

Read : Application dt.08.11.2013 (received on dt.11.11.2013) by M/s. Etihad Airways.

Heard : Sh. Walia (Legal Counsel) and Sh. Mohanty (Manager Finance & Adm., India - Etihad Airways), Smt. Purnima Singh (Advocate).

PROCEEDINGS

(under section 56(1)(e) of the Maharashtra Value Added Tax Act, 2002)

No.DDQ-11-2013/Adm-6/46/B- 2

Mumbai, dt. 16/12/2015

A determination application is received from M/s. Etihad Airways, situated at Sunder Mahal, 1st Floor, 141, Marine Drive, Mumbai-400 020, seeking determination of the rate of tax on Aviation Turbine Fuel (ATF) purchased from M/s. Bharat Petroleum Corporation Limited (BPCL) for supplies to the foreign going aircrafts of the applicant i.e Etihad Airways (a foreign operated and registered airline in the United Arab Emirates [UAE]) used for operating its international flights with an aircraft wet-leased from an Indian airline.

02. SCRUTINY OF FACTS

The applicant has made extensive submission by communications of various dates to contend thus -

- The impugned transaction is not liable to tax under the Maharashtra Value Added Tax Act, 2002 (MVAT Act, 2002) in view of provision under section 8(2) of the MVAT Act, 2002 which, subject to conditions, provides that no tax is payable on the sales of fuel and lubricants filled into receptacles forming part of any aircraft registered in a country other than India. Even though the aircraft in question is registered in India by Jet Airways, UAE being the State of Operator for the leased aircraft, such aircraft shall be deemed to be registered in the UAE substituting India as the State of Registry.
- The purchase of ATF by M/s. Etihad Airways was for export on its foreign going aircraft in accordance with section 5(1) of the Central Sales Tax Act, 1956 (CST Act, 1956). The sale of ATF by BPCL to Etihad Airways for export falls within section 5(1) and 5(3) of the CST Act thus satisfying the requirement for seeking exemption from tax in accordance with section 8(1) of the MVAT Act. Hence even if the Commissioner is of the view that Section 8(2) of the MVAT Act is not applicable, as a result of the aircraft being registered in India and not outside India, then the conditions for exemption as stipulated in 8(1) of MVAT Act stand satisfied and are applicable.
[Section 8(1)-Certain sales and purchases not to be liable to tax - sale or purchase which takes place outside the State; or in the course of the import of the goods into the territory of India, or the export of the goods out of such territory; or in the course of inter-State trade or commerce]

03. OBSERVATIONS

I have gone through the facts of the case. Though the question is about rate of tax on a certain product, there is an issue about maintainability of the present application in the present proceeding under section 56 of the MVAT Act, 2002. Therefore, before deciding on the merits of the case in terms of examining the contention about rate of tax, let me decide on the maintainability aspect first.

This application is being entertained under the provisions of section 56 of the MVAT Act, 2002 read with rule 64 of the Maharashtra Value Added Tax Rules, 2005 (MVAT Rules, 2005). The relevant portion of the aforesaid provisions could be reproduced thus :

SECTION - The sub-section (1) of section 56 enlists the questions thus :

- (a) any person, society, club or association or any firm or any branch or department of any firm, is a dealer, or
- (b) any particular person or dealer is required to be registered, or
- (c) any particular thing done to any goods amounts to or results in the manufacture of goods, within the meaning of that term, or
- (d) any transaction is a sale or purchase, or where it is a sale or purchase, the sale price or the purchase price, as the case may be, thereof, or
- (e) **in the case of any person or dealer liable to pay tax, any tax is payable by such person or dealer in respect of any particular sale or purchase, or if tax is payable, the rate thereof, or**
- (f) set-off can be claimed on any particular transaction of purchase and if it can be claimed, what are the conditions and restrictions subject to which such set-off can be claimed,

RULE - The relevant sub-rules (2) and (3) :

(2) The application shall—

- (a) be in writing,
- (b) contain the name and address of the applicant
- (c) be accompanied with proof of payment of fees,
- (d) contain a statement of relevant facts in detail along with supporting evidence, if any;
- (e) contain a statement explaining the circumstances in which the dispute has arisen, and
- (f) be signed and verified by the applicant himself and not by any person authorised to appear before the commissioner in such proceedings or by any agent, in the following form, namely :—

Verification

I do hereby declare that the particulars furnished and statements made above are correct and complete to the best of my knowledge and belief.

Place :

Signature:

Date :

Full Name:

Status:

Address:

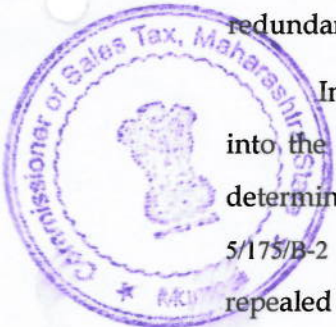
(3) The application may be summarily rejected—

- (a) if it is incomplete with regard to any of the provisions of sub-rule (2), or
- (b) if the applicant fails to reply to any query made, or
- (c) **if, in case of any question posed under clause (e) or (f) of sub-section (1) of section 56, the applicant is not liable to pay ¹ [sales tax or as the case may be, purchase tax] into the Government treasury, or, as the case may be, is not entitled to claim set-off on the transaction;**
- (d) on any other ground which the Commissioner may consider sufficient and which shall be reduced to writing by him :

Provided that, before an order summarily rejecting the application is passed under this sub-rule, the applicant shall be given a reasonable opportunity of being heard.

