

- Read :** 1. Revision petition dt.21.2.2003 for the period 1995-96 filed by M/s. I.B.P. Company Ltd.
2. Assessment order dt.05.03.1998 passed u/s. 6 of the Bombay Sales of Motor Spirit Taxation Act, 1958 by the Motor Spirit Sales Tax Officer, Enforcement Branch, Mumbai.
3. Appeal order dt.27.01.2003 passed u/s. 16 of the Bombay Sales of Motor Spirit Taxation Act, 1958 by the Asstt. Collector of Motor Spirit Sales Tax, (Appeals) P-1, Nariman Point Dn., Mumbai.
- Heard:** Sh. P.V. Surte, Advocate alongwith Sh. S Ganesh (DGM, Finance) and Sh. Ajay Jain (GM, Finance).

PROCEEDINGS

(under section 17 of the Bombay Sales of Motor Spirit Taxation Act, 1958)

No.MIA-13/2003/Adm-5/7/95-96/B- 3

Mumbai, dt. 30/3/2016

This is an application for revision filed under section 17 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 applicant'), 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 an appeal order for the period 1995-96 passed on dt.27.01.2003 by the Asstt. Collector of Motor Spirit Tax (Appeals) P-1, Nariman Point Division, Mumbai.

02. FACTS OF THE CASE:

A demand of Rs.3,17,01,758/- was raised by the assessing officer for the period 1995-96 through assessment order dt.05.03.1998. Against this order, the applicant had preferred an appeal which came to be decided on dt.27.1.2003 by the Assistant. Collector of Motor Spirit Sales Tax, (Appeals) P-1, Nariman Point Dn., Mumbai. The assessment order was confirmed by the appellate authority. The balance dues stood reduced to Rs.2,96,51,758/- in view of the part payment of Rs.20,50,000/- as directed to be made by the appellate authority. Against the said appeal order, the present application has been preferred before me, i.e. the Collector of Motor Spirit Sales Tax, under the provisions of section 17 of the Bombay Sales of Motor Spirit Taxation Act, 1958 (MST Act). By order No.MIA-13-2003/Adm-5/7/95-96/B-16, dt.08.08.2008 u/s. 17(1) of MST Act, the then Collector of Motor Spirit Sales Tax directed the applicant to make a part payment of Rs.19,62,881/-, on or before dt.15.09.2008, as a pre-condition for admission of the present revision application. 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.23.01.2009, alongwith other revision applications, in Revision Applications No.31-38 of 2008 confirmed the paid payment as fixed in the applicant's case and directed to pay the said amount within a period of two months from the date of communication of the Tribunal's order. While so confirming, it was observed that the impugned payment direction is given, not as a condition for admission of the Revision Application, but is given as a condition for granting stay to the recovery of the balanced assessed dues during the pendency of the Revision



Application. The decision of the Hon. MSTT was served on the applicant on dt.12.02.2009 and the payment has been made on dt.06.04.2009.

Since a set of seven Revision applications for various periods of IBP were preferred at the same time by the applicant, for the grounds of appeal for the impugned period of 1995-96, the applicant wished to rely on the submissions as made in respect of the period 1988-89. I have seen the said submission. The facts such as date of order, turnover, dues, etc. being of the period 1988-89, that portion of the submission is not reproduced. Since the appeal against the assessment order for the period 1995-96 was decided by a common order in appeal which included the period 1995-96, amongst other periods, submission from the appeal issue onwards is being reproduced verbatim thus :

"FACTS OF THE CASE

9) The Assistant Commissioner of Sales Tax, (Appeals) decided the appeal as Asstt. Collector of Motor Spirit Sales Tax (Appeals) P-1, Nariman Point Dn., Mumbai and passed an order on 27.1.2003. In deciding the appeal, the said officer framed four issues for his decision.

- (i) The first issue viz. whether transfer of proceedings done by the Dy. Commr. of Sales Tax (Adm) Nariman Point Dn., Mumbai is with a valid jurisdiction and whether it confers valid jurisdiction on the Motor Spirit Sales Tax Officer to assess the appellant. The issue was decided by him against appellant for reasons stated in the appeal order.

He held that due to the retrospective amendment in the Bombay Sales of Motor Spirit Taxation Act, 1958 and Validation and Savings provisions the transfer of proceedings by the Dy. Commr. of Sales Tax (Adm) Nariman Point Dn., Mumbai are legally validated and therefore the transfer of proceedings order passed by the Dy. Commr. of Sales Tax is with a valid jurisdiction and which confers valid jurisdiction to the Motor Spirit Sales tax officer, Enf. Br., Mumbai. On this point he upheld the order passed by the Sales Tax Officer.

- (ii) The second issue viz. whether the tax levied by the Motor Spirit S.T.O. is legally correct was decided by him with reference to the validity of the alleged incomplete declarations or declarations allegedly containing wrong details in order to give exemption to the appellant. For reasons stated in the appeal order he decided the issue against the applicant.

(iii) On the third issue viz. whether the principles of natural justice have been observed before passing the assessment order by giving proper opportunity of being heard, the said officer for reasons stated in the appeal order opined that no proper opportunity of being heard is given to the appellant, hence the appellant deserves to be given inspection of records on which the order of the Motor Spirit Officer is based and further opined that the appellant needs to be given an inspection of the records and that it will be proper and convenient to remand back the matter only for the purpose of granting inspection of the records

- (iv) The fourth issue viz. whether the interest u/s.6A(2) is applicable in the case of the appellant was decided by him for reasons stated in the appeal order & held that due to the retrospective amendment in the Bombay Sales of Motor Spirit Taxation Act, 1958 the interest u/s.6A(2) is applicable in the case of the appellant.

