect of the periods 88-89 to 95-96 before the then Collector, the appellant was again granted inspection of the records. The Asstt. Commissioner of Sales Tax (INV-27) informed by his letter dt.29.4.2011 that he made available to the appellant the records of fishermen's societies with his office for inspection from 25.4.11 to 27.4.11. He also informed that, the representative of petroleum companies had made a new demand for inspection of assessment and recovery records of fishermen co-op societies for the relevant period. It has been informed by the Asstt. Commissioner of Sales Tax (INV-27) that assessment and recovery records of fishermen co-operative societies are not available in their office. During the aforesaid periods, the fishermen societies involved were M/s. Mumbai Sagarputra Machhimar S.S. Ltd, Mumbai, M/s. Sagar Machhimar S. Society, Dist. Raigad, M/s. Onanwase Sahakari Machhimar S. Ltd., Kokan Machhimar Sahakari Society Ltd, Dist. Raigad, M/s. Bharadkhol Machhimar Sahakari Society Ltd Dist. Raigad and Kore Machhimar V.K.S. Ltd, Thane.

The orders on merits in respect of the periods 88-89 to 94-95 have been passed by the then Collector. The periods of the appellant which remained were 1987-88 (the present proceedings), 1987-88 and 1995-96. Hence, a common rehearing in all the three remaining periods was held on dt.04.11.2015 when Sh. P.V. Surte, Advocate attended alongwith Sh. S Ganesh (DGM, Finance) and Sh. Ajay Jain (GM, Finance). They were asked if there are any stock transfers during the periods. To this, it was submitted that to the best of the knowledge of those in charge today and who were not in office during 1986-87, 1987-88 and 1995-96, there were no stock transfers outside the State of Maharashtra. But there were stock transfers to their own places within the State of Maharashtra. They were asked to ascertain the position with regard to their records and give a submission thereto. They filed a synopsis alongwith copies of documents. The synopsis has facts and details for the periods 1986-87 and 1987-88. The same is reproduced herein thus :

"The Appellant deals in petroleum products. He holds a Licence under the M.S.T.Act,1958. He has filed the returns and paid the taxes in time. He was assessed for the two years as shown below by disallowing him claim for exemption and on the top of it interest was charged under section 6A of the Act, which section was inserted on 02/05/1997 by Mah. Act No. 30 of 1997 with retrospective effect from 1.4.1984.

F.Y.	Date of A.O.	Claim disallowed	Interest charged
1986-87	28-11-2002	Rs.1,72,10,958/=	Rs.76,10,081/=
1987-88	21-01-2003	Rs.2,44,51,199 /=	Rs.1,04,55,792 /=

Preliminary objection is that the assessment made is barred by limitation. Relevant case law will be cited separately.

2. Second ground is with regard to disallowance of claim for sales effected to M/s. Kore Machhimar Co.op. Society Ltd. which furnished declarations in the prescribed Form 'A' certifying that it holds a

licence under the Act, for sale to its members and that the society is certified by the Commissioner. Those sales have been erroneously disallowed.

3. Third ground is with regard to interest charged under section 6A (1) & (2) of the Act. Relevant case law and detailed submissions will be made at the time of hearing."

The index of the documents as made by the appellant to submit the documents is thus :

- 1) Notification dated 05-03-1975 issued u/s. 7A of the Motor Spirit Tax Act, 1958 exempting Fishermens' Co-op. Societies from tax.
- 2) Form of Declaration to be issued by the Fishermens' Society for claiming exemption.
- 3) Copy of the Licence granted to be the Kore Machhimar V.K.S. Society Ltd., Dist. Thane, together with renewal endorsements.
- 4) Copy of the Certificate granted to the Society.
- 5) Copy of the Declaration in Form 'A' issued.
- 6) Letter dated 31-12-1992 from the Dept. of fisheries, Govt. of Maharashtra recommending increase in quota of HSD to Kore Society.
- 7) Govt. Resolution dated 02-12-2004 waiving recovery of tax from Fishermens' Societies.
- 8) Copy of Circular issued by the Commissioner of Sales Tax waiving tax liability.
- 9) Bharat Steel Tubes v/s. State of Haryana. 70 STC 122(SC)
- 10) State of Punjab v/s. Bhatinda Dist. Co-op. Milk Producers' Union Ltd. 10 VST 180(SC)
- 11) Shubh Timb Steel v/s. State of Punjab. 31 VST 85 (P&H)
- 12) Chunnilal Parshadilal v/s. C.S.T. 62 STC 112 (SC)
- 13) CST v/s. MRF Ltd. 29 VST 566 (Bom)
- 14) Indo Burma Petroleum Co. Ltd v/s. Collector of Central of Motor Spirit. 57 VST 241 (Bom)
- 15) Milk Food Ltd. v/s. Comm. VAT. 59 VST 1 (Delhi)
- 16) Tata Oil Mills Co. Ltd. v/s. Collector of Central Excise. 82 STC 225 (SC)
- 17) Union of India v/s. Wood Paper Ltd. 83 STC 251 (SC)
- 18) Indo German Products v/s. Asstt. Commr. of Comm. Taxes. 45 VST 236 (Mad)

04. OBSERVATIONS

I have gone through the facts of the case. This is an appeal petition before the Collector of Motor Spirit Sales Tax. The present appeal is filed on dt. 29.01.2003 against the assessment order passed by the Assistant Collector of Motor Spirit Sales Tax. Hence, appeal against the same lies to the Collector as per the provisions before the amendment in 2005 in the rules prescribing the authorities under the Act. Now, the case is taken up for decision on merits. The appellant has paid the part payment fixed in the matter. Hence, the case is taken up for decision on merits. The grounds of appeal have been reproduced above. At the cost of repetition, albeit in brief, the same are reproduced again herein thus :

Period	Order details	Assessment / Appeal order date	Dt. of filing of appeal / revision with Collector	Amount	Grounds
87-88	Assessment by Asstt. Collector	Assessment order dt. 29.01.03	Appeal dt. 31.01.03	Dues in Assessment Rs. 1,33,89,935/- Less : Part payment in appeal Rs. 5,86,830/- Balance of Rs. 1,28,03,105/-	1. <u>Assessment proceedings after more than 12 years</u> , and completing them after 15 years. 2. <u>Disallowing claim for exemption amounting to Rs. 2,44,51,199/- for sales effected to Kore Machhimar Society Ltd., Kore, Tal. Palghar, Dist. Thane</u> , on the ground that the said society did not renew the licence granted to it for the year 1987-88. 3. <u>Interest u/s. 6A(1) & (2) has been erroneously levied</u> . There was no provision to charge interest in financial year 1987-88 & interest cannot be charged because of retrospective amendment after a period of 15 years.

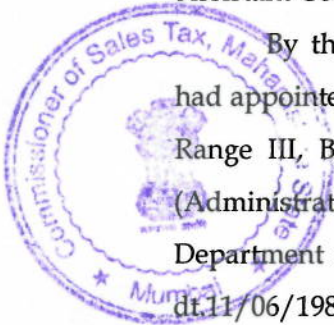
From a look at the grounds of appeal, it is seen that the issues boil down to the following ;

1. DELAY IN ASSESSMENT PROCEEDINGS
2. DISALLOWANCE OF SALES TO FISHERMEN CO-OPERATIVE SOCIETIES
3. LEVY OF INTEREST UNDER SECTION 6A(1) AND 6A(2)

I would deal with each of the points. However, prior to that, I find that the appellant in his grounds of appeal had taken up the point of transfer of assessment proceedings for the year in question by the Dy. Collector of Motor Spirit to the Assistant Collector of Motor Spirit Sales Tax, (B-109) , Nariman Point, Mumbai. I would deal with this issue in short thus :

JURISDICTION AND AUTHORITY OF THE ASSESSING OFFICER

The appellant has challenged the jurisdiction of the Assistant Collector of Motor Spirit Tax (B-109) in assessing the appellant for the period 1986-87. The point which immediately comes to notice is that the challenge to the authority of the Assistant Collector of Motor Spirit Tax (B-109) was not challenged at the stage of assessment. By letters dt.05.12.01 and dt.14.01.02, the appellant requested Assistant Collector of Motor Spirit Tax (B-109) to adjourn the assessment for the subject year so as to be able to produce the records. By letter dt.13.09.2002, the appellant informed the assessing authority that the appellant would attend the assessment proceeding only after completion of their assessment for the period 1986-87 under the Motor Spirit Act. The appellant attended before the assessing authority on dt.27.11.01 and thereafter, too. However, no objection was raised to the jurisdiction and authority of the assessing authority and in fact, the appellant had willingly participated in the assessment proceedings by attending before the Assistant Collector of Motor Spirit Tax (B-109) and also sending written communications to him.



By the Finance Department notification dt.11.06.1980, the Government of Maharashtra had appointed all Assistant Commissioner of Sales Tax (Administration), Bombay City Division, Range III, Bombay as Assistant Collector of Motor Spirit Sales Tax having jurisdiction for (Administration), Bombay City Division, Range III, Bombay. By virtue of the Finance Department notification dt.21.07.1995 (which was issued in supersession of the notification dt.11/06/1980), the Government of Maharashtra appointed all Assistant Commissioner of Sales Tax, Greater Bombay, Thane and Raigad as Assistant Collector of Motor Spirit Sales Tax having jurisdiction for Greater Mumbai and the revenue districts of Thane and Raigad. From the records, it is seen that the assessment order was passed by the Assistant Collector of Motor Spirit Tax (B-109) by virtue of the Transfer of Proceedings Order (TAP order) passed by the Deputy Collector of Motor Spirit Sales Tax, Nariman Point Division, (No-DC(Adm)NP/B-4482 Mumbai, dt.25.10.01) under section 38(A) of the Bombay Sales of Motor Spirit Taxation Act, 1958 read with section 70 of the Bombay Sales Tax Act, 1959. The assessment proceedings of the appellant for the period 1987-88 were transferred from the Assistant Collector of Motor Spirit Tax (B-106) to the Assistant Collector of Motor Spirit Tax (B-109) so as to expedite the pending assessment proceedings on administrative grounds. As on the date of passing of the assessment order, the assessing officer was having valid jurisdiction by virtue of the Government notifications and the TAP order and thus, was well authorized to pass the assessment order.

The Deputy Collector of Motor Spirit Sales Tax passed the TAP order dt.25.10.01 under

section 38A of the MST Act read with section 70 of the BST Act. Section 38A of the MST Act provides that -

The authorities empowered to assess, reassess, collect and enforce payment of any tax under this Act may, exercise all or any of the powers relating to penalties, interest, forfeiture, recovery, special mode of recovery and transfer of proceedings, under the Bombay Sales Tax Act, 1959 as if, the tax payable under this Act is the tax payable under the Bombay Sales Tax Act, 1959. Authorities under Bombay Sales Tax Act to be authorities, under the Act.

Thus, the MST Act has a provision for transfer of proceedings which is to be executed in accordance with the provision under the BST Act. The provision under section 70 of the BST Act reads thus :

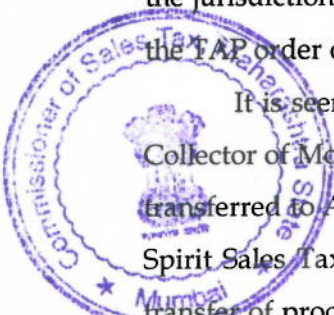
(1)The Commissioner may, after giving the parties a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, by order in writing transfer any proceedings or class of proceedings under any provision of this Act, from himself to any other officer and he may likewise transfer any such proceedings (including a proceeding pending with any officer or already transferred under this section) from any officer to any other officer or to himself:

Provided that, nothing in this section shall be deemed to require any such opportunity to be given where the transfer is from any officer to any other officer and the offices of both officers are situated in the in Greater Bombay or, as the case may be, in the same district as constituted under section 4 of the Maharashtra Land Revenue Code, 1966.