It can be seen from the above that a question about rate of tax can be posed for determination in terms of clause (e) of sub-section (1) of section 56 of the MVAT Act, 2002. The clause reads thus - *"in the case of any person or dealer liable to pay tax, any tax is payable by such person or dealer in respect of any particular sale or purchase, or if tax is payable, the rate thereof"*. Thus, the clause ascertains two issues but the decision on the second issue is left contingent on the outcome of the first. The first is whether the applicant is liable to pay tax. The second issue comes up for decision only if the answer to the first is in the affirmative. Liable to pay tax always means liable to pay tax into the Government Treasury. This is further fortified when we see the provision as made in clause (c) of sub-rule (3) of rule 64 of the MVAT Rules, 2005. This clause in the rule has made a provision in respect of clauses (e) and (f) of sub-section (1) of section 56 of the MVAT Act, 2002. The provision states that a question in respect of the aforesaid two clauses (e) and (f) can be posed **ONLY** by an applicant liable to pay tax, both Sales Tax and Purchase Tax, into the Government Treasury. It is the seller who is liable to pay tax into the Government Treasury on the sales effected by him. Under the erstwhile Bombay Sales Tax Act, 1959 (BST Act), there was a provision for levy of

Purchase Tax which was payable by the dealer effecting the purchase on account of contingencies such as purchase from unregistered dealers or contravention of certain provisions. Similarly MVAT Act,2002 also has a provision for purchase tax and it is applicable only when the purchase is from a *person who is not a dealer OR a dealer, who is not a registered dealer*. Further, the purchase tax is to be levied on the purchase of cotton and oilseeds ONLY and moreover, it is leviable ONLY when the specified contingencies as mentioned in the concerned levy sections (6A and 6B) take place. Thus, a dealer is liable to pay purchase tax under the MVAT Act,2002 in respect of only the aforesaid two commodities on fulfillment of the conditions. The intention behind the purchase tax under both the earlier and the present Act comes from the reasoning that tax is payable on the sales. A person who is not a dealer (*for reasons such as not carrying on business*) or a dealer who is not a registered dealer (*for reasons such as the required turnover limit having not been reached*) will not be eligible to file a return and pay tax on their sales in the prescribed forms for want of being registered. This lacuna is sought to be overcome by making a provision that the purchaser in such a case would discharge the liability. The purchase tax was generally applicable under the erstwhile Act while under MVAT Act,2002, it is in respect of the specified commodities ONLY. The question in clause (e) of section 56(1) being about rate of tax, it is provided under clause (iii) of rule 64(3) says that only a seller who pays the tax into the Government Treasury and the purchaser who pays purchase tax on the specified commodities into the Government Treasury can raise a question about rate of tax. Similar is the case with the question in clause (f) which is about set-off claim. The question in clause (f) of section 56(1) being about claim of set-off of tax paid on purchase, it is aptly provided under clause (iii) of rule 64(3) that only an applicant entitled to claim set-off in respect of a transaction can pose the question. There is conscious thought involved in restricting the making of an application to liability to pay tax. In the absence of such a requisite, there would arise a flood gate of applications. Also on the same transaction, both seller and buyer may prefer an application. Thus, it just reinforces the principle of law that no provision in a statute is redundant.



In view of above, it can be seen that the applicant, not being a seller is not liable to pay tax into the Government Treasury in respect of the impugned transaction. On this very issue, a determination order was passed in the case of M/s. Inter Dye Industries (No.DDQ-1187/Adm-5/175/B-2 dt.10.09.2009) in respect of the provision for determination as available under the repealed BST Act. The clause for interpretation therein was worded same as the present clause *"in the case of any person or dealer liable to pay tax, any tax is payable by such person or dealer] in respect of any particular sale or purchase, or if tax is payable the rate thereof"*. My inferences and observations find support in the decisions of the Hon. Courts and Hon. Maharashtra Sales Tax Tribunal (Hon. MSTT). I would refer to the same thus -

The applicant herein had purchased goods from a registered dealer. Hence, the applicant's attention was invited to a decision of the Hon. Bombay High Court in the case of Hemchand & Co. V/s. The Government of Maharashtra (Sales Tax Reference 28 of 1964 decided on 12th January, 1968) wherein it was observed thus :

"When this was pointed out to the counsel to find out what was the basis for making the application under section 52 of the Bombay Sales Tax Act to the Deputy Commissioner, it was suggested that possibly the question of liability of the applicants for the sales tax on the material supplied by the Port Trust might have given rise to the present dispute. If that was the basis for making an application there is hardly any justification for entertaining the application or for making a reference either. It is obvious that the liability of the applicants to pay, or not to pay, sales tax charged under the bills by the Port Trust for the material supplied by them, is purely a question resting on the terms of the agreement between the parties. The Revenue has nothing to do with it and the Commissioner of Sales Tax, nor the Tribunal nor this Court is a forum to adjudicate on the matter. This is a dispute solely between the parties inter se and no question of liability for revenue arises under such circumstances."