10) The said officer accordingly directed the assessing authority to grant the inspection of the records and further directed that if on inspection it is found that any of the society listed in category II to IV shifts to category I, then relief in tax and consequential penalty to the extent of that society should be given.

Being aggrieved by the order passed in appeal, the applicant has preferred the present revision application on the following amongst other grounds

GROUND OF APPEAL

1. The Assistant Collector of Motor Spirit Sales Tax, (Appeals), P-1, Nariman Point Division, has erred in holding that the Motor Spirit Sales Tax Officer, acquired valid jurisdiction to pass the assessment order. He has erred in holding that the retrospective amendment to the Act and the provisions relating to validation and savings confer valid jurisdiction on the motor Spirit Sales Tax Officer.
2. He has erred in confirming the disallowance made by the Assessing Officer as legally correct on the ground that the declarations were incomplete or they contained wrong details.
3. On the issue whether the principles of natural justice were observed before passing the assessment order, he was pleased to hold that no proper opportunity of being heard was given to the appellant and

as such, he deserves to be given inspection of records on the basis of which the assessment order was passed. He has erred in observing that the matter is remanded back only for the purpose of granting inspection of the case records. He ought to have set aside the assessment order and the notice of demand and thereafter remanded the case back to the Motor Spirit Officer.

4. He has erred in observing that interest under section 6A (2) is applicable because of the retrospective amendment made to the Motor Spirit Taxation Act, 1958.
 5. The applicant submits that jurisdiction cannot be conferred by amending the Act with retrospective effect. If as on the date of passing the order, the Deputy Commissioner was incompetent to transfer the proceedings, the subsequent amendment cannot confer power on the Deputy Commissioner to validate the action taken earlier to amendment.
 6. As regards the second issue renewal of licence on payment of Rs. 2/- prior to 1.4.1991 was a matter of procedure to be followed and complied with by the Co-operative Society. The applicant was not a party to the procedure. In fact, with effect from 1.4.1991 a sum of Rs.1,000/- was required to be paid whereupon the licence was not required to be renewed.
 7. The power to issue a licence and grant of a certificate in addition to the licence was delegated to the Motor Spirit Tax Officer. When he issued a licence, he could have as well issued the certificate to the Society. No separate application was required to be made nor the form of application for grant of a certificate prescribed. In the circumstances, merely because the Society did not hold a certificate in addition to the licence will not constitute a valid ground for rejecting the claim. The grant of a certificate was a mere formality.
 8. The societies have issued declarations in Form A certifying that they held valid license and a certificate issued by the Commissioner. Therefore, there was no reason for the Applicant to disbelieve the contents of the declarations as the Societies were in existence during the year of assessment. In fact, the Societies are in existence even in the year 2003 and they have been recognized by the Finance Department by issue of a Notification No. STA-1097/CR-2/Taxation-2 dated 21st July, 2001.
 9. That apart, if the declarations were incomplete or incorrect. The societies should have been saddled with liability to pay purchase tax for issue of wrong or incorrect declarations, since the Societies enjoyed the benefit. There was no jurisdiction in imposing tax on the Applicant. The assessments of the Societies were completed by accepting the declarations issued by them and the statements furnished to the Motor Spirit Sales Tax Officer. Not only that their licences were renewed from time to time and factually no renewal was required after 1.4.1991 as the Societies has deposited the sum of Rs. 1,000/-. It has not been established that there was collusion between the Societies and the applicant. At the same time it is not established that the declarations produced by the Applicant were forged or fabricated. Under the circumstances, they should have been accepted since the genuineness of the declarations was not in doubt. The said declarations raise an irrebuttable presumption that those are valid. The applicant cannot be held responsible for the correctness or otherwise of the statements made therein by the Societies.
 10. In particular, in the case of Kore Machhimar V.K.S. Society Ltd. the Director of Fisheries, Govt. of Maharashtra, Department of Fisheries, had addressed a letter on 31.12.1992 to the applicant and had recommended to increase their quota from January 1993 to 5500 KL. The said Society held licence as well as certificate right from the Registration till today and inspite of failure to deposit the renewal fee, the licence was renewed from time to time on subsequent payment of the fees. In the circumstances, the applicant cannot be held responsible merely because the renewal fee was not paid by the society within the prescribed time.
 11. The applicant relies on the written submissions filed before the Assistant Collector as well as the reply given by him to the show cause notice.
- PRAYER**
1. The applicant therefore prays that the assessment order passed by the Motor Spirit Tax Officer may please be set aside being an order passed without jurisdiction.
 2. Without prejudice to the aforesaid prayer, the sales effected by the applicant to various co-operative societies against declarations in Form A be allowed and taxed at 2%.
 3. The interest charged under section 6A (2) by the Motor Spirit Tax Officer may please be removed.
 4. The appellant takes leave to add further grounds to the memorandum and does hereby declare that what is stated herein is true to the best of his knowledge and belief."

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 applicant 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 is 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 applicant 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 exempt 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 finally took place on dt.15.02.2011 when Sh. P. V. Surte (Advocate) attended. During hearing, the Advocate made a plea for inspection of records i.e. they wanted to inspect the certificate/licence of the fishermen's societies. It was brought to his notice that during the proceedings in Appeal, a similar plea was made and it was considered by the appellate authority. The appellate authority granted inspection of records for the period 1994-95 and rejected the request for the other periods. It was observed by the appellate authority that the appellant had been granted the inspection of the records for the year 1995-96 at the assessment stage. He argued that the original records of Kore Machhimar Society including licence/certificate be shown and he should be allowed inspection of the records.