(2)Notwithstanding anything contained in sub-section (1), where the exigency of the administration so requires, the Commissioner may assign by transfer, cases from one officer to other if the offices of such officers are situated in the same city, locality or place and all such officers have identical territorial jurisdiction.

Explanation—In this section, the word "proceedings" in relation to any dealer means all proceedings under this Act in respect of any year, which may be pending on the date of such order, or which may have been completed on or before such date, and includes also all proceedings under this Act which may be commenced after the date of such order in respect of any year in relation to such dealer.

A bare perusal of the above shows that the transfer of assessment proceedings was very well within the provisions of the Act. Where both the officers are situated in the same district, the section does away with the requirement of giving a reasonable opportunity of hearing. Further, a transfer of proceedings under administrative exigencies is also provided for. In the present case, both the officers (from whom and to whom the proceedings were transferred) were located in the same location at Mazgaon, Mumbai. Therefore, there is not even an iota of a reason to doubt the jurisdiction validly conferred on the Assistant Collector of Motor Spirit Sales Tax (B-109) by the TAP order dt.25.10.2001.



It is seen from the records that the assessment proceeding was initiated by the Assistant Collector of Motor Spirit Sales Tax (B-106) by issuing notice on dt.22.06.94. The proceedings were transferred to Assistant Collector of Motor Spirit Sales Tax (B-109) by Deputy Collector of Motor Spirit Sales Tax, Nariman Point Division, Mumbai under order dt.25.10.01. Subsequent to the transfer of proceeding to Assistant Collector of Motor Spirit Sales Tax (B-109), the appellant was called for the purpose of assessment by issuing reminder. In response to notice and reminder issued by the assessing authority, the appellant attended before the assessing authority on dt.27.11.2001, dt.03.12.2002, dt.19.12.2002, dt.30.12.2002, dt.07.01.2003 and dt.14.01.2003. The appellant had also tendered written submission of various dates during the course of the assessment proceedings. The same are scrutinized and it is seen that no objection was raised by the appellant as regards the jurisdiction of the assessing authority.

It can be inferred from the above that the appellant participated in the proceedings without any reservations. The conduct of the appellant shows that he had accepted the jurisdiction of the assessing authority. In such a case, the appellant is estopped from raising any

objection to the jurisdiction of the assessing authority. This view is fortified by the decision of the Hon. Calcutta High Court in the case of M/s. Elbe Industrial Works (131 STC 453) wherein it was held that once the appellant had participated in the proceedings without any reservation, had accepted the order and after having participated without any reservation, the petitioner is stopped from challenging the order of reopening the assessment at the stage of appeal. It was further observed that *if there be any objection, the same were waived by the conduct of the petitioner.*

With regard to the argument that jurisdiction cannot be conferred by amending the Act with retrospective effect, then it is seen that the argument of the appellant about retrospective effect has been dealt with by the Hon. MSTT in Revision Application No.15 of 2011 dt.29.04.2013 in respect of the period 1988-89 which also had been transferred by a TAP order passed by the Deputy Collector of Motor Spirit Sales Tax. The observations of the Hon. MSTT in the appellant's case itself but for the period 1988-89 would lay the issue to rest thus :

"11. Shri. P. V. Surte, the learned Advocate submitted that the Deputy Collector of Motor Spirit is not an officer appointed by the Government of Maharashtra u/s. 3 of M.S.T. Act in the year 1997. He submitted that the Deputy Commissioner of Sales Tax (Administration) Nariman Point, transferred the assessment proceeding from the file of the Assistant Collector Motor Spirit to the file of Sales Tax Officer (Enforcement branch) Mumbai. He therefore, submitted that the Deputy Commissioner of Sales Tax was not having power to transfer the assessment proceeding on 22/10/1997 with the aid of Section 38A of M.S.T. Act. He submitted that the Government does not have the power to validate his act retrospectively. He relied on the decision of Bombay High Court in case of Commissioner of Sales Tax, Maharashtra State, Mumbai vs. Ravi Coffee Works [52 STC 452] in support of his submission.

12. Shri. V. A. Sonpal, the learned Advocate for the revenue submitted that the post of Deputy Collector Motor Spirit Sales Tax is created by the State Government u/s. 3 of M.S.T. Act by virtue of the Maharashtra (levy, amendment & validation) Act, 1997 w.e.f. 02/05/1997. He submitted that designation of Deputy Collector is introduced in Section 3(b) of M.S.T. Act permitting State Government to appoint the Deputy Collector of Motor Spirit for carrying out the purpose of the said Act. He submitted that Deputy Commissioner is deemed Deputy Collector Motor Spirit by virtue of Section 3A introduced by Maharashtra Ordinance No. 11 of Section 2. He, therefore, submitted that the transfer of proceeding dated 22/10/1997 is done by the Deputy Collector of Motor Spirit, and the said act is valid.

13. The transfer of assessment proceeding is dated 22/10/1997. The Deputy Commissioner of Sales Tax (Adm.) Nariman Point, Mumbai transferred the assessment proceeding from the file of Assistant Collector Motor Spirit Sales Tax to the file of the Sales Tax Officer (Enforcement Branch) Mumbai. The State Government amended section 3 of M.S.T. Act retrospectively w.e.f. 1st April 1984 permitting it to appoint Deputy Collector Motor Spirit for carrying out the purpose of said Act. Section 3A is introduced in the M.S.T. Act by Maharashtra Ordinance No. 11 of 1999, Section 2, whereby the Deputy Commissioner of Sales Tax appointed during the period from 01/04/1984 to 28/09/1997 is deemed to be the Collector of Motor Spirit. Section 3A validated the act performed by the Deputy Commissioner of Sales Tax as if it is done by the Deputy Collector of Motor Spirit. In view of the retrospective amendment into M.S.T. Act, the Deputy Commissioner of Sales Tax, Nariman Point, was the Deputy Collector of Motor Spirit under the M.S.T. Act. The transfer of proceeding made by him in the exercise of his power u/s. 38A r/w. Section 70 is validated by Section 3A of M.S.T. Act. The Sales Tax Officer (Enforcement), who is also Motor Spirit Sales Tax Officer, to whom the assessment proceeding is transfer acquired a valid jurisdiction to proceed with the assessment. The assessment is valid.

14. The case relied on by Shri. P. V. Surte is not applicable to the facts of the present case because in Ravi Coffee Works, the reassessment proceeding was already completed before the transfer order. Such is not the present case."

The Hon. MSTT having held so, there arises no point in deliberating any further on the issue of jurisdiction. Though an appeal has been preferred with the Hon. Bombay High Court against the order of the Hon. MSTT, the same observations as above, on the issue of 'jurisdiction', have been reiterated in the order in Revision Application Nos. 8, 9, 12, 13, 14 and 15 of 2012, decided on June 21, 2013 in IBP for the periods 1989-90 to 1994-95. I also find that the arguments placed in respect of this point of jurisdiction have been dealt with in the above order of the Hon. MSTT.

I now turn to the first ground of appeal.

DELAY IN ASSESSMENT PROCEEDINGS

The appellant has made an argument that there is no justification to take up the assessment of the appellant after 12 years of filing the statements and making payment of tax as also the point that the amendment being retrospective, there is no justification in charging interest for 15 years. In this regard, the first and foremost thing that I notice is that the assessments are completed under the provisions of the MST Act which during the period under consideration did not provide for a time limit within which the assessing authorities are to complete the assessments. In this regard, we may refer to section 38A(1) of the MST Act which is thus :

38A (1) Subject to the other provisions of this Act, the authorities empowered to assess, reassess, collect and enforce payment of any tax under this Act may, exercise all or any of the powers relating to penalties, interest, forfeiture, recovery, special mode of recovery and transfer of proceedings, under the Bombay Sales Tax Act, 1959 as if, the tax payable under this Act is the tax payable under the Bombay Sales Tax Act, 1959.

(2) All the provisions relating to offences and penalties (including provisions relating to penalties in lieu of prosecution for an offence, or in addition to the penalties or punishment for an offence) of the Bombay Sales Act, 1959, shall with necessary modifications, apply in relation to the assessment, re-assessment, collection and enforcement of payment of any tax required to be collected under this Act or in relation to any process connected with the collection or enforcement of payment as if the tax under this Act were a tax under the Bombay Sales Act, 1959.

A reading of section 38A(1) reveals that the provisions of limitation are not made applicable to the MST Act. The section 38A(2) only says that the provisions relating to **offences and penalties** shall apply in relation to assessments and this does not in any way imply that the provisions of limitation will also apply. Also, the section dealing with the subject matter is sub section (5) of section 6 of the Motor Spirit Act which was specifically amended by the Amendment Act dt.29.06.2004 to provide for the following:-

"(5) Where all the statements other than an annual statement are filed by a licensed trader for any year starting on or after the 1st April 2004 within one month from the end of the year to which such statements relate, no order of assessment under sub-section (3) or (4) in respect of that year shall be made after the expiry of three years from the end of the said year; and if for any reason such order is not made within the period aforesaid, then the statements so filed shall be deemed to have been accepted as correct and complete for assessing the tax due from such licensee.

Explanation - If all the statements pertaining to any year ending on or before the 31st March 2004, are filed by a trader on or before the 30th September 2004, no order of assessment under sub-section (3) or (4) shall be made on or after the 1st April 2007.

Provided that, where a fresh assessment has to be made to give effect to any finding or direction contained in any order made under this Act or to any order of the High Court or the Supreme Court, such assessment shall be made within thirty-six months from the date of communication to the Collector of such finding, direction or, order, as the case may be :

Provided further that, in computing any period of limitation laid down in this section, the time during which the assessment remained stayed under the order of the Tribunal or of the High Court or of the Supreme Court shall stand excluded :"

With the introduction of the VAT Act, the Motor Spirit Act was repealed and the Maharashtra Value Added Tax Act, 2002 (MVAT Act,2002) came into existence. By the Amendment Act dt.30.03.2007, section 96 of the MVAT Act,2002 which pertains to Savings was amended to insert the following:-

"Where all the statements pertaining to any year ending on or before the 31st March 2004 are filed by the licensed trader on or before the 30th September 2004 and an order of assessment under sub-section (3) or (4) of section 6 of the Bombay Sales of Motor Spirit Taxation Act, 1958 is not made before the 31st March 2007, the Collector may make such an order of assessment before the 31st March 2008."

From the above, it can be seen that, the concept of time barred assessment was first introduced in the MST Act w.e.f dt.29.06.2004. It lays down that when the statements pertaining to any year ending on or before the 31st March 2004 are filed by a trader on or before the 30th September 2004, no order of assessment under sub-section (3) or (4) shall be made on or after the 1st April 2008. The present order is made on 28.11.2002 and as it is before the stipulated date of 1st April 2008, the assessment order is not time barred.

Further, it is seen that the Amendment Act dt.29.06.2004 also introduced the concept of assessment in a scenario where the monthly returns or statements to be filed by the licensed trader have been filed late. The provision reads thus :

"If a licensed trader does not furnish the statements in respect of any period by the prescribed dates, the Collector shall, at any time within eight years from the end of the year in which such period occurs, after giving the trader a reasonable opportunity of being heard, proceed to assess to the best of his judgment, the amount of tax (if any) due from him."