The observations in the above determination order may be seen thus -

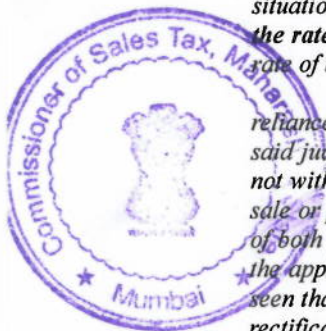
"Let me begin by referring to the said clause (e) : "any tax is payable in respect of any particular sale or purchase, or if tax is payable, the rate thereof." The clause could be bifurcated into two parts - one before 'or' and the other after 'or'. The first part requires a tax payable in respect of any particular sale or purchase. In the present case, the seller and the purchaser i.e Bombay Port Trust and the applicant, respectively are registered dealers under the Bombay Sales Tax Act, 1959. The applicant is the purchaser and Bombay Port Trust being a registered dealer, the purchase of the applicant is a purchase from a registered dealer and hence, the applicant is not liable to pay any tax in respect of the particular purchase. The situation would have been otherwise, had the purchase been from an unregistered dealer. In such a situation arising from a purchase from an unregistered dealer, the applicant would have been liable to pay tax purchase tax on the transaction as per the provisions of the Bombay Sales Tax Act, 1959. It has been settled by a catena of decisions that 'tax payable' means 'tax payable into the Government Treasury'. The responsibility to pay tax has been cast on the seller. The Bombay High Court in the case of Hemchand & Co. (cited supra) has very rightly captured the essence of a transaction between a seller and a purchaser. It has been observed that if the question of liability of the applicant for the sales tax on the material supplied by the Port Trust was the basis for making an application, then there is hardly any justification for entertaining the application or for making a reference either. "It is obvious that the liability of the applicants to pay, or not to pay, sales tax charged under the bills by the Port Trust for the material supplied by them, is purely a question resting on the terms of the agreement between the parties. The Revenue has nothing to do with it and the Commissioner of Sales Tax, nor the Tribunal nor this Court is a forum to adjudicate on the matter. This is a dispute solely between the parties inter se and no question of liability for revenue arises under such circumstances."

In the present case, as pointed by the Court, the liability of the applicant to pay or not to pay tax is a matter to be decided by the parties to the transaction. Even in the present decision dt.12.06.2009, the High Court has pointed that the application under the section can be moved by a dealer or any person who is liable to pay tax and liable to pay tax means liable to pay tax into the Government Treasury. The Act has cast a responsibility on the seller to pay sales tax on his sales and on the purchaser to pay purchase tax on his purchases from unregistered dealers. We have seen above that the purchase of the applicant being a purchase from a registered dealer, the applicant is not liable to pay any tax in respect of the particular purchase. Now, since it is seen that the applicant is not liable to pay any tax into the Government Treasury in respect of his purchase from a registered dealer, the question of interpreting the situation in terms of the words following "or" in the clause (e) does not arise at all. The words are "if tax is payable, the rate thereof". As no tax is payable, there is no question of ascertaining the rate of tax. The determination of the rate of tax is made contingent to the event of payability of tax.

The arguments placed by the applicant in his reply do not make a point. The applicant has sought to place reliance on the decision in the case of Nagpur Distillery vs. State of Maharashtra [cited supra]. I have perused the said judgment and it is seen that the same dealt with clause(c) section 52(1) of the Bombay Sales tax Act, 1959 and not with clause(e) of the same section. Clause (c) pertains to "any transaction is a sale or purchase, or where it is a sale or purchase the sale price or the purchase price, as the case may be, therefore,". It can be seen that the wording of both the clauses is not the same. Hence, I am not inclined to discuss the case any further. The other case cited by the applicant is Kulko Engg. vs. The State of Maharashtra [cited supra]. I have perused the said judgment and it is seen that the same dealt with the question as to whether section 52 of the Bombay Sales tax Act, 1959 created a bar to rectification power under section 62 of the said Act. The circumstances of the present case are in no way similar to the situation in the aforesaid case.

In view of the above, the reply to the question posed for determination in the present proceedings is as follows :

1. No tax is payable into the Government Treasury by the applicant in respect of the transaction posed for determination between the applicant and Bombay Port Trust being a purchase from a registered dealer.
2. As no tax is payable, there is no question of determining the rate of tax thereon."



The aforesaid determination order has been confirmed by the Hon. Maharashtra Sales Tax Tribunal (Hon. MSTT) in Appeal No.40 of 2009 decided on 10.07.2010 wherein it was observed thus :

"The appellant has submitted before us that the phrase "tax payable" used in clause (e) contemplates tax payable under the Act on a particular transaction. For the purposes of determination the transaction of sale has to be seen as a single unit without dissecting it into its components i.e. sale and seller, purchase and purchaser. Further he contended that though in law tax is levied on the seller, however its incidence is borne by the buyer from whom tax is collected. Accordingly he contended that the purchaser has a right to seek determination on the tax payable by his vendor. In this context, he referred to the definition of tax given in Bombay Act, provisions of Section 6 of the Bombay Act which states that the dealers liable to pay tax under this Act have to pay the tax in accordance with the provisions of this chapter and provisions of Section 46 which prohibits excess collection of tax. The appellant has also stated that his claim is tenable by virtue of Bombay High Court judgment given in the case of Kulko Engineering Works Ltd. v. State of Maharashtra (46 STC 454) and this Tribunal's judgment in the case of M/s. Nagpur Distillery (Appeal No. 15 of 1991, decided on 05.04.1991). Mr. Bonde, the government representative supported the order passed by the Commissioner.