I have perused the proceeding sheet of the assessment for the period 1995-96. It is seen from the proceeding sheet dt.26.5.1998 that the assessing authority had given the inspection of records of 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 to Sh. S.P. Surte (Advocate) and Mrs. Godavari Joshi, Dy. Manager (F & A).

In respect of the inspection of records, the Asstt. Collector of Motor Spirit Act, (Appeals) P-I, Nariman Point Dn. Mumbai through his order vide No.AC/App-P-I/50 to 55/98-99/B-556, dt.27.1.2003, has observed the following,

"41.....
.....The appellant submitted the reply and also requested for inspection of record as well as granting reasonable time. However, prayer was rejected and assessment orders were passed without giving

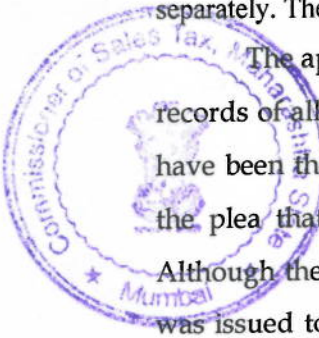
reasonable opportunity to the appellant. This contention of the appellant bears some force particularly for the period 88-89 to 93-94 of which assessment orders are passed in the month of March 98. Though appellant requested for inspection of records of societies of which claim was proposed to be disallowed, the said inspection of record has not been given to the appellant. However, it appears that the assessment proceedings were going on for many days and appellant was given as many as 4 to 5 opportunities and hearing were taken for 4 to 5 times. Therefore, the contention of the appellant that no proper opportunity of being heard was given does not hold good. Let us take for example, the proceedings for the period 93-94. For this period notice under section 6 of the Act was issued on 14.8.97. The TAP order is passed on 22.10.97. Reminder was issued on 13.11.97. The show cause letter issued on 18.3.98. The appellant attended on 23.3.98 and filed reply. The inspection of record was given on 26.3.98. However, Smt. Godavari Joshi, Dy. Manager expressed her inability to take inspection of record in absence of her consultant Shri. P.V. Surte. Therefore, the assessment order is passed on 31.3.98 which shows that no inspection of record is taken by the appellant.

42. On going through the proceedings for the period 95-96 it is seen that the notice under section 6 of the Act was issued on 14.8.97. TAP order is passed on 20.10.97, reminder issued on 24.2.98 and 7.4.98. On 16.4.98 Shri Dinesh Pai, Accountant attended and case was partly verified on 24.4.98, Show cause letter issued on 30.4.98, the appellant filed reply to show cause notice. Thereafter on 26.5.98 the appellant inspected the record of the Co-operative fishermen societies. After taking inspection of records the appellant filed his reply on 10.7.98. I have carefully gone through the reply filed by the appellant before assessing officer on 10.7.98 vide his letter on 8.7.98 which is available in the assessment file.

43. This letter dt. 8.7.98 refers to following fishermen societies (1) Onanwase Sahakari Macchimar Society Ltd. (2) Konkan Macchimar Society Ltd. (3) Mumbai Sagarputra Vividh Macchimar Sahakari Society Ltd. (4) Sagar Macchimar Vyavsaik Society, (5) Bharadkhoh Macchimar Society, (6) Kore Macchimar Society.

44. The appellant has given reply after taking inspection of the records regarding above six societies. It is undisputed fact that for the earlier six years i.e. 88-89 to 93-94. The appellant did not received inspection of records. However, it is also equally undisputed fact that in earlier six years the claim disallowed by the assessing officer is regarding these six societies only. Therefore, if appellant would have taken inspection of records of all these societies for earlier six year also then the reply of the appellant would have been same. Therefore, it can very well to be considered that for earlier six years also the inspection of records has been received to the appellant. And the reply filed by the appellant for the period 95-96 has been considered as reply filed by the appellant for earlier six years i.e. 88-89 to 93-94.

45. The reply filed by the appellant vide his letter dt. 8.7.98 to the assessing officer is more or less, contention raised by the appellant in grounds of appeal and the written contention filed by him. No any new point has been arised in this reply. As I have dealt with in depth the contention of the appellant raised in the grounds of appeal and written contention there is no need to deal with contention in this letter separately. Therefore, it is held that proper opportunity of being heard has been given to the appellant."



The appellate authority has rightly concluded that if the appellant had taken inspection of records of all these societies for the earlier six years, even then the reply of the appellant would have been the same. During the hearing dt.15.02.2011 before me, the appellant has again taken the plea that the inspection of the records of the fishermen's societies be granted to them. Although the records seem to have been earlier inspected by the applicant, a letter dt.23.03.2011 was issued to the Joint Commissioner of Sales Tax (Enf. B) to issue directions to the concerned assessing authority (INV officer) to give inspection of records to the applicant.

The Asstt. Commissioner of Sales Tax (INV-27) informed by his letter dt.29.4.2011 that he made available to the applicant 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 have 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. However, for the final hearing on 19.7.2011, the applicant again took up the plea that the inspection of the assessment records of the fishermen societies be granted to them.

When the hearing was fixed on dt.19.7.2011. Sh. P. V. Surte, Advocate, attended on behalf of the applicant. It was contended thus -

- The inspection of the records was not granted to the oil company.

To this, the applicant was informed that the investigating authority had been directed through letter dt.23.03.2011 to grant inspection. Thereupon, the inspection of records was granted to the applicant by the investigating authority and the proceedings were taken on record.