The above provision is referred since it is seen that the last return of the year 86-87 has been filed late. The above provision as stood earlier read thus :

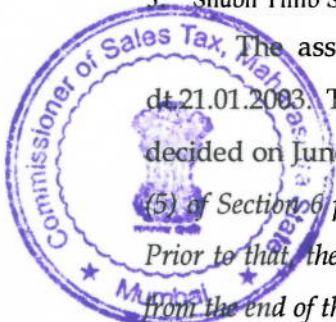
"If trader does not furnish the statements in respect of any period by the prescribed dates, the Collector shall, after giving the trader a reasonable opportunity of being heard, proceed to assess to the best of his judgment, the amount of tax (if any) due from him."

As can be seen, there was no time limit to pass an assessment order under the MST Act, even when the returns or statements were filed late. On this aspect, the appellant has placed on reliance on the following judgments :

1. Bharat Steel Tubes v/s. State of Haryana. 70 STC 122(SC)
2. State of Punjab v/s. Bhatinda Dist. Co-op. Milk Producers' Union Ltd. 10 VST 180(SC)
3. Shubh Timb Steel v/s. State of Punjab. 31 VST 85 (P&H)

The assessment order in respect of the impugned period of 1987-88 was passed on dt.21.01.2003. The Hon. MSTT in Revision Application Nos. 8, 9, 12, 13, 14 and 15 of 2012, decided on June 21, 2013 in IBP for the periods 1989-90 to 1994-95 has observed that - *Sub-section (5) of Section 6 prescribing the period of limitation is inserted in MST Act with effect from 23/06/2004. Prior to that, there was no period prescribed for assessment. As such, assessment completed after 9 years from the end of the year is not barred by limitation.* I have perused the case laws and it is seen that the

facts are not pari materia. However, the applicant wishes to rely on the principle that where no time limit has been prescribed, a reasonable period has to be considered. I have perused the assessment record and it is seen that the first notice calling the appellant for assessment on dt.13.07.1994 was issued on dt.22.06.1994. The applicant has received the said notice on the very date of issue i.e dt.22.06.1994. However, the proceeding sheet records no attendance on the said date. There is also no communication submitting any documents or excusing attendance or requesting adjournment, thereby showing that the appellant has taken any cognizance of the notice. Thereafter, there is a second notice dt.25.07.1995 calling the appellant for assessment on dt.24.08.1995. Again, I find no communication from the appellant or recording of attendance of the appellant. What the aforesaid details show is that the assessment proceedings were initiated



in the appellant's case for the period 1987-88 within seven years from the end of the year 1987-88. When reminders were issued from 2001 onwards by the assessing authority, I find that the appellant has communicated to the assessing authority that they are busy with assessments under MST Act for the period 1986-87. In fact, it was categorically informed that the appellant would attend the assessment proceeding only after completion of their assessment for the period 1986-87 under the Motor Spirit Act.

Now, the appellant has cited a case which says that where there was no provision then the subsequent provisions should be followed. Considering that the return or the statement for the month of March 1988 and January 1988 were filed late, we have seen that the assessing authority had initiated the assessment within a period of eight years which is in adherence to the subsequent provision introduced in the Act.

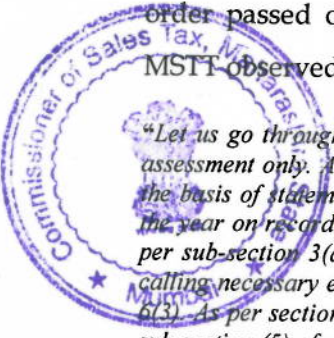
However, I still hold that the facts of the oil company assessments are different and in absence of a specific provision providing for time bound assessments, the argument about delay in assessments cannot be pressed into. And this I say on the basis of the very cases as are cited by the appellant. The appellant seems to have lost sight of the fact that the Hon. Courts have also laid down that what a reasonable period would depend on the facts of each case. In *State of Punjab v/s. Bhatinda Dist. Co-op. Milk Producers' Union Ltd.*, the Hon. Court has observed that *"What, however, shall be a reasonable period would depend upon the nature of the statute, the rights and liabilities thereunder and other relevant factors."* In the present case, we have seen that during the period under consideration, there was no provision to complete an assessment within a prescribed period. Further, the taxation was in respect of motor spirits and the players were IBP, an oil company. The tax payments by the oil companies account for a major chunk of the States' revenue sources. These assessments cannot be hurried into as the issues involved are varied and involve striking monetary ramifications. This could be one of the reasons as to why the Act had no provision for time baring assessments. I understand that the same player was also assessed for the purposes of the BST Act which had a limitation period. However, it needs to be appreciated that the Sales Tax Department was administering the BST Act which provided for the taxes on the sales. Alongside, with the same set-up and more importantly, the same set of staff, the Department was also administering other Act such as :

- The Central Sales Tax Act, 1956
- Works Contract Tax Act
- Lease Tax Act
- The Maharashtra Tax on Luxuries Act, 1987
- The Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975
- The Maharashtra Tax on the Entry of Goods into Local Areas Act, 2002
- The Maharashtra Tax on Entry of Motor Vehicles into Local Areas Act, 1987
- The Maharashtra Purchase Tax on Sugarcane Act, 1962
- Motor Spirit Taxation Act
- Chit Fund Act

Thus, the circumstances and facts in the present case are peculiar and as has been observed by the Hon. Court, depending upon the nature of the statute, the rights and liabilities

thereunder and other relevant factors, the ratio of 'reasonableness' cannot be pressed in such cases. The long and short of it is that no blanket rule can be applied. We have seen that the assessment records show no sign of the appellant's attendance before the assessing authority. However, when reminders were issued in the later years, the appellant themselves had requested time so as to be able to complete the assessment proceedings in respect of the other periods or under other statutes. This behavior of the appellant gives no reason or cause for the appellant to raise a hue and cry about delay in completing the assessments. The TAP orders shows that the Departmental authorities took steps to ensure that the assessment proceedings for the various periods which were pending against the Desk of one officer were distributed to other officers with a view to expediting the assessments. Whereas after such transfer of proceedings, the behavior of the appellant was such as to delay the process further by seeking adjournments. Further, we have also seen that there were issues such as the CBI authorities having evidences about incorrect claims of sales on declarations as made by the oil companies. In view thereof, considering the conduct of the appellant and the available provisions, I find that the argument about delayed assessments fails to make a valid point.

Apart from the above, I find support from the decision of the Hon. MSTT in the case of M/s. Hindustan Petroleum Corporation Ltd. (Appeal No. 64 of 2012, decided on February 18, 2015) wherein on account of the available provisions, the Hon. MSTT held that the assessment order passed on 31-08-2002 for the period 1985-1986 was not barred by limitation. The Hon. MSTT observed thus :



"Let us go through the provisions of assessment of tax substituted in M.S.T. Act, Section 6 of the Act is meant for assessment only. As per sub-section (1) of Section 6, the Collector can assess the dealer separately for each year on the basis of statement submitted in prescribed form as provided under section 13 or he can assess him for a part of the year on recording reasons in writing, sub-section 2 says assessments can be done on the basis of statements. As per sub-section 3(a) of section (6) the collector can call the assessee for assessments by issuing notices and after calling necessary evidence on which the trader relies he can pass assessment order under sub-clause (b) of section 6(3). As per section 6(4) best judgement assessment order can be passed if no response is given by the trader as per sub-section (5) of section 6, if no statements are filed by traders, the collector after giving hearing notice can proceed to assess to the best of his judgment. In all these sub-sections, no time limit is prescribed and section 6 of M.S.T. Act was amended vide Act No. XIII of 2004 and a period of limitation is prescribed three years and the said limitation was made applicable from assessment year starting from 1-4-2004 provided if all the statements are filed within one month from the end of year. It is also specifically provided in the said section that if all the statements pertaining to any year ending on or before 31-3-2004 are filed by dealer on or before the 30th September, 2004, no order of assessment under section (3) or (4) to be passed after 1-4-2007. Previously no time limit was prescribed and the same is first time substituted in the year 2004. After introduction of Maharashtra Value Added Act, the time for completion of assessment under sub-section (3) or (4) for the period before 31-3-2004 was extended from 31-3-2007 to 31-3-2008 provided all the statements earlier to year ending 31-03-2004 are furnished on or before 30-09-2004. When these provisions are made in statute book Tribunal can not overrule the same and give any order on point of limitations."

I now turn to the second ground of appeal.

DISALLOWANCE OF SALES TO FISHERMEN CO-OPERATIVE SOCIETIES

Let me deal with each of the aspects of the arguments on the issue thus :

During the period 1987-88, the appellant has claimed to have effected sales of Rs.8,74,24,342/- to the fishermen cooperative societies under Notification Entry-2 issued u/s 7A of the Act. To allow any sale on a declaration, the declaration as well as the conditionalities under which the declaration could be held valid need to be produced and examined. Supporting evidence like books, bills, etc. need to be verified. In other words, every claim for a deduction needs to be justified. If the appellant is unable to produce any details, I would have to ascertain the validity of the claims by referring to available details on the record. The sales effected to Fishermen societies are exempted from tax by virtue of a notification. Sub-section (1) of section 7A provides that *subject to such conditions as it may impose, the State Government may, if it is necessary so to do in the public interest, by notification in the Official Gazette, exempt any specified class of sales or purchases from payment of the whole or any part of the tax payable under the provisions of this Act.* The notification issued for the purposes of -section 7A(1) read thus :

Column 2	Column 3	Column 4	Column 5
	Extent of exemption	Condition	Authority
2. <u>Sale of High Speed Diesel Oil by Trader holding a Licence</u> under the Bombay Sales of Motor Spirit Taxation Act, 1958 <u>to a co-operative society of fishermen</u> , which is a trader <u>holding a licence</u> under the said Act and which carries on the business of purchasing such oil and reselling it to its fishermen members or to other co-operative societies of fishermen <u>and which is certified</u> for that purpose <u>by the Collector</u> .	Whole of tax	(1) If the co-operative society furnishes to the selling trader a declaration <u>Form-A</u> appended hereto declaring inter alia that the goods are intended to be resold to its fishermen members or to other co-operative societies of fisherman for use in fishing operations. (2) If the co-operative society fails to use the goods in accordance with the terms of the declaration furnished by it or contravenes any provisions of the said Act or the Rules made thereunder, the certificate issued by the Collector shall be liable to be cancelled. Note: The exemption under this entry shall have effect from the 5th March 1975 (inclusive)	Government Notification, Finance Department No.MST-1074/2376/74/M-2 dt.5th March, 1975.

* (Emphasis added)

A look at the above shows thus -

In column-2, the class of sales and purchase have been indicated based on certain basic conditionalities incorporated therein. Column-3 indicates the extent of exemption. Column-4 provides for certain conditions on the fulfillment of which the benefit of exemption flows from the notification entry and which benefit could be availed of by a supplier. Column-5 provides the relevant details of notification. A careful examination of the contents in column-2 would show that all sales of HSD oil are not eligible for the benefit of the notification entry. In order that the benefit of the entry could be claimed by any selling trader, he has to ascertain and establish that the sales are effected to,-

- a co-operative society of fishermen,
- such a co-operative society holds licence as a trader under the Act,
- such a co-op. society is carrying on the business of purchasing oil and selling it to its fishermen members or to other societies of fishermen,
- such a co-operative society is certified for that purpose by the Collector

And all these relevant details are to be incorporated in a declaration in Form-A given by the buyer and only on scrutiny, a valid declaration allows the seller to claim benefit of exemption

from sales tax payable on sales of motor spirits. As mentioned earlier, column (3) contains the conditions on the fulfillment of which the benefit of exemption could be allowed. The condition at no. (i) requires that only on production of **Form-A** by the co-operative society, can the exemption be allowed. As per the condition at no. (ii), if the co-operative society fails to use the goods in accordance with the terms of the declaration furnished by it or contravenes any provisions of the said Act or the Rules made thereunder, the certificate issued by the Collector shall be liable to be cancelled. Even before the essential of Form A applies, the class of sales is very specific with a condition that the benefit claimed by a trader in respect of supply to a co-operative society of fishermen is conditional on the fulfillment of the two main statutory requirements:

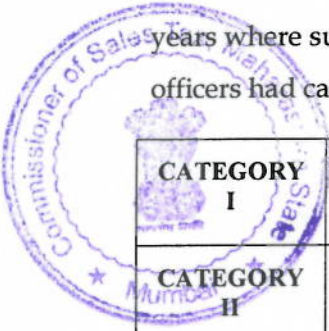
(a) a licensing of the fishermen co-operative society as a trader under the MST Act;

and

(b) a certificate from the Collector to the fishermen co-operative society.