We have duly considered the submissions made by the appellant. We have also perused the judgments on which the appellant has placed reliance. The Commissioner has dealt with the judgments cited by the appellant. We are of the opinion that these citations are not relevant for deciding the issue before us. The appellant's argument is mainly based on the interpretation of phrase "tax payable" used in clause (e) of sub-section (1) of Section 52. The appellant is arguing that alongwith dealer who is liable to pay tax under the Act any other dealer from whom such tax is collected can seek determination under sub-clause (1)(e) of Section 52. For this proposition, the appellant has cited before us Supreme Court judgment rendered in the case of American Remedies Pvt. Ltd. The appellant's reliance on the aforesaid judgment is misconceived as the cited judgment does not deal with the issue involved herein. The text of Section 52 is clear. Clause (e) under which the appellant had filed the determination application primarily deals with tax payable on a particular transaction and secondarily if tax is payable rate at which tax is payable. There is no direct provision for determination of general tax-rate applicable to particular goods. The focus of the provision is on the transaction (whether taxable or tax free or exempt) and not on goods per se. In tax laws, tax becomes payable, by a person on whom tax is leviable/levied. In the context of sales tax, tax can be levied on seller, or purchaser or on both. When the tax is levied on the seller the transaction is referred as sale and the tax so levied is termed as sales tax. When the tax is levied on the purchaser the transaction is referred as purchase and the tax so levied is termed as purchase tax. In clause (e), the legislature has used the expression "sale or purchase" and not "sale" simpliciter. In our opinion clause (e) contains two independent contingencies which can be stated as under -

(a) Any tax is payable in respect of any particular sale, or if tax is payable the rate thereof.

(b) Any tax is payable in respect of any particular purchase, or if tax is payable the rate thereof,

It is evident from above that both seller and purchaser can seek determination about payability of tax. It follows from this that the seller cannot seek determination of purchaser's liability and vice versa. In the present case the appellant is seeking determination about the amount of tax payable by his seller. In our considered opinion for this the seller should have approached the Commissioner."

It can be seen that my observations stand reinforced by the Hon. MSTT's ruling that *the seller cannot seek determination of purchaser's liability and vice versa*. In the proceedings before me, the facts are as follows :

1. *The applicant is a purchaser. Therefore, the liability to pay Sales Tax into the Government Treasury in respect of the transaction is on the seller and not the purchaser.*
2. *The commodity purchased is ATF and not cotton or oilseeds. Therefore the question of payment of Purchase Tax into the Government Treasury does not arise.*

In view thereof, the present application becomes liable to be rejected summarily in terms of clauses (e) of sub-section (1) of section 56 of the MVAT Act, 2002 read with clause (c) of sub-rule (3) of rule 64 of the MVAT Rules, 2005.

In view of the above position, the case was taken up for hearing on dt.24.12.2013 when Sh. Walia (Legal Counsel) and Sh. Mohanty (Manager Finance & Adm., India - Etihad Airways)



attended. The provisions in clauses (e) of sub-section (1) of section 56 of the MVAT Act, 2002 and clause (c) of sub-rule (3) of rule 64 of the MVAT Rules, 2005 were brought to their notice. The facts in the present case were summarized to them thus:-

- i. The applicant is not registered under the MVAT Act, 2002.
- ii. The applicant has effected a purchase on which he is not liable to pay tax. Also the transaction does not attract purchase tax.
- iii. The applicant being not registered under the MVAT Act, 2002, would also not be liable to claim set off on the transaction.

Therefore, it was informed that the application is liable to be rejected summarily. To this, it was submitted that a written submission would be given on the issue of non-maintainability. The applicant wished to argue on the merits of the case for which it was stated that a written submission has already been given in the matter and further written submission summarizing the arguments on maintainability and merits would be given within 2 weeks.

No communication on the issue of maintainability was received from the applicant. Therefore, the position as above was brought to the notice of the applicant through letter dt.14.05.2015. It was also expressed that in case the view was not acceptable, the applicant to attend a hearing on dt.03.06.2015, failing which the applicant was cautioned that the application would be rejected summarily. The view as expressed is reproduced hereunder. Additionally, the applicant was also advised to arrange his affairs in terms of a determination order passed in respect of supplies of ATF to the applicant, for a different bill, on an application for determination by the seller i.e BPCL.

"A question was posed about the rate of tax on the Aviation Turbine Fuel (ATF) purchased from M/s. Bharat Petroleum Corporation Ltd. (BPCL). A hearing in the matter was scheduled on the 24th December 2013. During the course of the hearing, your attention was drawn to provisions contained in section-56(1)(d) and section-56(1)(e) of the Maharashtra Value Added Tax Act, 2002 (the MVAT Act) read with rule-64(3)(c) of the Maharashtra Value Added Tax Rules, 2005 (the MVAT Rules). It was pointed out that, clause (e) of sub-section (1) of section 56 of the MVAT Act calls for question to be raised by a person or dealer liable to pay tax and whereas in the instant case, the question for determination was posed by a purchaser who is not liable to pay tax as also being not registered under the MVAT Act, not liable to claim set off. Therefore, in terms of the aforesaid provisions, the application for determination was liable to be rejected summarily. From the determination proceedings it is seen that it was requested to grant time of 2 weeks to submit a written submission on maintainability and merits. However, to date the same has not been submitted. In this respect, your attention is invited to a determination order No.DDQ-1187/Adm-5/175/B-2 dt.10.09.2009 in the case of M/s. Inter Dye Industries wherein it was observed that the transaction posed for determination being effected by a purchaser who is not liable to pay tax into the Government Treasury, there is no question of determining the rate of tax applicable to the purchase.