- The assessment records of the fishermen's societies be made available to them.

To this the applicant was informed that the inspection granting authority (Enforcement) has recorded in his proceedings that the said records are not available with him.

- The assessment order has been passed after a considerable delay.
- The assessing authority has no jurisdiction to pass the assessment orders.
- As regards, the other plea relating to the disallowance of sales on Form A to co-operative societies, it was stated that the societies were responsible for various breaches of the Act. The Government Resolution (GR) of Administrative relief given to the societies was referred to wherein it is mentioned that certain fishermen societies had been responsible for certain acts of wrongdoing. It was stated that the societies had produced the Form A but the claim is rejected on technical grounds. It was submitted that Rule 7(A) has granted exemption subject to declaration. Therefore, once declaration is produced the duty of seller is over. It was stated that if the societies have quoted licence/certificate then the seller should not be responsible for the fact that the licence/certificate is expired/non existent. Reliance was placed on judgment in Chunnilal Parsadilal (62 STC). The licence /certificate number quoted on the Form A gives rise to the irrefutable presumption that the sale is to a dealer who fulfills the requisite condition.
- He stated that the allegations of concealment/non holding of licence certificate is with respect to fishermen's societies and the applicant should not be held responsible for the same. He asked as to why the societies should not be prosecuted and why the applicant should be made to pay tax/interest.
- He referred to the Maharashtra Gazette of 1997 where the limitation period under BST Act was made applicable to the MST Act.
- He stated that the provision to levy interest was brought with retrospective effect which is not proper and such provision is arbitrary. He referred to the decision in the case of Tata Automobiles (135 STC 1) wherein the Hon. Supreme Court held that the provision for interest cannot be brought retrospectively.
- He stated that the claim of sales to Kore Machhimar were disallowed because the society renewed licence after a delay. However, the society possessed both licence/certificate. If the society had renewed licence retrospectively then the society should be made to pay tax and not the applicant. The records of Kore Machhimar were not shown to them. Kore Macchimar also had filed appeal against the retrospective cancellation of their licence.

A rehearing in the matter was again 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). It was a common hearing for the three periods of IBP which included the period 1995-96. 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. Since the issues involved are the same, the relevant portion therefrom 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.

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 a the time of hearing.”

The index of the documents as made by the applicant 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 a revision application before the Collector of Motor Spirit Sales Tax. The applicant 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 revision with Collector	Amount	Grounds
95-96	1. Assessment by STO	1. Assessment order dt.05.03.98	Revision dt.28.02.03	Assessment Dues of 3,17,01,758	1. The Appellate authority has erred in holding that the Motor Spirit Sales Tax Officer, acquired <u>valid jurisdiction to pass the assessment order</u> . He has erred in holding that the retrospective amendment to the Act and the provisions relating to validation and savings confer valid jurisdiction on the Motor Spirit Sales Tax Officer.
	2. Appeal by DC	2. Appeal Order dt.27.01.03		Less: 1. Part payment in	

			appeal of 20,50,000 2. Part payment in the present Revision proceedings of 19,62,881 Balance Dues of 27688877	2. <u>Jurisdiction cannot be conferred by amending the Act</u> with retrospective effect. If as on the date of passing the order, the Deputy Commissioner was incompetent to transfer the proceedings, the subsequent amendment cannot confer power on the Deputy Commissioner to validate the action taken earlier to amendment. 3. <u>No proper opportunity of being heard</u> was given to the appellant and as such, he deserves to be given inspection of records on the basis of which the assessment order was passed. 4. <u>Erred in confirming the disallowance</u> made by the assessing officer as legally correct on the ground that the declarations were incomplete or they contained wrong details. 5. <u>Issue of renewal of licence</u> prior to 1.4.1991 was a matter of procedure to be followed and complied with by the Co-Op Society. The applicant was not a party to the procedure. 6. The power to issue licence and grant of a certificate in addition to the licence was delegated to the Motor Spirit Tax Officer. When he issued a licence, he could have as well issued the certificate to the Society. No separate application was required to be made nor was the form of application for grant of a certificate prescribed. In the circumstances, merely because the Society did not hold a certificate in addition to the licence will not constitute a valid ground for rejecting the claim. <u>The grant of a certificate was a mere formality.</u> 7. The <u>societies have issued declarations in Form A certifying that they held valid licence</u> and a certificate. Therefore, there was no reason for the applicant to disbelieve the contents of the declarations as the societies were in existence during the year of assessment. The societies have been recognized by the Finance Department by issue of the Notification No. STA-1097/CR-2/Taxation-2 dt. 21.7.2001. 8. If the declarations were incomplete or incorrect, the societies should have been saddled with liability to pay purchase tax for issue of wrong or incorrect declaration, since the societies enjoyed the benefit. There was no jurisdiction in imposing tax on applicant. <u>The applicant cannot be held responsible for the correctness or otherwise of the statements made therein by the societies.</u> 9. In particular, in the case of M/s. <u>Kore Machhimar V.K.S. Society</u> Ltd. the Director of Fisheries, Govt. of Maharashtra had addressed a letter on dt. 31.12.1992 to the applicant and had recommended to increase their quota. The said society held licence as well as certificate right from the registration till today and in spite of failure to deposit the renewal fee, the licence was renewed from time to time on subsequent payment of the fees. In the circumstances, the applicant cannot be held responsible merely because the renewal fee was not paid by the society within the prescribed time. 10. <u>Erred in observing that interest under section 6A(2) is applicable</u> because of the retrospective amendment made to the Act.
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From a look at the grounds of appeal, it is seen that the issues boil down to the following ;