It could also be observed that section-10 of the Act did provide for renewal of licence every year prior to 31st march 1991. As per the then section-10(1), the licences were to expire on the last day of the year for which it was granted and the same sub-section also provided for renewal from year-to year basis. One time renewal has been provided in respect of licences having validity on 31st March 1991 as per amended provision of 1991 as contained in section-10(2).

In order to deal with the matter judiciously, the assessment records of the appellant for the years where such claims on Form A were involved were perused. It was found that the assessing officers had categorized the fishermen's societies into four categories as follows:-



CATEGORY I	<i>In this category, societies holding valid licence and certificate are covered. In other words the societies covered by this category are holding a valid licence as a trader duly renewed and also holding the certificate issued by the Collector.</i>
CATEGORY II	<i>Under this category, societies who are not at all holding any "Trader's Licence" as per the Act or societies who had not renewed their Licence are included. In both these cases, the societies are not holding a certificate as required by the Notification Entry.</i>
CATEGORY III	<i>Under this category, societies are holding their valid Trader's Licence (duly renewed) but they are not holding a certificate from the Collector of Motor Spirit Tax.</i>
CATEGORY IV	<i>Under this category, the societies are not holding the valid licence (not renewed) but are holding a certificate issued by the Collector of Motor Spirit Tax.</i>

The assessing officers have adopted a scientific and rational approach. It is indeed a commendable exercise. The following points were in consideration of the assessing officers at the time of assessment:-

- i. notification requirements – valid license & certificate;*
- ii. provisions pertaining to license under the Act;*
- iii. factual details about the fishermen's societies in terms of valid license & certificate.*

Accordingly, the strategy adopted by the assessing officers could be seen as follows:-

- *Interpreting the notification in the correct sense;*
- *Ascertaining the requirements of the notification to claim any benefit therefrom;*
- *Identifying the contingencies in terms of -*
 - a. *allowing the benefits of the notification;*
 - b. *licenses & certificates available with the fishermen's societies;*

It means there could arise in circumstances where the society may be holding a valid license but not a certificate from the Collector of Motor Spirit Tax or vice versa.

- *Categorization of the contingencies;*
- *Placing the societies in the category identified;*
- *Proceeding to assess the tax implications of the categorization.*
- *The Categories I to IV are annexed with the assessment orders along with reasons for placing the fishermen's societies in any particular category.*

As stated earlier, I have perused the assessment record wherein the claim is disallowed. It is seen that the society whose claim has been disallowed is only one and it finds a place in the category as follows :-

CATEGORY IV	1. Kore Machhimar V.K.S. Ltd. Dist. Thane
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The criteria required for being entitled to the benefits of the notification have already been reproduced earlier. Let us now apply the categorization to the facts on record for the impugned period:-

CATEGORY IV

The appellant would not be allowed the benefit of exemption from tax on his sale to the societies identified in CATEGORY IV as **although** the purchaser **holds a Certificate** issued by the Collector of Motor Spirit Tax, **he does not hold a valid license** (not renewed). Mere holding of a license is not enough. It should be a valid license such that it should be duly renewed as per the available provisions.

The appellant has effected sale of HSD to M/s. Kore Macchimar V.K.S. Ltd. Dist. Thane at Rs.2,44,51,199/- against declaration in Form-A. In this case, the society was granted license bearing no. MST-19-K-29 w.e.f. 6.8.1975 dated 13.9.1975 under section 9 of the Act. The said license was got renewed from time to time till 1986. Thereafter the society failed to make an application for renewal of license as mandated by the various provisions of the Act. Hence for the reason of the failure on the part of society to apply for renewal of licence, it ceased to hold any licence from 1.4.1986 onwards and it in fact did not hold licence as defined u/s 2 of the Act during the period 1.4.1987 to 31.3.1988. The provision for renewal of licence is laid down under section 10(2) and (3) of the Act. The provision reads as follows:-

- (2) "Whereas a licence is subsisting on the 31st day of March, 1991 and the holder thereof carries on his trade thereafter, then such licence shall be renewed only once and the licence so renewed shall not require any further renewal :

Provided that, if any such licence is already renewed for the period of one year commencing on the 1st April, 1991 before the date of commencement of the Maharashtra Tax Laws (Amendment) Act, 1991 the holder of such licence shall pay the difference between the licence fee already paid on such renewal and the fee payable as prescribed in sub-section (3).

(3) *The fee for licence including the licence renewed under sub-section (2) shall be rupees one thousand".*

For renewal of licence under the aforesaid provision as is evident from the plain reading of the language of the section, it was necessary that the licence should have been in existence on 31st March, 1991. In the case of Kore Macchimar Co-operative Society the license had expired on 31.3.86. The fact remains that at the time of transactions of sale of H.S.D. by the company to the above society, the licence was not in existence. Though the licence was renewed retrospectively, the Asst. Commr. of Sales Tax (M-55, Palghar) revised the order of renewal and set aside the renewal made by the officer. Thus, the society was not holding any licence during the financial year 1987-88. The licenses which were renewed and made effective retrospectively were set aside being illegal by the revisional authorities of the authorities who granted the renewal. In view of all the above facts, sales to M/s. Kore Macchimar V.K.S. Ltd on Form A were disallowed by the assessing officer.

The appellant could not rectify the defects in the present proceedings. The facts are such that the Society had no valid licence as the same had not been renewed. In the circumstances, I have no alternative but to confirm the action of the appellate authority.

The above would be the normal procedure which would have been followed by any officer to allow the benefit of the notification. A trader desirous of availing the benefit of exemption on Form A has to submit the said declaration before the assessing authority. Thereafter, where the claimant dealer satisfies the conditions of the notification, the claim is normally allowed by the Assessing Authority. From the arguments of the appellant made during hearing, it is seen that the appellant has raised objection to this categorization. The appellant is of the opinion that the non-renewal of license as well as obtaining of the requisite Certificate was the responsibility of the fishermen's cooperative societies and not of the appellant. I would now deal with this argument as regards "onus" of compliance.

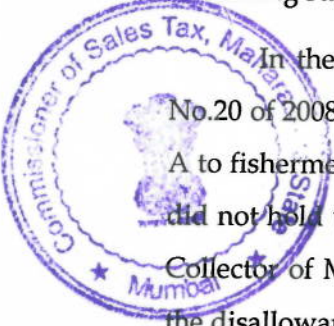
We have already seen as to how the sales effected to fishermen societies are able to get exemption from the tax payable by them. In the first place, the benefits of exemption flow from the notification dt.5th March, 1975 reproduced and discussed earlier. This notification provides that the liability of sales tax in respect of transaction of sales of High Speed Diesel oil (HSD) gets exempted only if,-

- *the buyer holds a licence under the MST Act,*
- *the buyer is certified by the Collector,*
- *the buyer gives a declaration in Form-A declaring that the goods are intended to be resold to its fishermen members or to other co-operative societies of fishermen for use in fishing operations.*

It can be seen that independent and separate burden has been placed on the sellers and buyers. The burden is cast on a supplier to secure a declaration from a buying trader if he chooses to avail the benefits of exemption. The declaration has to incorporate the licence no. and also the details of certificate granted to the buyer by the Collector. Unless these details are



secured by the seller, the conditions provided in column-2 do not make his 'sale' a class of sale eligible for exemption. The burden in respect of conditions provided in column-(2) is on the seller since the conditionalities relate to a 'sale' to qualify it for a given 'class of sale' and also for the reason that the levy of tax emerges on the point of sale as has been laid down in terms of section-5(1) of the Act making seller responsible for payment of tax. In respect of these two characteristics since the burden is on the selling supplier he has to abide by the conditions provided in column-2 of the said notification to claim exemption, or face the levy. In this view of the matter, the holding of the licence under the Act by the buyer and a certificate from the Collector to the buyer, the burden has been placed on the supplying trader since he effects sale and it is his sale in respect of which he seeks exemption. The supplying seller therefore, cannot pass on this burden to the wisdom of the buyer. The burden is cast on the supplying trader only or else he has to pay taxes. The appellant cannot claim that in the case of breach of conditions, the buyer is responsible for making payment of tax and therefore, the exemption should be granted to a supplying trader. Since the levy is in respect of sales and the statute in section 5(1) provides that the leviable tax shall be paid by the selling trader, the consequence thereof is obviously that if a seller wants to avail the benefit because he is the beneficiary of exemption, the burden is cast on the seller. The burden to secure a declaration in Form-A with specified requisites at the time of sale is on the seller because he is the claimant of exemption. I have, therefore, to hold that in respect of licence and certificate from Collector of the buyer in order to include a transaction of sale in a class of sale eligible for exemption, the burden is fully placed on the selling supplier to establish the relevant claims as provided in column-2.



In the case of Indian Oil Corporation vs. State of Maharashtra in Revision Application No.20 of 2008 decided on 19.7.2010, the issue before the Hon. MSTT was whether sales on Form-A to fishermen's societies should be taxed or not in view of the fact that the fishermen's societies did not hold valid licences or certificates. In this regard, the Hon. MSTT upheld the order of the Collector of Motor Spirit Sales Tax and held that the Collector was entirely right in confirming the disallowance of the claim made by the assessing authority. It was observed thus -

"Further more we have to make it clear that in respect of exemption and to claim it, the entire burden of proving exemption is on the individual who claims it. In the present case it is appellant who claims exemption from payment of MST on his sales. Obviously the entire burden to prove the claim of exemption shall be on appellant before us. Secondly, every provision of exemption in accordance with law meant therefor has to be construed strictly. This is the well set-out principle by various High Courts and Hon'ble Supreme Court in number of cases. The principle propounded by the Apex Court in the case of Union of India and another v. Wood Papers Ltd. and another [1991] 83 STC 251 (SC) reads as under -

"Literally exemption is freedom from liability, tax or duty. Fiscally it may assume varying shapes, especially in a growing economy. For instance tax holiday to new units, concessional rate of tax to goods or persons for limited period or with the specific objective, etc. That is why its construction, unlike charging provision, has to be tested on different touchstone. In fact an exemption provision is like an exception and on normal principle of construction and interpretation of statutes it is construed strictly either because of legislative intention or on economic justification of inequitable burden or progressive approach of fiscal provisions intended to augment State revenue. But once exception or exemption

becomes applicable no rule or principle requires it to be construed strictly. Truly speaking, liberal and strict construction of an exemption provision are to be invoked at different stages of interpreting it. When the question is whether a subject falls in the notification or in the exemption clause then it being in nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction."

Thus it could be observed from the ratio of the judgment of Apex Court in Wood Paper's case that the exemption provision being an provision of exception it has to be construed strictly so as to see whether the subject-matter fall into area of operation of exemption notification. Thus for this aspect of the matter the notification entry no.(2) providing for exemption from payment of tax on supplies of HSD when are made by a trader to Fishermen Co-Op. Society shall have to be construed strictly.