The said determination order was challenged by the dealer before the Hon. Maharashtra Sales Tax Tribunal (the MSTT) in Appeal No.40 of 2009 decided on 10.07.2010 in the case of Shri Indrakumar Gupta V/s. the State of Maharashtra. It was argued by the dealer that the phrase 'tax payable' used in section-52(1)(e) of the Bombay Sales Tax Act, 1959 (the BST Act) contemplates tax payable under the Act on a particular transaction and therefore, the purchaser has a right to seek determination on the tax payable by his vendor. As to the provision under section-52(1)(e) of the BST Act, the Hon.MSTT observed,-

"... Clause (e) under which the appellant had filed the determination application primarily deals with tax payability on a particular transaction and secondarily if tax is payable rate at which tax is payable. There is no direct provision for determination of general tax-rate applicable to particular goods. The focus of the provision is on the transaction (whether taxable or tax free or exempt) and not on goods per se."

"In clause (e) the legislature has used the express 'sale or purchase' and not 'sale' simpliciter. In our opinion clause (e) contains two independent contingencies which can be stated as under -

- (a) Any tax is payable in respect of any particular sale, or if tax is payable the rate thereof.
- (b) Any tax is payable in respect of any particular purchase, or if tax is payable the rate thereof,



It is evident from above that both seller and purchaser can seek determination about payability of tax. It follows from this that the seller cannot seek determination of purchaser's liability and vice versa."

The Hon.MSTT recorded that the applicant was seeking determination about the amount of tax payable by his seller and hence, dismissed the said Appeal.

In the backdrop of the discussion above, the question of the rate of tax applicable in respect of a purchase stands concluded by the aforesaid determination order and further, the Hon.MSTT has upheld that a purchaser cannot seek to determine the rate of tax payable by the seller. In view thereof, the present application for determination is liable to be rejected summarily in terms of rule-64(3)(c) of the MVAT Rules.

Additionally, I would also like to invite your attention to a determination order No.DDQ-11/2013/Adm-6/39/B-1 dt.05.01.2015 in the case of BPCL. Through the determination order sale of ATF by BPCL to Etihad Airways for the supply to the aircraft registered in India for operating on international scheduled services between points in India and abroad was held neither a transaction under section-8(2) of the MVAT Act nor covered under section-5(5) of the Central Sales Tax Act, 1956 and not an export also. The transaction was held covered by the schedule entry D-7 of the MVAT Act, thereby taxable @ 30%. Thus, it can be seen that the issue placed by you for determination stands concluded by the aforesaid determination order in BPCL. Thereby, you can arrange your affairs accordingly.

In view of the above, you are requested to remain present for a re-hearing in the matter fixed on Wednesday, the 3rd June 2015 at 10.30 am and show cause as to why your application should not be dismissed.

Please note that in the event of failure to attend on the aforesaid date, it would be presumed that you have nothing to say in the matter and the application would be rejected summarily within the terms of provisions contained in rule-64(3) of the Maharashtra Value Added Tax Rules, 2005."

The hearing on dt.03.06.2015 was postponed to dt.05.06.2015 due to certain unavoidable circumstances. By communication of dt.05.06.2015, the applicant requested for adjournment of upto 4 weeks in the matter. The applicant requested for copies of the various decisions cited in the communication dt.14.05.2015 whereby a view about the merits of the instant case was expressed to the applicant. The requisite copies were supplied to the applicant by the letter dt.11.06.2015. I would refrain from reproducing the points about the merits of the tax rate issue as sought to be made in this communication dt.05.06.2015. However, I would reproduce herein the points as regards maintainability of the present application thus :

"4. Request for supply of copy of Determination Order in BPCL Case:

We note that you have issued a determination order No.DDQ-11/2013/Adm-6/39/B-1 dt.5.1.2015 in the case of BPCL. In this Order you have come to certain conclusions without taking our views and evidence on record merely based on the submission of BPCL even though we are an aggrieved party being the purchaser and hence being liable to pay tax, when we firmly believe that we are not liable to pay tax based on the evidence that we are in a position to provide, given a fair opportunity. Thus, the determination order on the application of M/s. BPCL has been passed admittedly without granting us a reasonable opportunity of being heard or allowing us to adduce evidence even though we are an aggrieved party being the purchaser.