1. JURISDICTION AND AUTHORITY OF THE ASSESSING OFFICER
2. DISALLOWANCE OF SALES TO FISHERMEN CO-OPERATIVE SOCIETIES
3. LEVY OF INTEREST

I would deal with each of the points thus :

JURISDICTION AND AUTHORITY OF THE ASSESSING OFFICER

The applicant has challenged the jurisdiction of the Motor Spirit Sales Tax Officer (E-216) in assessing the applicant for the period 1995-96. The point which immediately comes to notice is that the challenge to the authority of the Motor Spirit Sales Tax Officer was not challenged at the stage of assessment. By letter dt.27.11.97, the said officer informed the applicant that the assessments under the Motor Spirit Act were transferred to the officer by an order dt.22.10.1997 of the Deputy Collector of Motor Spirit Sales Tax. It was also informed that the process of assessment had already been initiated by the Assistant Collector of Motor Spirit Sales Tax and by the Transfer of Proceedings Order (TAP order) dt.22.10.1997, the assessment proceedings were transferred from the Assistant Collector of Motor Spirit Sales Tax to the Motor Spirit Sales Tax Officer. Even after this letter dt.27.11.97, the Motor Spirit Sales Tax Officer has sent several communications to the applicant. However, none were objected to and in fact, the applicant had willingly participated in the assessment proceedings by attending before the Motor Spirit Sales Tax Officer and also sending written communications to him. For example against the reminder letter dt.07.04.1998 by the Motor Spirit Sales Tax Officer to furnish the needful statements as required for assessment, the applicant by letter dt.16.04.1998 submitted certain documents. Also the attendance on dt.16.04.1998 by Sh. Dinesh Pai, Advocate of the applicant. These were only two of the many such instances of participation by the applicant in the assessment proceedings. I would now deal with the authority, whether right, as exercised by the Motor Spirit Sales Tax Officer. As mentioned earlier, the Deputy Collector of Motor Spirit Sales Tax by order dt.22.10.1997 under section 38A of the MST Act read with section 70 of the Bombay Sales Tax Act, 1959 (BST Act) passed the TAP order. 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.*

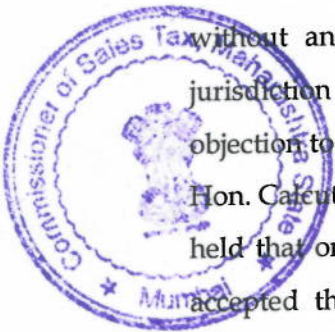
Explanation--*In this section, the word "proceedings" in relation to any dealer means all proceedings under this Act in respect of any year, which may be pending on the date of such order, or which may have been completed on or before such date, and includes also all proceedings under this Act which 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 Motor Spirit Sales Tax Officer by the TAP order dt.22.10.1997.

It is seen from the records that the assessment proceeding was initiated by the Assistant Collector of Motor Spirit Sales Tax, Nariman Point Division, Mumbai by issuing and serving notice on dt.20.08.97. The proceedings were transferred to Motor Spirit Sales Tax Officer (E-216) by Deputy Collector of Motor Spirit Sales Tax, Nariman Point Division, Mumbai under order dt.22.10.97. Subsequent to the transfer of proceeding to Motor Spirit Sales Tax Officer (E-216), the applicant 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.16.04.1998, dt.30.04.1998, dt.26.05.1998 and dt.10.07.1998. Further the assessment officer had issued show cause letter dt.24.4.98. In response to the above show cause letter, the applicant by letter dt.30.04.1998 raised a number of objections including the objection against the disallowance of claim of exemption in respect of sale of HSD to Bharadkhol Sahakari Society Ltd, Kore Macchimar V.K.S. Ltd., Konkan Machhimar Sahakari Society Limited, Mumbai Sagarputra M.V.K.S. Ltd., Onanwase Sahakari Macchimar Society Ltd. and Sagar Macchimar Vyavsaik S.S. Ltd. The written submission is scrutinized and it is seen that no objection was raised by the applicant as regards the jurisdiction of the assessing authority.

It can be inferred from the above that the applicant 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.*

Without prejudice to the above, I shall deal with the objection raised by the applicant. 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 Sales Tax Officers, Greater Bombay, Thane and Raigad as Motor Spirit Sales Tax Officers 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 Motor Spirit Sales Tax Officer (E-216) by virtue of the TAP order passed by the Deputy Collector of Motor Spirit Sales Tax, Nariman Point Division, (No-DC(Adm)NP/TAP-103/97-98/MST/IF-15600/B-3016 Mumbai, dt.22.10.97) 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 1995-96 were transferred from the Assistant Collector of Motor Spirit Tax (B-106) to the Sales Tax Officer (E-216) Enforcement Br, Mumbai, 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 notification dt.21/07/1995 and in view of the TAP order, was well authorized to pass the assessment order. I, therefore, see no point in the objection raised by the appellant. The assessing authority was well within his powers in assessing the appellant and was not without jurisdiction.

The issue relating to jurisdiction, as challenged by the appellant, has been discussed in order no.MIA-13-2003/Adm-5/7/88-89/B-09 dt.08.08.2008 deciding the part payment in this Revision proceedings. I have gone through the common appeal order for the periods 1988-89 to 1993-94 and 1995-96 (7 periods) as passed by the Assistant Collector of Motor Spirit Sales Tax, (Appeals) P-1, Nariman Point Dn., Mumbai. On the issue of jurisdiction, I find the reasoning and order of the appellate authority satisfactory.