.....(the Hon. MSTT has reproduced the notification herein which I have reproduced earlier).....

This notification allows exemption for HSD on following conditions viz.,

- * supplies of it are made to Fishermen Co-op. Society,
- * such society holds licence under MST Act,
- * such society is certified by Collector
- * such society gives declaration in Form-A duly filled in to a supplier of HSD.

This conditionalities being for availment of tax concession granting exemption to supplier from payment of tax and passing of benefits of the same to society so also it being in the nature of exemption, has to be construed strictly following the ratio of Apex Court judgment in Wood Papers case. We also find that the principle for construing statutory provision is that the given provision has to be read as it exists and in the plain terms nothing can be added nor anything could be substituted in it. In this respect the Orissa High Court judgment in the case of State of Orissa v. Chandrakant Jayantilal [1975] 36 STC 237 (Orissa) lays down the ratio as under -

"The principle in construing taxing statutes is that it must be strictly construed and, in case of doubt, must be construed against the taxing authorities and the doubt would be resolved in favour of the tax payer. Such taxing statutes should not be extended by implication beyond the clear import of the language used, nor will their operation be amplified or enlarged so as to bring within its sweep matters not expressly pointed out although they may stand upon a close analogy thereto."

The second principle in construction which should be brought in aid is that -

"A fiscal statute has to be interpreted strictly. If there is any ambiguity or doubt, it should be resolved in favour of the subject. There is no equity about the tax. The taxing liability must be express and absolute."

Following the ratio of Allahabad High Court judgment in the case of Commissioner of Sales Tax v. Dayal Singh Kulfiwala [1982] 49 STC 295 (All) above principle emerges.

Following the ratio and rules of interpretation flowing from these judgments and applying the same to the present controversy we shall have to observe that on plane reading of the notification entry No. 2 granting exemption in a given contingency is clear in its terms and no ambiguity or doubt exists in it. Since the provision is clear nothing can be added or anything could be substituted in it. Exemption being an exception, the strict construction is required to be undertaken of the said provision resulting into final situation that - "

Thus, the MSTT held that while granting exemption in a given contingency the provisions have to be interpreted strictly and nothing can be added to or subtracted from it. It also observed,

"For allowing exemption the Fishermen Society must hold valid licence under the MST Act so also the Certificate from the Collector and then only it could give a declaration in Form-A incorporating holding of said documents so also the purpose of procurement of HSD from the supplier which is focused for exemption. Unless these are strictly complied no exemption is permissible in entry 2 of notification."

As such in the present case we find that the disallowances in respect of supplies to the fishermen co-operative societies to the tune of Rs. 12,11,08,137/- were rightly disallowed by the Collector and his action is justified in the eyes of law."

The Hon. MSTT, thus, unequivocally held that the requirements of the notification have to be strictly complied with and exemption is not permissible if the fishermen societies do not possess the licence and certificate. Thus, the Tribunal has held that the onus is on the seller i.e the oil company to prove its claim on the basis of valid and correct documentary evidence as they are claiming exemption.

This very issue in the very present appellant's case but for different periods has also been decided by the Hon. MSTT through the following two judgments. Though the appellant has preferred to appeal to the Hon. High Court, the observations of the Hon. MSTT while deciding the issue are worthy of mention.

1. In Revision Application No. 15 of 2011, decided on April 29, 2013 in IBP for the period 1988-89, the fishermen society involved was Kore Macchimar Co-operative Society which is one of the six societies as are involved in the present proceedings. The Hon. MSTT observed thus :

"18. In view of the rival submissions, it would be useful to refer the license No. M.S.T. - 9829 issued to M/s. Kore Fishermen Society alongwith the relevant provisions of M.S.T. Act prior to 31/03/1991. The license to Kore Fishermen Society is issued on 13/09/1975 commencing from 06/08/1975. It was renewed on 23/02/1976 till 31/03/1977 and further renewed yearly on payment of license fees of Rs. 2/- till 31/03/1981. It was renewed for the period from 31/03/1982 till 31/03/1988 on 03/05/1988 on payment of license fees Rs. 10/-. Again on 08/02/1996, it was renewed on payment of one time license fees from 01/04/1987 till 31/03/1996. Renewal was by the Sales Tax Officer, Palghar. The Assistant Commissioner of Sales Tax revised the renewal dated 08/02/1996 on 4th June 1996. Renewal of license retrospectively was cancelled as the license was not subsisting on 31/03/1991. The Assistant Commissioner of Sales Tax found Sales Tax Officer, Palghar exceeded in his power to renew the said license. As a result of the revision of the license, the fact is established that during the year of assessment commencing from 01/04/1988 till 31/03/1989, Kore Fishermen Society was not holding license.

19. Section 2 (d) defines license granted or renewed under this Act. Section 9 of M.S.T. Act provides that ever trader could obtain a license from the Collector for carrying of his trade. Sub-section (3) of Section-9 requires renewal of license before it expires. Section 10(1) provides that the license is yearly and expires on the last date of the year. License fees of renewal is Rs. 2/-. Section 11 of the Motor Spirit Act is as under :

"No trader shall carry on business in the sale or purchase of the motor spirit without, or otherwise than in accordance with the conditions of, a license"

20. On plain reading, Section 11 provides that for carrying the trade in sales or purchase of motor spirit a license is an essential requirement. The trader cannot trade in motor spirit without license. Kore Fishermen Society is a trader and was holding a license, and it did not renew its license for a period from 01/04/1988 till 31/03/1989. It is not holding license for the said period.

21. Section 7A(1) permits State Government to exempt any specified class of sales or purchases from payment of whole or any part of tax payable under the M.S.T. Act subject to such conditions as may be impose. The State Government in pursuance of the powers vested in Section 7A(1) Notification dated 5th March, 1975. The notification relevant for our purpose is as under :

...(the Hon. MSTT has reproduced the notification herein which I have reproduced hereinearlier)..

22. Section 7A(2), which is relevant for our purpose is as under :

"When any specified class of sales or purchases is exempt from the payment of tax under sub-section (1) and if there be a breach of the conditions subject to which such exemption was granted, the seller or purchaser responsible for such breach shall be liable to pay tax on such

sales or purchases as if no such exemption had been granted notwithstanding that he may not be liable to pay tax under section 5."

23. The Supreme Court in recent case of M/s. Favourite Industries, referred its earlier decision on interpretation of exemption notification and quoted the following principles.

"A provision especially a FISCAL STATUTE providing for an exemption, concession or exception has to be construed strictly. An EXEMPTION NOTIFICATION has to be interpreted in the light of the words employed by it and not on any other basis. A person who claims exemption or concession must establish clearly that he is covered by the provisions concerned and, in case of doubt or ambiguity, the benefit of it must go to the State."

"It is now a well-established principle of law that whereas eligibility criteria laid down in an EXEMPTION NOTIFICATION are required to be construed strictly, once it is found that the appellant satisfies the same, the EXEMPTION NOTIFICATION should be construed liberally."

"The notification requires to be interpreted in the light of the words employed by it and not on any other basis. There cannot be any addition or subtraction from the notification for the reason the EXEMPTION NOTIFICATION requires to be strictly construed by the Courts. The wording of the EXEMPTION NOTIFICATION have to be given its natural meaning, when the wordings are simple, clear and unambiguous. In Commissioner of Customs, Kolkata v. Rupa & Co. Ltd. (2004) 6 SCC 408, this Court has observed that the EXEMPTION NOTIFICATION has to be given strict interpretation by giving effect to the clear and unambiguous wordings used in the notification."

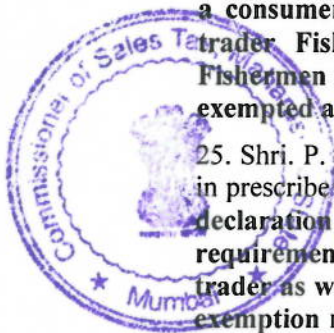
"It is settled law that in order to claim benefit of a notification, a party must strictly comply with the terms of the notification. If on wording of the notification the benefit is not available then by stretching the words of the notification or by adding words to the notification benefit cannot be conferred."

"It is well settled that unless literal meaning given to a document leads to anomaly or absurdity, Golden Rule of interpretation shall be adhered to."

The Supreme Court in Tata Oil Mills Co. Ltd. vs. Collector of Central Excise [82 STC 225] and Union of India & Ors. vs. Wood Papers Ltd. & Another [83 STC 251] laid down the similar principles referred above.

24. The exemption notification on its plain reading, exempts the sale of H.S.D. Oil to a particular class of Society namely a trader Fishermen Co-operative Society holding license carrying on the business of purchasing such oil and re-selling it to a Fishermen Co-operative Society of Fishermen which is certified for that purpose. The principle of law laid down above requires that the appellant is required to comply and establish the essential requirement to claim exemption. In the present case, Kore Fishermen Co-operative Society was not holding license for buying and selling H.S.D. Oil during the period from 01/04/1988 till 31/03/1989. The requirement of license is an essential requirement u/s. 11 of the M.S.T. Act for a trader to carry on the business of purchasing and selling H.S.D. Oil. In absence of license, the Kore Fishermen Society ceased to be a trader and the sale of H.S.D. Oil by appellant to Kore Fishermen Society would be that of a consumer. The consumer sale is not exempted under the notification. The sale to a trader Fishermen Co-operative Society holding license is exempted. As the Kore Fishermen Society was not holding license, the sale of H.S.D. Oil to the said Society is not exempted and such sale is not a class of exempted sale under the notification.

25. Shri. P. V. Surte, Advocate is relying on the declaration given by the Co-operative Society in prescribe Form 'A'. There is no provision in the M.S.T. Act to draw the presumption on declaration in Form 'A' that the Fishermen Co-operative Society is holding license. The requirement of license is an essential requirement under M.S.T. Act, both for a selling trader as well as a purchasing trader. The said requirement of law is incorporated in the exemption notification. If this requirement is not fulfilled, the declaration is insignificant, and has no value. In the present case, it is established fact that the Kore Fishermen Society was not holding a license during the period under assessment. As such, the declaration in Form 'A' would be against the law, and it will not prevail over the requirement of law. The satisfaction of requirement of license to a Fishermen Co-operative Society is an essential requirement to claim exemption on sale of H.S.D. Oil. Appellant, is therefore, required to satisfy itself at the end of the year about renewal of license. This is on plain reading of the notification. As appellant has not established this



requirement of license, the sale of H.S.D. Oil to Kore Fishermen Society is not exempted under the said notification.