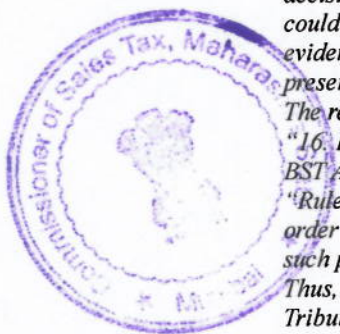
It may be observed that the Bombay High Court in the case of Commissioner of Sales Tax v. Maharashtra Sales Tax Tribunal : 2004 137 STC 1 Bom has allowed an opportunity to the affected party RIL to participate in the proceedings before the Tribunal being an aggrieved party, and also allowed RIL to adduce evidence given that the decision of the Tribunal was based simpliciter on the admissions of BPCL in that case and not on evidence that could be presented by RIL. The matter was thus remanded to the Tribunal allowing both RIL and BPCL to adduce evidence in order to avoid a decision based on admissions of the seller alone, which is also the position in the present case.

The relevant extract from the said decision is reproduced below for ready reference:

"16. Rule 62 of the BST Rules, 1959 made by the State Government in exercise of its power under section 74 of the BST Act reads as under :

"Rule 62. Notice to person likely to be affected adversely.- - Before an appellate or revising authority passes an order in appeal or revision which is likely to affect any person other than the appellant adversely, it shall serve on such person a notice in form 40 and shall give him a reasonable opportunity of being heard."

Thus, under Rule 62, before passing an order in appeal under Section 55, it is obligatory on the part of the Tribunal to give notice of hearing to a person who is likely to be affected adversely by its decision. The words "any person" in Rule 62 are restricted to the person with whom the appellant before the Tribunal has entered into a transaction. To illustrate, in a transaction between A and B, if the Tribunal finds that its decision in the appeal filed by A is likely to affect B adversely then under Rule 62 notice of hearing must be given to B before passing the order.



17. Section 62(1) and (2) of the BST Act which is relevant in the present case reads as under:

"62. Rectification of mistakes.-(1) The Commissioner may at any time within two years from the date of any order passed by him, on his own motion, rectify any mistake apparent from the record, and shall within a like period rectify any such mistake which has been brought to his notice by any person affected by such order:

Provided that, no such rectification shall be made if it has the effect of enhancing the tax or reducing the amount of a refund, unless the Commissioner has given notice in writing to such person of his intention to do so and has allowed such person a reasonable opportunity of being heard.

(2) The provisions of Sub-section (1) shall apply to the rectification of a mistake by the Tribunal or an appellate authority under Section 55 as they apply to the rectification of a mistake by the Commissioner."

Thus, under Section 62, rectification of a mistake apparent on the face of the record can be done *suomotu* by the authority who passed the order or, on an application made by any person affected by such order.

.....
"21. With all this background, the basic question now to be answered is, in the facts of the present case, whether RIL can be said to be directly, affected by the order of the Tribunal dated April 21, 2004 and if so, whether failure on the part of the Tribunal to hear RIL as per Rule 62 of the BST Rules before passing the order under Section 55 of the BST Act constitutes an error apparent on the face of the record which could be rectified under Section 62 of the BST Act? In the present case, the order in original in the first instance was passed by the Commissioner of Sales Tax on the basis of the admission made by BPCL. BPCL admitted before the Commissioner that RIL returned kerosene after extracting N-paraffin from the kerosene supplied by BPCL to RIL. This factual admission was not disputed by BPCL even in the appeal filed by it before the Tribunal. The Tribunal confirmed the order of the Commissioner on the basis of the undisputed admission made by BPCL. Even RIL in its rectification application has not specifically disputed the factual admissions made by BPCL. The only grievance of RIL is that the decision of the Tribunal directly affects, RIL and, therefore, no order could be passed without hearing RIL, as contemplated under Rule 62 of the BST Rules. No evidence was brought on record by BPCL before the Commissioner regarding the process adopted by RIL in extracting N-paraffin from the kerosene supplied by BPCL to RIL and the only submission was that even after extraction of N-paraffin, the goods remained kerosene as per BIS specification. Thus, in the present case, the determination of the issue as to whether the goods returned were different goods or not was based on admission and not on evidence. The Tribunal decided the matter on the basis of the above admission of BPCL and not on evidence and even the rectification application of RIL was allowed without giving any finding as to how the decision of the Tribunal based on undisputed facts adversely affected RIL. If on recall, the issue whether the kerosene returned after extracting N-paraffin can be said to be return of the same goods supplied or not is to be determined by the Tribunal by permitting the parties to lead evidence, then, as suggested by the Commissioner, it can as well be led before the first authority, i.e. the Commissioner of Sales Tax. In this view of the matter, without going into the questions as to whether the RIL was a directly affected party or not and whether there is error apparent on the face of the record or not, we think it appropriate to accept the alternate submission of Bharucha and permit the Commissioner of Sales tax instead of the Tribunal to decide the question No.2 afresh after hearing both BPCL and RIL. It will be open to the parties to adduce such evidence as they deem fit before the commissioner of Sales Tax."

Hence in view of the above, it is clear that an order should be based on evidence to be adduced by Etihad, as the purchaser and the aggrieved party, and not on the basis of mere submissions of BPCL alone as has been done in the present case. Moreover, an affected and aggrieved party ought to be permitted to be given a fair and reasonable opportunity to adduce evidence as was held in the aforesaid matter decided by the Bombay High Court. The grant of a hearing ought to be meaningful opportunity for an affected party to convey their arguments to support the position they understand as correct, and not a mere formality post the issuance of the Determination Order. This hearing has been granted after the lapse of 5 months from the date of the passing of the Order, which indicates that the hearing may be treated as a formality by your respected office. However, due to the reasons outlined above, we wish to be granted meaningful opportunity to outline why we continue to be aggrieved by the conclusion in the Order.