With regard to the argument that jurisdiction cannot be conferred by amending the Act with retrospective effect, then it is seen thus :

By the impugned TAP order, the periods from 1988-89 to 1993-94 and 1995-96 of the applicant were transferred to the Motor Spirit Sales Tax Officer. Against the common appeal order involving these periods passed by the Assistant Collector of Motor Spirit Sales Tax, (Appeals) P-1, Nariman Point Division, Mumbai, the applicant preferred Revision applications with the Collector of Motor Spirit Sales Tax for all these periods. Therefore, the argument about jurisdiction is common to all these periods. One such Revision Application filed before the Collector in respect of the period 1988-89 was decided by the then Collector through Revision Order No.MIA-13/2003/Adm-5/7(1)/95-96/B-1 dt.06.09.2011. Against this order of the then Collector, the applicant filed Revision Application before the Hon. MSTT. The Hon. MSTT confirmed the order of the then Collector in their order in Revision Application No.15 of 2011 dt.29.04.2013. The argument of the applicant about retrospective effect has been dealt with by the Hon. MSTT in this order dt.29.04.2013 in respect of the period 1988-89. The observations of the Hon. MSTT in the applicant'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.

The assessment order in respect of the period 1995-96 was passed on dt.05.03.1998 which is within two years from the end of the F.Y. 1995-96. 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. In the present case, since assessment is completed within two years, all arguments and case laws cited in respect of "reasonable period of assessment" do not apply to the facts of the present case. Hence, I refrain from discussing the following case laws on the issue of assessment as cited by the applicant :

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)

I now turn to the next 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 1995-96, the applicant has claimed to have effected sales of HSD of Rs.45,70,42,037/- 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 applicant 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. Sale of High Speed Diesel Oil by trader <u>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 <u>carries on the business of purchasing such oil and reselling it to its fishermen members</u> or to other co-operative societies of fishermen <u>and</u> which is <u>certified for that purpose by the Collector</u> .	To the extent to which the amount of tax exceeds two paise in the rupee	(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 fishermen for use in fishing operation. (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.	Government Notification, Finance Department No.MST-1294/CR-25Taxation-03 dt.29 th March, 1994.

* (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 applicant 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 18 societies mentioned in the list submitted by the appellant during the impugned period find a place in the categories as follows :-

CATEGORY I	1. Burondi Machhimar Soc. Dist. Ratnagiri 2. Dabhokhadi Machhimar Soc. Dist. Ratnagiri 3. Dongri Chowk Machhimar S.S. Ltd, Dist-Thane 4. Jaigad Matsya Vyavsay Sah.Soc Ltd. Jaigad Dist. Ratnagiri 5. Karla Machhimar S. Society Dist. Ratnagiri 6. Mirkarwada Adarsh M.S.S. Ltd. Dist. Ratnagiri 7. National Machhimar S.S. Ltd 8. Sakhar Sahakari Machhimar Soc. Dist. Ratnagiri 9. Sakhrinate Machhimar Sahakari Soc. Dist. Ratnagiri. 10. Shivsagar Machhimar S.S. Ltd 11. Utkarsha G.S. Sanstha S.S. Ltd, Dist. Thane 12. Vengurla Machhimar S.s. Ltd, Dist. Sindhudurg
CATEGORY II	1. Onanwase Sahakari Machhimar S. Ltd.
CATEGORY III	1. Bharadkhol Machhimar Sahakari Society Ltd. At- Bharadkhol, Dist. Raigad. 2. Konkan Machhimar Sahakari Society Ltd. At-Shrivardhan, Dist- Raigad. 3. Mumbai Sagar Machhimar S.S. Ltd. Mumbai 4. Sagar Machhimar V.Ks.S. Ltd. Dist. Thane.
CATEGORY IV	1. Kore Machhimar V.K.S. Ltd. Dist. Thane

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 I

The appellant would be allowed the benefit of exemption from tax on his sale to the 8 societies identified above in CATEGORY I as the purchaser holds both a valid license as well as a Certificate issued by the Collector of Motor Spirit Tax. Needless to say, Form A also has to be produced in the first place. And the assessing authority has duly allowed the claim.

CATEGORY II

The appellant would not be allowed the benefit of exemption from tax on his sale to the societies identified in CATEGORY II as the purchaser **does not hold a valid license or has not renewed the licence**. Also, he **does not hold a Certificate** issued by the Collector of Motor Spirit Tax.

The appellant has effected sale of HSD to M/s. Onanwase Sahakari Machhimar S. Ltd. at Rs.2,13,01,789/- against declaration in Form-A, However the assessing officer has observed in the assessment order that this society was neither granted a licence nor certificate by the Collector. Since, this society was neither granted a licence nor certificate by the Collector these did not meet the basic requirements for claiming the benefit of a tax exemption under the impugned notification. Hence the claim of the appellant under notification entry in respect of sale of HSD to this fishermen's society is not admissible.

CATEGORY III

The appellant would not be allowed the benefit of exemption from tax on his sale to the societies identified in CATEGORY III as **although the purchaser holds a valid license (duly renewed), he does not hold a Certificate issued by the Collector of Motor Spirit Tax.**

The appellant has effected sale of HSD to M/s. Bharadkhol Machhimar S.S. Ltd., Dist. Raigad at Rs.2,24,56,642/-, Kokan Machhimar Sahakari S.S. Ltd., Dist. Raigad at Rs.72,43,879/-, Mumbai Sagar Machhimar S.S. Ltd. Mumbai at Rs.17,77,879/-, and Sagar Machhimar S. Society, Dist. Raigad Dist. Thane at Rs.1,36,15,650/- against declaration in Form-A, However the assessing officer has observed in the assessment order that these societies were not holding certificates in Form-I. Since, these four societies were not granted a certificate by the Collector these did not meet the basic requirements for claiming the benefit of a tax exemption under the notification. Hence the claim of the appellant under notification entry in respect of sale of HSD to these fishermen's societies is not admissible.