26. Shri. V. P. Patkar, the learned Advocate relying on the provisions of Section 7A(2) of M.S.T. Act for the purpose of breach of condition of exemption notification. According to him, M/s. Kore Fishermen Society breached the conditions of the notification and liable to pay tax. **As said earlier, the requirement of license for carrying the business as a trader for purchase and sale of motor spirit is the requirement of the Act itself and the same is incorporated in the exemption notification. The same cannot be said to be the condition of the exemption notification, but is the essential requirement of law. Therefore, sub-section (2) of Section 7A is not applicable to the present case. Even if it is presumed for a moment that it is a condition of exemption notification, in that event, it is the appellant, who is claiming exemption on sale of H.S.D. Oil to Kore Fishermen Society, who is not holding license, has breached the condition.**

27. In M/s. Indian Oil Corporation Ltd. vs. Commissioner of Central Excise, Vadodara, referred above, the Central Government, in the exercise of its powers under sub-rule (1) of Rule-8 of Central Excise Rules, 1944 exempted the excise duty on sale of Reduced Crude Oil (for short "RCO") to an electrical undertaking described in the notification entry. One of the condition of exemption was that if RCO is to be used elsewhere than in factory production, the electrical undertaking is to obtain the registration certificate. Rule 192 provided that concession would cease on expiry of registration certificate renewed by the Collector. The Ahmedabad Electricity Company Ltd. obtained a registration certificate, which is expired on 31/12/1995 and a fresh registration certificate was granted on 26/06/1996. The assessee IOCL supplied RCO to Ahmedabad Electrical Company during the period 01/01/1996 till 25/06/1996. The Supreme Court did not allow exemption of excise duty on sale of RCO during the period which was without required registration certificate. The Supreme Court in para-6 referred the decision of Constitution Bench and observed as under :

"Constitution Bench of this Court considered the decisions of this Court in Thermax Private Limited vs. The Collector of Customs (Bombay), New Customs House (supra) and Collector of Central Excise, Jaipur v. J.K. Synthetics (supra) and held that **a provision for exemption, concession or exception, as the case may be, has to be construed strictly and if the exemption is available only on complying certain conditions, the conditions have to be complied with.** In the aforesaid decision, the Constitution Bench further held that detailed procedures have been laid down in Chapter X of the Rules so as to curb the diversion and utilization of goods which are otherwise excisable and the plea of substantial compliance or intended use therefore has to be rejected."

The case of M/s. Indian Oil Corporation Ltd. is fully applicable to the facts of the present case. Although there is no express rule like Rule 192 in M.S.T. Act; however, **in absence of license to a Fishermen Society, the sale to that Society is not exempted under the notification and the exemption would cease to apply in such case.**

28. Shri. P. V. Surte, strongly relied on the decision of our High Court in case of M/s. M.R.F. Ltd., wherein our High Court held that it was not for the selling dealer to go beyond the declaration produced by the Zilla Parishad. Section as amended makes it clear that if it is found that such dealer was not entitled to issue such declaration, then such dealer would be liable to pay tax. Sub-section (2) of Section 41 of the Bombay Sales Tax Act, 1959, as amended clearly provides that even if a purchasing dealer was not entitled to issue declaration, it was liable to pay purchase tax. Section 41(2) is not similar with Section 7A of the M.S.T. Act. Hence, the decision in case of M/s. M.R.F. Ltd. would not assist the appellants in the present case.

29. The Supreme Court in case of Chunni Lal Parshadi Lal, referred above observed that, the genuineness of the certificate and declaration in Form III-A may be examined by the taxing authorities but not the correctness or the truthfulness of the statements made therein. The taxing authorities may examine whether the certificate was issued in collusion or was forged or fabricated, but not enquire whether the purchasing dealer had subsequently sold the goods or consumed it. The observations are made as the requirement of Section 12A of U. P. Sales Tax Act, 1948 is that, once a certificate in Form III-A is produced, the presumption is that the sale of goods is for resale and not for consumption. The seller would not have control over the purchaser subsequent to sale. He has relied on the representation made to him. **The breach of declaration in this case is subsequent to sale, which was on fulfillment of the required**

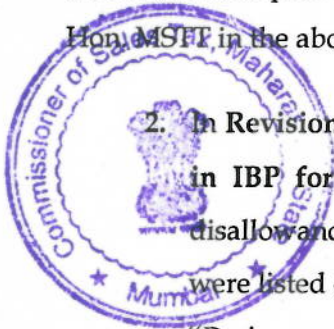
condition as per law. Such is not the present case. The Kore Fishermen Society was not holding a license during the period under assessment, which was the essential requirement for claiming exemption. Similarly, is the case of Milk Food Ltd. vs. Commissioner, VAT And Others [2013 (59) VST 1 (Delhi)] is not applicable. In Writ Petition No. 2595 of 2012 in M/s. Indo Burma Petroleum Co. Ltd. & Other vs. Collector of Motor Spirit decided on 14/12/2012, the issue was not decided on merit and the decision is on prima facie consideration. The said Writ Petition was against order of pre-admission deposit fixed by the Tribunal.

30. In case of Tata Oil Mills Co. Ltd. vs. Collector of Central Excise, the tax on use of Rice Bran Oil used in manufacture of soap was exempted. The Rice Bran Oil was converted into hydrogenated oil or fatty acid and then used in manufacture of soap. The subject of exemption was the Bran Oil and it was falling within exemption notification. Such is not the present case. On facts, the said case is not applicable to the present case. Similarly, the issue involved in Wood Papers Ltd. & Another is different than in the present case. Hence, on facts these two case relied on by Shri. P. V. Surte, Advocate are not applicable to the facts of present case.

31. Kore Fishermen Society has preferred an appeal against the decision of revising the renewal of license. Appellant made efforts to obtain the information under the Right to Information Act about the present status of that appeal. However, Shri. P. V. Surte submits that no information is yet received. He has referred the correspondence made with the Public Information Officer. Shri. P. V. Surte has made it clear that it is not necessary to wait for the decision in appeal filed by Kore Fishermen Society. In view of this submission, appeal is not taken up for hearing on merit. Therefore, the said correspondence referred by him would not have any bearing on the decision of appeal.

32. Shri. P. V. Surte has also referred the decision of the Government, in which, the Fishermen Co-operative Societies have been exempted from the payment of tax for the purchases made by them. The decision of Government, in our view has no relevance in the present case. The issue, if the appellant is entitled to claim exemption under exemption notification will have to be decided on the basis of the wording of the exemption notification itself. The Tribunal in M/s. Indian Oil Corporation Ltd. vs. State of Maharashtra [Revision Application No. 20 of 2008 decided on 19/07/2010] already held that for allowing the exemption, the Fishermen Society must hold a valid license under the M.S.T. Act so also a certificate from the Commissioner. The view taken earlier is correct. We are unable to persuade ourselves to take a contrary view as argued by Shri. P. V. Surte, Advocate.”

Thus, it can be seen that the Hon. MSTT has exhaustively dealt with the arguments and the case laws as put forth. The next judgment has taken recourse to the observations made by the Hon. MSTT in the above judgment. The same could be seen thus :



2. In Revision Application Nos. 8, 9, 12, 13, 14 and 15 of 2012, decided on June 21, 2013 in IBP for the periods 1989-90 to 1994-95, the very parties in respect of whom disallowances have been made in the present proceedings were involved. The names were listed out thus :

“During years 1989-90 to 1994-95, appellant sold H.S.D. Oil to the Fishermen Co-operative Societies namely, -

- (1) M/s. Kore Machhimar Society Ltd., Kore.
- (2) M/s. Bharadkhol Machhimar Sahakari Society Ltd.
- (3) M/s. Konkan Machhimar Sahakari Society Ltd. at Shrivardhan.
- (4) M/s. Mumbai Sagarputra Vividh Machhimar S. S. Ltd., Mumbai.
- (5) M/s. Sagar Machhimar Vyavasaik Sanstha Maryadit Ltd., Tukaram Wadi, Dist. Raigad.
- (6) M/s. Onanwase Sahakari Machhimar Society Ltd.”

The Hon. MSTT while following its decision in Revision Application No. 15 of 2011, decided on April 29, 2013 in IBP for the period 1988-89, observed thus :

“Consideration :-

12. The Tribunal in Revision Application No. 15 of 2011 decided on 29/04/2013 decided the issue of limitation, jurisdiction, and sales effected to Kore Fishermen Society for the assessment period 01/04/1988 to 31/03/1989. The facts of said revision and present revision are similar. The Tribunal held as under :

(i) Sub-section (5) of Section 6 prescribing the period of limitation is inserted in MST Act with effect from 23/06/2004. Prior to that, there was no period prescribed for assessment. As such, assessment completed after 9 years from the end of the year is not barred by limitation.

(ii) Section 3(A) is inserted in MST Act by Maharashtra Ordinance No. 11 of 1999, whereby the Deputy Commissioner of Sales Tax appointed during 01/04/1984 to 28/09/1997 is deemed to be the Deputy Collector of Motor Spirit under MST Act. The transfer proceeding by Deputy Commissioner of Sales Tax is deemed to be by the Deputy Collector of Motor Spirit and valid by virtue of section 3A of MST Act. The Sales Tax Officer (Enforcement), who is Sales Tax Office, Motor Spirit acquired valid jurisdiction to proceed with assessment. The assessment is valid.

(iii) The Sales Tax Officer, Palghar renewed the licence of Kore Fishermen Society on 08/02/1996 on payment of one time licence fees from 01/04/1987 to 13/03/1996. Assistant Commissioner of Sales Tax revised and set aside the order of renewal of licence w.e.f. 01/04/1987 to 31/03/1988. As a result of setting aside the order of renewal dated 08/02/1996, the Kore-Fishermen Co-op. Society was not holding licence from 19/04/1988 till 31/03/1989.

(iv) The Tribunal held in para - 24 as under :

"The exemption notification on its plain reading, exempts the sale of H.S.D. Oil to a particular class of Society namely a trader Fishermen Co-operative Society holding license carrying on the business of purchasing such oil and re-selling it to a Fishermen Co-operative Society of Fishermen which is certified for that purpose. The principle of law laid down above requires that the appellant is required to comply and establish the essential requirement to claim exemption. In the present case, Kore Fishermen Co-operative Society was not holding license for buying and selling H.S.D. Oil during the period from 01/04/1988 till 31/03/1989. The requirement of license is an essential requirement u/s. 11 of the M.S.T. Act for a trader to carry on the business of purchasing and selling H.S.D. Oil. In absence of license, the Kore Fishermen Society ceased to be a trader and the sale of H.S.D. Oil by appellant to Kore Fishermen Society would be that of a consumer. The consumer sale is not exempted under the notification. The sale to a trader Fishermen Co-operative Society holding license is exempted. As the Kore Fishermen Society was not holding license, the sale of H.S.D. Oil to the said Society is not exempted and such sale is not a class of exempted sale under the notification."

(v) There is no provision of law in MST Act to presume the requirement of licence on declaration in Form 'A'.

(vi) Holding licence is requirement of law incorporated in the notification. In absence of licence declaration in Form 'A' is insignificant. It is established fact that Kore Fishermen Society was not holding licence. As such, declaration in form 'A' would be against the law. It will not prevail over law.

13. The findings recorded above are equally applicable to the facts in present revisions. In view of finding (iii), referred above, the Kore Fishermen Society is not holding licence from 01/04/1987 till 31/03/1996. The period of assessment under revision is 01/04/1989 to 31/03/1996. During this period, the Kore Fishermen Co-operative Society was not holding licence, which is essential requirement of law and exemption notification for a trader to carry on the business of purchase and selling H.S.D. Oil. The Kore Fishermen Society was not holding licence, as such was not a trader. As such, sale of H.S.D. Oil to Kore Fishermen Society is not exempted.

14. Shri P. V. Surte, the learned Advocate submitted that licence of Kore Fishermen Society was renewed on 03/05/1988 for back years 1982 to 1986 on payment of licence fees after the expiry of period of licence. The fact is not relevant for the reason that period prior to 31/03/1986 is not for consideration in these revisions or in Revision No. 15 of 2011 decided earlier. It is also not case that said renewal dated 03/05/1988 is set aside. Hence, submission is not relevant in these revisions.