In view of the above, we request you to kindly furnish us a copy of the Order, as the same has direct bearing on us so that we may understand the stand taken by the Sales Tax Authority and defend ourselves by initiating appropriate remedies available to us under law and respond accordingly to the present hearing notice.

Clearly only taking submissions of BPCL on record as a seller and not granting us a fair and reasonable opportunity of adducing evidence and being heard, merely on technical grounds, will be contrary to the principles of natural justice and equity and will amount to a travesty of justice.

We are confident that you will grant us an opportunity to place our say on record before passing any order summarily rejecting our application.

5. Right to adduce evidence and review of Determination Order in BPCL Case

With respect to the Determination Order passed, it is submitted that:

- Given the fact that the impugned order was passed more than 5 months ago, we seek sufficient time and a reasonable opportunity to submit our evidence, which would be an opportunity in accordance with the principles established in the judgment passed by the Hon'ble Bombay High Court in the aforesaid RIL matter.
- The Order in the BPCL case has been passed based only on the admissions of BPCL without granting us, as an aggrieved party, with an opportunity to convey arguments and it is apparent that the same is erroneous on the face of it. This is contrary to the provisions of Section 62 of the BST Act. Therefore, this letter is
- being filed without prejudice to the continued existence of our right to file an application for

review/rectification to the Order passed in the BPCL matter.

d) We also take this opportunity to confirm the status of the BPCL case in view of the judgment passed by the Hon'ble Bombay High court in the aforesaid RIL matter and more particularly whether the Order will be rectified in view of the said judgment and the hearing that has been granted to us now."

The reliance on the above case of RIL and BPCL in the submission dt.05.06.2015 is made to put across the point that the applicant being an affected party should be allowed to place his say in the matter. With regard to the same, I have to submit that the reliance on the said case law is not proper as the facts of the said case are different than the present one. In the said case, there was an initial sale by BPCL, of a certain commodity, Superior Kerosene Oil (SKO), to RIL. Thereafter, RIL returned the SKO after extracting N-paraffin therefrom. BPCL claimed the said transaction as it's 'Sales Return' which in other words meant the 'Purchase Return' of RIL. The claim of 'Sales Return' by BPCL was rejected by the then Commissioner and accordingly, held to be a purchase of BPCL from RIL which eventually means to be a sale by RIL to BPCL. RIL being held as the 'seller' would mean RIL is liable to pay tax on the said transaction, being the seller. And therefore, there is liability which required intervention by RIL in the determination proceedings. In the present case, the applicant would, in no situation whatsoever, be liable to pay tax on the impugned transaction. The charge by BPCL of an amount towards tax is the point of agreement between the parties to the transaction and cannot form an issue for the purchaser to raise the same in the proceedings under section 56 of the MVAT Act, 2002. At the cost of repetition, I would refer herein again to the decision of the Hon. Bombay High Court in the case of Hemchand & Co. (cited supra). The Hon. Court has answered the non-issue, as in the present case, by observing so :

".....there is hardly any justification for entertaining the application or for making a reference either. It is obvious that the liability of the applicants to pay, or not to pay, sales tax charged under the bills by the Port Trust for the material supplied by them, is purely a question resting on the terms of the agreement between the parties. The Revenue has nothing to do with it and the Commissioner of Sales Tax, nor the Tribunal nor this Court is a forum to adjudicate on the matter. This is a dispute solely between the parties inter se and no question of liability for revenue arises under such circumstances."

Thus, the Hon. Bombay High Court has decided that there is no liability to tax on the purchaser in the issues as in the present case. Therefore, reliance on the above case with a different set of implications has no relevance to the facts of the present case. Further, in the said case, the determination was in respect of BPCL and on confirming of the said order in appeal filed before Hon. MSTT by BPCL, RIL stepped into the appeal proceedings. RIL had not filed an application for determination nor sought for inclusion as a party to the determination. The Rectification was filed by RIL not for the rectification of the order of the Commissioner but of the Hon. MSTT's order in appeal confirming the Commissioner's DDQ.

Since the applicant has referred to the issue of the transaction between BPCL and RIL, I would refer herein to a decision in the same matter as delivered by the Hon. MSTT of dt.16.04.2002 (M/s. Bharat Petroleum Corporation Ltd. And M/s. Reliance Industries Ltd. Vs. The State Of Maharashtra [25 MTJ 924]). Though this decision was set aside by the Hon. Bombay High Court by



the very decision on which the applicant has placed reliance in his submission above, the point to be noted was that both the Hon. MSTT and the Hon. Court had agreed to allow RIL to be made a party in the issue of BPCL. The observations of the Hon. MSTT while deciding thus were as follows :