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. 5,03,17,179/- 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 1.4.1995 to 31.3.1996. 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 1995-96. 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 applicant, in the present proceedings as also in the assessment and appellate stage, could not rectify the defects. The facts are such that the Societies either had no licence or had not renewed the licence or had not been certified by the Collector. 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.29th March, 1994 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."

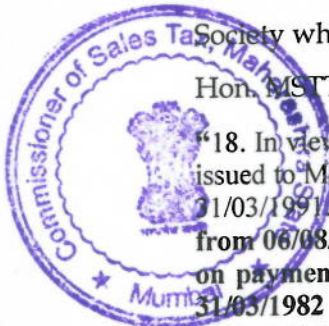
As such in the present case we find that the disallowances in respect of supplies to the fishermen co-operative societies to the tune of Rs. 12,11,08,137/- were rightly disallowed by the Collector and his action is justified in the eyes of law."

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 applicant's case but for different periods has also been decided by the Hon. MSTT through the following two judgments. Though the applicant 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 applicant satisfies the same, the EXEMPTION NOTIFICATION should be construed liberally."

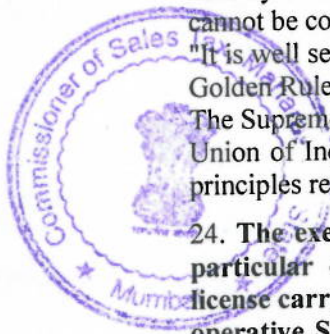
"The notification requires to be interpreted in the light of the words employed by it and not on any other basis. There cannot be any addition or subtraction from the notification for the reason the EXEMPTION NOTIFICATION requires to be strictly construed by the Courts. The wording of the EXEMPTION NOTIFICATION 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.**

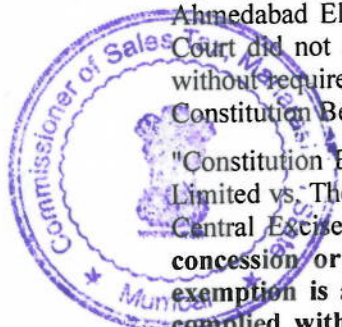
26. Shri. V. P. Patkar, the learned Advocate relying on the provisions of Section 7A(2) of M.S.T. Act for the purpose of breach of condition of exemption notification. According to him, M/s. Kore Fishermen Society breached the conditions of the notification and liable to pay tax. **As said earlier, the 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, applicant 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.

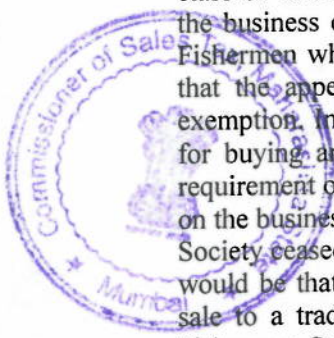
(iv) The Tribunal held in para - 24 as under :

"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 applicant 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 applicant 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	Certificate No. MST-N-29-N-3 dt. 23-12-91 is a licence No. of society. This society was not holding certificate during 94-95 Duly Renewed
4.	Mumbai Sagarputra Vividh Machhimar Sahakari Society Ltd. Machhimar Nagar, Cuffe Parade, Bunder, Colaba, Mumbai - 5	MST/IA-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	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/IA/59/E-2/14 w.e.f. 20-6-1996.

				bearing number MST/IA/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 applicant 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 applicant 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 applicant 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 applicant 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 applicant, 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, 160, 161, 162 and 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 applicant in instant case. I have perused the appeal order in the instant case against which the present Revision Application has been filed.

On the aspect of natural justice in respect of the impugned period of 1995-96, the appellate authority has observed thus:

"42. On going through the proceedings for the period 95-96 it is seen that the notice under section 6 of the Act was issued on 1.4.97. TAP order is passed on 20.10.97, reminder issued on 24.2.98 and 7.4.98. On 16.4.98 Shri Dinesh Pai, Accountant attended and case was partly verified on 24.4.98, Show cause letter issued on 30.4.98, the appellant filed reply to show cause notice. Thereafter on 26.5.98 the appellant inspected the record of the Co-operative fishermen societies. After taking inspection of records the appellant filed his reply on 10.7.98. I have carefully gone through the reply filed by the appellant before assessing officer on 10.7.98 vide his letter on 8.7.98 which is available in the assessment file.

43. This letter dt. 8.7.98 refers to following fishermen societies (1) Onanwase Sahakari Macchimar Society Ltd. (2) Konkan Macchimar Society Ltd. (3) Mumbai Sagarputra Vividh Macchimar Sahakari Society Ltd. (4) Sagar Macchimar Vyavsaik Society, (5) Bharadkhol Macchimar Society, (6) Kore Macchimar Society.

44. The appellant has given reply after taking inspection of the records regarding above six societies. It is undisputed fact that for the earlier six years i.e. 88-89 to 93-94. The appellant did not received inspection of records. However, it is also equally undisputed fact that in earlier six years the claim disallowed by the assessing officer is regarding these six societies only. Therefore, if appellant would have taken inspection of records of all these societies for earlier six year also then the reply of the appellant would have been same. Therefore, it can very well to be considered that for earlier six years also the inspection of records has been received to the appellant. And the reply

filed by the appellant for the period 95-96 has been considered as reply filed by the appellant for earlier six years i.e. 88-89 to 93-94.