15. Sale of H.S.D. oil to remaining five fishermen Co-operative Societies other than Kore Fishermen Society is not allowed as these societies were not holding certificate of

Collector, Motor Spirit certifying them eligible for exemption. The first contention of Shri P. V. Surte is that the appellant is not given the inspection of the record of Fishermen Co-operative Societies though allowed by Commissioner and Tribunal, to ascertain that the five societies do not have eligibility certificate required under the notification. He has referred his two letters dated 27th April 2011 and 12th March, 2013. The issue of inspection is discussed at length in revision order in para - 5 on page 8 and 9 in Revision Application No. 12 of 2012. The letter dated 29/04/2011 of Assistant Commissioner of Sales Tax (I-27) Investigation branch, Mumbai, on the record of the revision for period 1994-95 before the Commissioner would show that inspection of the record of Fishermen Co-operative Societies was given to representatives of petroleum companies between 25 and 27th April 2011 and letter dated 12/03/2013 the endorsement having inspected Indo Burma Petroleum Company's record. So it is not the case that appellant has not verified from the record of Fishermen Co-operative Societies that Fishermen Societies do not have the certificate from Collector, Motor Spirit. Hence, the grievance of Shri P. V. Surte about inspection of record of Fishermen Societies does not stand.

16. The assessing officer found that the Collector of Motor Spirit has not issued the certificate certifying the five societies other than Kore Fishermen Society eligible for exemption. On verification of 'A' Form, he found that these five societies have mentioned the licence number as certificate number. The facts noted by him are mentioned by him in Annexure 'B' annexed to the assessment for the year 1994-95. The facts noted by him are as under :

Sr. No.	Name of the Society	Licence as per our record	Renewal upto	Certificate No. as per our record	Discrepancies in 'A' Form
1.	Kore Machhimar Society Ltd., At - Kore, Tal. - Palghar, Dist. - Thane	MST/19K-29	Valid upto 31-3-86	MST/19K-2/2	This licence was not alid during 94-95 since it was not renewed for the period from 1-4-86 onwards. However the licence was renewed by the S.T.O. (D-1336), Palghar on 8-2-96 for the period 1-4-86 to 31-3-96 retrospectively. The retrospective renewal of the licence was set aside by the Asst. Commr. of Sales Tax, ADM-15, Palghar by order dt. 4-6-96 passed u/s. 17 of the M.S.T. Act, 1958.
2.	Bharadkhol Machhimar Sahakari Society Ltd., At - Bharadkhol, Tal. - Shrivardhan, Dist. - Raigad.	MST/N-29-N-2 dt. 4-4-91	Duly Renewed	Not issued	Licence Number has not been mentioned. Certificate number is actually licence number granted to society. This society was not holding certificate during 94-95.
3.	Kokan Machhimar Sahakari So. Ltd., Tal. - Shrivardhan, Dist. - Raigad.	MST/N-29-N-3 w.e.f. 23-12-91 dt. 23-12-91	Duly Renewed	Not issued	id>Certificate No. MST-N-29-N-3 dt. 23-12-91 is a licence No. of society. This society was not holding certificate during 94-95Duly Renewed
4.	Mumbai Sagarputra Vividh Machhimar Sahakari Society Ltd. Machhimar Nagar, Cuffe Parade, Bunder, Colaba, Mumbai - 5	MST-1A-59 w.e.f. 8-2-94 dt. 16-2-94	Not issued	The number mentioned as certificate number is actually licence number. This society was not holding certificate during 94-95 however society was granted certificate bearing number MST/1A/59/E-2/14 w.e.f. 20-6-1996	The number mentioned as certificate number is actually licence number. This society was not holding certificate during 94-95 however society was granted certificate bearing number MST/1A/59/E-2/14 w.e.f. 20-6-1996
5.	Sagar Machhimar Vyavasaik Sahakari Sanstha Maryadit, Tukaram Wadi, Post - Wadhav, Tal. - Pen, Dist. - Raigad.	MST/N.29-D-2 w.e.f. 18-12-93	Duly Renewed	Not issued	N-29D-736 mentioned as licence No. on 'A' form, is actually Registration Certificate No. granted under the B.S.T. Act to the society.
-	-	-	-	-	No. EXM/MST/N-29D-2, mentioned as certificate number was never granted to any society, including this society. Besides, this society was not holding certificate during 94-95.
6.	Onanwase Sahkari Machhimar Society Ltd., Tal. - Dapoli, Dist. - Ratnagiri	Not issued	-	Not issued	MST/N-30/B-601 was never granted as licence Number to any society including "Onanwase". Certificate bearing this number was never granted to any society including this society under the M.S.T. Act.

17. The appellant could not produce any contrary evidence before the assessing officer, appellate authority and before the Commissioner in revision. It is, therefore, an established fact that these five societies other than Kore Fishermen Society were not issued a certificate certifying them as eligible for exemption under the notification issued u/s. 7A(1) of the MST Act. The appellant sold H.S.D. Oil to these five Fishermen Societies during the period from 01/04/1989 till 31/03/1995, which was not having any certificate from Collector, Motor Spirit, certifying them as eligible for exemption. Notification No. 2 issued u/s. 7A(1) provide following two essential requirements for qualifying the sale of H.S.D. Oil to Fishermen Co-Op. Society as a class of sale exempted under the notification.

(1) The Fishermen Co-operative Society to whom H.S.D. Oil is sold, is holding licence, and
(2) The Fishermen Society is certified by the Collector, Motor Spirit, eligible for exemption under the said notification.

18. The five Fishermen Societies, other than the Kore Fishermen Society were never having certificate, certifying them as eligible for exemption under the notification. The sale of H.S.D. Oil effected by the appellant to these five societies, therefore, does not fall as a class of sale of H.S.D. Oil exempted under the notification. The declaration given by these societies on the face of it, bearing the licence number as their certificate number is incorrect declaration. Therefore, sale of H.S.D. Oil on such declaration in Form 'A', which is not correct at the time of effecting sale during the period under assessment, would fall outside the scope of exemption notification.

19. Shri P. V. Surte, Advocate is relying on the declaration Form 'A'. He submitted that the appellant is entitled to rely on the said certificate. However, the said submission on facts does not stand, as the certificate number mentioned in the certificate is the licence number. On plain reading of the Form 'A', anyone can understand that both licence number and certificate number cannot be the same. The Supreme Court in Commissioner of Central Excise Surat - I vs. Favourite Industries [Civil Appeal No. 949 of 2004] along with Civil Appeal No. 228 of 2005, 38 of 2006 and 1388 of 2008 decided on 29/02/2012 made it clear that the person, who claims exemption for concession must establish clearly that he is covered by the provisions concerned, and in case of ambiguity, the benefit of it, must go to the State. The same view is reiterated in Tata Oil Mills Co. Ltd. vs. Collector of Central Excise [82 STC 225] and Union of India & Ors. vs. Wood Papers Ltd. & Another [83 STC 251].

20. Shri P. V. Surte, Advocate relied on the decision of Supreme Court in case of M/s. Suresh Trading Company [109 STC 439 (SC)], wherein M/s. Suresh Trading Company is a registered dealer under the Bombay Sales Tax Act, 1959 effected purchases of goods from M/s. Sulekha Enterprises Corporation during the period from 01/01/1967 till 31/12/1967. ... M/s. Sulekha Enterprises was also a registered dealer under the Bombay Sales Tax Act, 1959 and issued bills containing a certificate to the effect that its registration was in force on the date of sale. The registration certificate of M/s. Sulekha Enterprises was cancelled on 20/08/1967 w.e.f. 01/01/1967. In the context of the above fact, the Supreme Court observed as under :

"In our view, the High Court was right. A purchasing dealer is entitled by law to rely upon the certificate of registration of the selling dealer and to act upon it. Whatever may be the effect of retrospective cancellation upon the selling dealer, it can have no effect upon any person who has acted upon the strength of a registration certificate when the registration was current. The argument on behalf of the department that it was the duty of persons dealing with registered dealers to find out whether a state of facts exists which would justify the cancellation of registration must be rejected. To accept it would be to nullify the provisions of the statute which entitle persons dealing with registered dealers to act upon the strength of registration certificates."

21. It is important to note that in M/s. Suresh Trading Company, the registration of Sulekha Enterprises exists on the date of sale. The facts in present case are that the Kore Fishermen Society was not holding licence during the period 01/04/1989 till 31/03/1995. The remaining five societies other than Kore Fishermen Society were not holding certificate from Collector of Motor Spirit, certifying them as eligible for exemption under notification. **On the date of sale, the essential requirement for qualifying the sale of H.S.D. Oil as a class of sale exempt under the notification is wanting.** The facts in the present case are just opposite to case of M/s. Suresh Trading Company, hence, the said decision is not applicable to the facts of the present case.

22. Shri P. V. Surte submitted that the certificate of Kore Fishermen Society was not cancelled by the Commissioner, but this fact does not carry any more weight, as the said society was not holding the licence, which is one of the essential requirements of the exemption notification. If the said condition is not established, the sale of H.S.D. Oil to the said society does not qualify for exemption. The Collector, Motor Spirit may or may not cancel the certificate.

23. Section 7A sub-section (2) of Motor Spirit Act has no application when the sale of H.S.D. Oil to Fishermen Co-operative Society does not qualify for exemption as the class of sale exempted under the said notification. Even if it is applicable, it is the appellant, who has sold H.S.D. Oil to a Fishermen Co-operative Societies, who have not fulfilled the requirement of exemption notification, and as such, the sale effected to the Fishermen Co-operative Society is exigible to tax under the Motor Spirit Act. The tax is correctly levied on the sales effected to Fishermen Co-operative Societies, who are not fulfilling requirement of exemption notification. The earlier decision in Revision Application No. 15 of 2011 decided on 29/04/2013 is squarely applicable to the facts of the present case."

A look at both the above decisions of the Hon. MSTT shows that the Hon. MSTT has very carefully dealt with the issue, the arguments and also distinguished the case laws cited by the appellant before them. The view in both the above decisions was also reiterated by the Hon. MSTT in the case of M/s. Bharat Petroleum Corporation Ltd. (BPCL) v. The State of Maharashtra (Appeal Nos. 159-163 of 2012, decided on May 5, 2014). I find that the following case laws cited before me have already been discussed and held not appropriate to the facts as are similar to the instant case :

1. Chunnilal Parshadilal v/s. C.S.T. 62 STC 112 (SC)
2. CST v/s. MRF Ltd. 29 VST 566 (Bom)
3. Milk Food Ltd. v/s. Comm. VAT. 59 VST 1 (Delhi)
4. Tata Oil Mills Co. Ltd. v/s. Collector of Central Excise. 82 STC 225 (SC)
5. Union of India v/s. Wood Paper Ltd. 83 STC 251 (SC)

During the hearing in the instant case, the Advocate had referred to the judgment in the case of M/s Chunnilal Parsadilal (cited supra). However, the said judgment having been considered at length by MSTT while rendering its judgement in the case of Indian Oil Corporation, the same holds good and is thus not dealt by me here again. The order of the MSTT in Indian Oil (cited supra) was again referred to with approval by the Hon. MSTT in the case of BPCL (SA no 1437 and 1438 of 2005 dt.24.12.2010) wherein it was observed that the law in this context is well settled. The burden to secure a declaration in Form-A with specified requisites at the time of sale is on the seller because he is the claimant of exemption. I, therefore, hold that in respect of licence and certificate from Collector, of the buyer, in order to include a transaction of sale in a class of sale eligible for exemption, the burden is fully placed on the selling supplier to establish the relevant claims as provided in column-2 of the notification reproduced hereinafter.

As regards reliance on the case law of Indo Burma Petroleum Co. Ltd v/s. Collector of Central of Motor Spirit. 57 VST 241 (Bom), then it is seen that while deciding on the extent of payment as decided by the Hon. MSTT to grant a stay to the recovery of dues, the Hon. Court did away with the part payment as fixed by the Hon. MSTT when it saw a totality of factors such as the appellant being Government of India undertaking, tax payments made during the period, no

possibility of collusion with the fishermen co-operative societies. The above case cannot be cited as a ratio to hold that the exemption from tax in respect of sale to fishermen co-operative societies would be allowed despite there being non-compliance of the conditions as prescribed by the notification granting the exemption. More importantly, we have seen the Hon. Supreme Court having held that - *A person who claims exemption or concession must establish clearly that he is covered by the provisions concerned and, in case of doubt or ambiguity, the benefit of it must go to the State.....There cannot be any addition or subtraction from the notification for the reason the EXEMPTION NOTIFICATION requires to be strictly construed by the Courts..*".

As regards reliance on the case of Indo Germa Products v/s. Asstt. Commr. of Comm. Taxes 45 VST 236 (Mad), it is seen that the same is about an opportunity of hearing to be given while initiating on a procedure in a section which specifically requires so expressly. In the present case, neither are the facts such that no opportunity of hearing was granted nor is such plea about non-granting of sufficient opportunity made by the appellant in instant case. In the present appeal proceedings too, the appellant's request for inspection of the records was granted. In view thereof, the reliance on the case law in Indo Germa Products v/s. Asstt. Commr. of Comm. Taxes 45 VST 236 (Mad) is contrary to the facts of the case. While I am on this point of inspection of records, I would deal with one last aspect of the argument and which is inspection of records of the Fishermen's Cooperative Societies thus :

The issue in the present proceedings is concerned only with the disallowance of sales on Form-A because of the alleged defects in the licence. Therefore, there is no question of inspection of assessment records of fishermen societies. The declarations issued by the fishermen's societies to the appellant are not valid and it is a finding recorded by the assessing authority that there was no proper and valid licence. The appellant has already been granted inspection of the license/certificate twice and the same was granted because it was germane to the case- the Form A were disallowed because the purchaser was not holding a licence/certificate. But I fail to see as to how the inspection of the assessment records of the fishermen societies would advance the case of the appellant. The assessment records of the impugned fishermen's societies do not form a part of the assessment record in question on the basis of which the impugned assessment order was passed and therefore the plea made on this count cannot be sustained in these appeal proceedings. It is relevant to mention here that the assessment records of third parties are not a subject matter of these proceedings hence such request is not reasonable. During the hearing dt.19.07.2011, the appellant had argued for grant of inspection of assessment record of fishermen societies. The only reasonable explanation seems that the appellant wants to prove that no tax has been levied on the fishermen societies and that they should not be penalized for the alleged malpractices of the fishermen societies. However, we have already seen that it is observed by the Hon. MTT Tribunal while deciding an identical issue in the case of Indian Oil Corporation v.

State of Maharashtra (Revision Application No.20 of 2008 decided on 19.7.2010) that onus is on

the appellant to prove that he is eligible for the exemption. The law being confirmed by the Tribunal there was no point in delaying the matter. Therefore, no further adjournment was granted to the appellant as I had reasonable grounds to believe that the requests of the appellant was more to do with delaying the case rather than a righteous belief that natural justice was denied to them.

The appellant's arguments about the Government waiving the recovery of the fishermen co-operative societies have also been dealt with by the Hon. MSTT by observing that the issue, if the appellant is entitled to claim exemption under exemption notification will have to be decided on the basis of the wording of the exemption notification itself and which is such that for availing the exemption, the Fishermen Society must hold a valid license under the MST Act as also a certificate from the Commissioner. Therefore, reliance on the Government Resolution and the Trade Circular would be of no help.

Having dealt with the issue exhaustively, I find that the facts as stood in respect of the impugned fishermen co-operative society, the sales to whom have been disallowed, remain the same despite passing through the present appeal proceedings. In view thereof, the disallowance on the basis of the scientific categorization of the society deserves to be upheld.

I now move on to the next issue. But before that I would refer to two aspects thus :

The first issue is about stock transfer of motor spirits to branches outside the State of Maharashtra. The information becomes necessary as rule 15(2)(b) of the Bombay Sales of Motor Sprit Taxation Rules, 1958 provides that if the motor spirits purchased by any of the companies as specified in the said sub-rule (2) (which includes the appellant) is utilized for a purpose other than for use in manufacture of motor sprit for sale or for resale then the company shall be liable to pay purchase tax on the purchase price of the Motor spirit so utilized. Hence, the appellant was queried regarding the same by letter dt.05.10.2013 as also during the hearing in the present proceedings on dt.04.11.2015. The appellant by letter dt.06.01.2014 informed that they do not find any reference to stock transfers in the assessment order as well as in the appeal order and also in their grounds of appeal. It was also stated that the matter relates to 1986-87 and 26 years have passed and that they do not have these records since the merger took place in 2007. In the letter dt.23.11.2015 as also during the hearing held on dt.04.11.2015, it was further mentioned that to the best of their knowledge, there were no stock transfers outside the State of Maharashtra.

The second issue is about inter-state sales. A show-cause notice dt.17.06.2005 was issued to the appellant wherein the appellant was requested to show-cause as to why the turnover of sales liable to tax should not be enhanced for disallowance of inter-state sales in accordance with the claim put forth by the person before Central Bureau of Investigation. In reply to this letter, the appellant by letter dt.31.12.2007 submitted thus :

- “There is no direct reference to M/s. IBP.
- One of the statements pertaining to Sh. Sanjay Damji Chheda says that he started purchasing HSD through some mediators in the year 1997 which makes it clear that his statement is not relevant for the period for which appeals are pending (1986-87 to 1995-96).
- On referring to the declaration of the Sales Tax Officer, Bhilad Check Post, Gujarat, it is seen that the said officer has made a statement that the tankers owned by the persons whose names have been specified by him did not cross Bhilad Check Post, during the period January 1997 to March 2000. Without entering into the veracity of the statements, it is stated that the period referred by the Officer is subsequent to the period to which the appeals relate (1986-87 to 1995-96). It is further stated there was no check post prior to January 1997, in the State of Gujarat and therefore his statement is clearly inadmissible in evidence.”

The next ground of appeal in this Revision proceeding is -

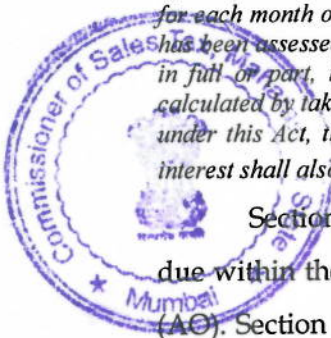
LEVY OF INTEREST

The appellant has put forth a ground that the interest under section 6A(1) and (2) of the MST Act has been wrongfully levied. The appellant has argued that the interest provision is illegal as the same has been brought in retrospectively. It is seen that section 6A was deemed to have been substituted w.e.f 1st April, 1984 by the amendment of 1997. Therefore, if the contingencies related to interest as specified therein occur, the assessing authority would have to levy the interest as provided under the section which was deemed to have been existed since 1st April, 1984. It is not for the assessing or appellate/revising authority to expound on the correctness, or otherwise, of the provision. They are not to step in the shoes of the legislature or go beyond what is provided in a statute. The appellant has challenged the legislative competence of the retrospective operation of the provision levying interest. I shall only say that this is not the proper forum for dealing with the legislative competence of the provision. In the present case, the interest which has been levied falls under section 6A(1) and (2) which say so :

“(1) If a trader does not pay the tax due within the prescribed time, he shall be liable to pay, by way of simple interest, in addition to the amount of the tax due, a sum equal to two per cent. of the amount of such tax, for each month or for part thereof after the last date by which he should have paid such tax.

(2) If any amount of tax, other than the tax on which interests is leviable under sub-section (1), has remained unpaid on the date prescribed for filing the last statement in respect of any period of assessment starting on or after the 1st April 1984, then the trader shall be liable to pay, by way of simple interest, a sum equal to two per cent. of such tax for each month or part thereof from the date immediately following the date on which the period for which the trader has been assessed expires till the date of the order of assessment and where any payment of such unpaid tax whether in full or part, is made on or before the date of the order of assessment, the amount of such interest shall be calculated by taking into consideration the amount of and the date of, such payment. If as a result of any order passed under this Act, the amount of tax which had so remained unpaid is enhanced or reduced, as the case may be, the interest shall also be accordingly, enhanced or reduced.”

Section 6A(1) of the Motor Spirit Act would apply in case a trader does not pay the tax due within the prescribed time. Accordingly, the same has been levied by the Assessing Officer (AO). Section 6A(2) of the Motor Spirit Act would apply in case any amount of tax, other than the tax on which interest is leviable under sub-section (1), has remained unpaid on the date prescribed for filing the last statement in respect of any period of assessment starting on or after the 1st April 1984. The period under consideration, 1987-88, is after the date of effect of the



aforesaid section 6A. Therefore, the late payment of tax for the month of January 1988 and March 1988 and the differential tax dues become amenable to interest u/s 6A(1) and (2), respectively. The levy of interest is an automatic levy and as there are unpaid dues, the levy of interest becomes applicable. I, therefore, confirm the action of the assessing authority in levying interest u/s 6A(1) and (2).

With regard to the levy of interest, I find that the appellant has made an argument that there is no justification to take up the assessment of the appellant after 15 years of filing the statements and making payment of tax as also the point that the amendment being retrospective, there is no justification in charging interest for 15 years. While deliberating on the issue of delay in assessment proceedings, I have dwelled at large on the aspect of the assessment proceedings in the appellant's case. I have observed above that the proceedings were started in the year 1994. However, there is no record of the appellant's attendance. In fact, it is seen that when reminders were issued, the appellant came up with a communication that he would attend the assessment proceedings only after the assessment under the MST Act in respect of the period 1986-87 was completed. The assessment is completed under the provisions of the MST Act which during the period under consideration did not provide for a time limit within which the assessing authorities are to complete the assessments. The concept of time barred assessment was first introduced in the MST Act w.e.f dt.29.06.2004. The present order is made on 28.11.2002 and as it is before the stipulated date of 1st April 2008, the assessment order is not time barred. I have mentioned above that the Hon. MSTT in Revision Application Nos. 8, 9, 12, 13, 14 and 15 of 2012, decided on June 21, 2013 in IBP for the periods 1989-90 to 1994-95 has observed that - *Sub-section (5) of Section 6 prescribing the period of limitation is inserted in MST Act with effect from 23/06/2004. Prior to that, there was no period prescribed for assessment. As such, assessment completed after 9 years from the end of the year is not barred by limitation.* I have also observed above that the facts in the case laws cited by the appellant and the present facts are not pari materia. There are case laws by the Hon. Courts which say that what a reasonable period would depend on the facts of each case.

In view thereof, considering the conduct of the appellant and the available provisions, I find that the argument about delayed assessments fails to make a valid point for consideration in respect of the levy of interest. The levy of interest is as per the available provisions and the late assessment order is not deliberately planned to be so.

In view of the deliberations held hereinabove, I pass an order as follows :

ORDER

(under section 16 of the Bombay Sales of Motor Spirit Taxation Act, 1958)

No.MIA-13/2003/Adm 5/3/B- 2

Mumbai, dt. 30/3/2016

For reasons as elaborately dealt with in the body of these revision proceedings, it is

ordered as follows :-

- The argument about delayed assessments fails to make a valid point.
- The disallowance of exemption on sales to Fishermen's Cooperative Societies is upheld.
- The levy of interest u/s 6A (1) and (2) is upheld.

The assessing officer is directed to recover the amount payable as per this order as per the provisions of law.

Balance as per first appeal (Amt. in Rs.)	Part payment in revision (Amt. in Rs.)	Balance dues payable (Amt. in Rs.)
1,33,89,935/-	5,86,830/-	1,28,03,105/-

(RAJIV JALOTA)

COLLECTOR OF MOTOR SPIRIT SALES TAX,
MAHARASHTRA STATE, MUMBAI