45. The reply filed by the appellant vide his letter dt. 8.7.98 to the assessing officer is more or less, contention raised by the appellant in grounds of appeal and the written contention filed by him. No any new point has been arised in this reply. As I have dealt with in depth the contention of the appellant raised in the grounds of appeal and written contention there is no need to deal with contention in this letter separately. Therefore, it is held that proper opportunity of being heard has been given to the appellant.

46. To sum up the issue my answers to the questions raised at the beginning are as follows:

Q. No. (1) Whether the assessing officer has acquired proper jurisdiction before passing assessment order.

Ans. The assessing officer has acquired proper jurisdiction before passing assessment order and, therefore, the orders passed by the Motor Spirit Sales Tax Officer are legally valid.

Q. No. (2) Whether the tax levied by the Motor Spirit Sales Tax Officer is legally correct.

Ans. As regard category 2 to 4 Sales of motor spirit Sales Tax are not eligible for exemption as per notification entry referred to above.

Q. No. (3) Whether the interest u/s. 6 A(2) is applicable in the case of appellant.

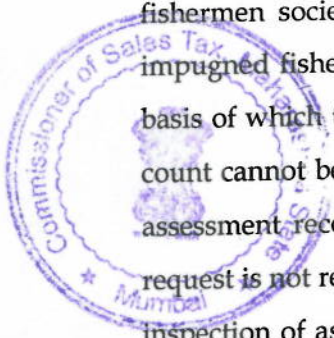
Ans. Interest under section 6A(2) is applicable in the case of the appellant.

Q. No. (4) Whether the principles of natural justice has been observed before passing the assessment order by giving proper opportunity of being heard.

Ans. Reasonable opportunity of being heard has been given to the appellant and principles of natural justice has been observed before passing the assessment orders."

In the present revision proceedings too, the applicant'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 and certificates. Therefore, there is no question of inspection of assessment records of fishermen societies. The declarations issued by the fishermen's societies to the applicant are not valid and it is a finding recorded by the assessing authority that there were no proper licences or certificates. 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 applicant. 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 this revisional 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 applicant had argued for grant of inspection of assessment record of fishermen societies. The only reasonable explanation seems that the applicant 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. MSTT 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 applicant 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 applicant as I had reasonable grounds to believe that the requests of the applicant was more to do with delaying the case rather than a righteous belief that natural justice was denied to them.

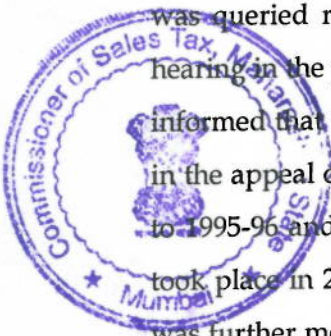
The applicant's arguments about the Government waiving the recovery of the fishermen co-operative societies have also been dealt with by the Hon. MSTT by observing that the issue, if the appellant is entitled to claim exemption under exemption notification will have to be decided on the basis of the 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 societies, the sales to whom have been disallowed, remain the same despite passing through the appeal and the present revision proceedings. In view thereof, the disallowance on the basis of the scientific categorization of the societies 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 applicant) 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 applicant was queried regarding the same by letters dt.29.12.2011 and dt.05.10.2013 as also during the hearing in the present revision proceedings on dt.04.11.2015. The applicant 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 1995-96 and 17 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 applicant wherein the applicant 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



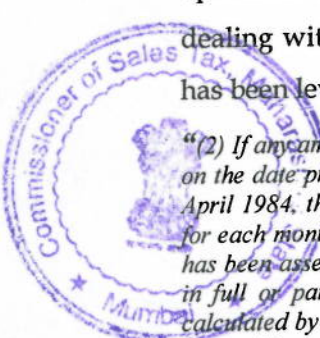
the claim put forth by the person before Central Bureau of Investigation. In reply to this letter, the applicant by letter dt.31.12.2007 submitted thus :

- "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 applicant has put forth a ground that the appellate authority has erred in observing that interest under section 6A(2) of the MST Act is applicable because of the retrospective amendment made to the Act. The applicant 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(2) which says so :



"(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(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, 1995-96, is after the date of effect of the aforesaid section 6A. Therefore, the differential tax dues become amenable to interest u/s 6A(2).

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(2).

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

ORDER

(under section 17 of the Bombay Sales of Motor Spirit Taxation Act, 1958)

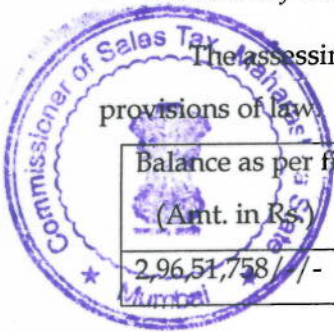
No.MIA-13/2003/Adm-5/7/95-96/B- 3

Mumbai, dt. 30/3/2016

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

- The action of the appellate authority in holding that the assessing authority had acquired proper jurisdiction before passing of assessment order is upheld.
- The action of the appellate authority in confirming the disallowance of exemption on sales to Fishermen's Cooperative Societies is upheld.
- The action of the appellate authority in confirming interest u/s 6A (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.)
2,96,51,758/-	19,62,881/-	2,76,88,877/-


(RAJIV JALOTA)

COLLECTOR OF MOTOR SPIRIT SALES TAX,
MAHARASHTRA STATE, MUMBAI