"8. As regards the first question regarding whether RIL is directly affected or not by the impugned judgment, we answer it in the affirmative for more than one reasons mentioned hereafter. We agree with Mr. Nirale that if a judgment is not causing any variation in the liability of the person other than the party to the proceedings as per the provisions of the Bombay Act, then such person cannot be said to be person affected by that judgment. The mere fact that the judgment has caused an addition to the tax-liability of the party to the proceedings and that such liability may get shifted to a third person as a result of a contract between those parties, will not make such third person 'affected' by the judgment as contemplated by rule 62. Ordinarily, for any transaction of Sale/Purchase, there are two parties, and normally either of these parties is liable to pay tax on that transaction to the Government as per the Sales Tax Law. The party liable to pay tax to the Government may or may not recover that tax from the other party depending on the terms and conditions agreed upon by them in that regard. Mr. Nirale has pointed out to a Supreme Court's judgment in the case of Ms. Central Wines (65 STC 48) according to which the law does not cast any obligation on the purchaser to pay any tax to the seller, where the seller is liable to pay tax to the Government on the particular transaction and that the various components including the tax charged by the seller to the purchaser is the consideration for passing of the property as per the contract. In that view of the matter, the Sales Tax Department is really not concerned with whether its adjudication on the liability of the party liable to pay tax to the Government as per law would affect in any way the contractual liability of the other party. So long as this adjudication is not affecting the liability of that other party as per the Sales-Tax Law, the department would be quite justified in holding that other party was not 'affected' by that adjudication. We do not find any difficulty in accepting this proposition..... It is precisely with that view that the intervention sought by a sole buyer in the determination-proceedings of a selling dealer was not allowed by this Tribunal in the case of M/s. Indian Marble and Mineral Corporation (Appeal No. 50 of 1970 decided on 25.7.1973). For the same reason, the intervention sought on the basis of the rule 62 by a buyer in the appeal-proceedings of the selling dealer claiming a sale in the course of import to the said buyer was also denied by the Larger Bench of this Tribunal in the case of M/s. Esso Standard Refining Co. of India Ltd. (Misc. Appln. No. 11 of 1970 decided on 20.11.1972). In all these cases, the particular purchasing dealers seeking intervention in the proceedings of the selling dealers were apparently not liable to pay any tax to the Government on the disputed transactions as per the Bombay Act or the Central Act, and therefore they were held to be not affected by the adjudication in the proceedings of the selling dealers. The view held by the Tribunal in these cases seems to us to be most logical and reasonable. As stated earlier, normally each transaction has two parties. If the purchasing dealer to the transaction is to be held as affected by the adjudication in the selling dealer's case simply because it has an indirect effect on his contractual liability, then in almost all the appeal proceedings, such interventions will have to be allowed which certainly would cause stalling or delaying the appeal-proceedings. We have absolutely no doubt in our minds that it is not the intention of the Government in introducing rule 62 in the Bombay Rules, and such interventions are certainly not contemplated by the said rule. We therefore unequivocally approve Mr. Nirale's proposition that if a judgment given in one dealer's case does not directly affect the tax-liability of another person or dealer under the Bombay Act or the Central Act, then such person or dealer cannot be said to be affected by that judgment. In our view, even the purchasing dealer's entitlement of set-off under Bombay Rules in the context of the tax determined to be leviable or not leviable in the hands of the selling dealer, will not alter this legal position. This is so because the entitlement of set-off is always with reference to the tax paid by the purchasing dealer to the selling dealer and therefore any decision as regards the tax payable by the selling dealer will not materially affect the purchasing dealer's liability, even though it has a bearing on the set-off admissible to him. In the case of M/s. Steel Plant P. Ltd. (Appeal No. 132 of 1968 dated 23.10.1970) on which Mr. Joshi has placed reliance, the intervention sought by the purchasing party i.e. Bombay Municipal Corporation (BMC) seems to have been allowed mainly because the Corporation had filed a Determination Application before the learned Commissioner in the context of the very transaction and also because the disputed transaction in the hands of the selling dealer (i.e. M/s. Steel Plant P. Ltd.) having been disallowed as Works Contract and having been held as a Sale under the Bombay Act, was held by implication to be a purchase on the part of BMC. It seems that since BMC is a dealer under the Bombay Act, it was open to a liability on that transaction under the Bombay Act as a result the judgment in the seller's case. It is on this background that BMC's intervention seems to have been allowed in that case. Having considered the legal position as unfolded by the various judgments, we do not feel hesitated to accept Mr. Nirale's argument that a purchaser is not affected by a judgment in seller's case, if it does not change his own liability under Bombay Act or Central Act. In the present case, three questions were posed by BPCL before the Commissioner, out of which the first and third questions were regarding the tax-liability of BPCL on its sales of kerosene, while the second question was regarding the admissibility of claim of goods-return from RIL. Had there been only the first and third questions without there being the second question, then the decision on those two questions would not have affected RIL, who was not at all liable to pay any tax on those transactions as per the Bombay Act. In that case, RIL could not have validly sought any intervention in the proceedings of BPCL, by taking recourse to rule 62. However, it is the adjudication on the second

question regarding the Goods Return Claim which has a certain and inescapable impact on the RIL's liability under the Bombay Act for the reasons mentioned in the succeeding paragraphs and therefore RIL has to be held as directly affected by the impugned judgment."

Thus, it can be seen that intervention even by a sole buyer was not held allowable by the Hon. MSTT. I again reiterate that the decision in the BPCL-RIL case has no bearing on the facts in the present case. There the decision in BPCL had the effect of causing the Purchase Return of RIL to be it's sale and therefore, liability to tax in respect thereof. In the present case, the applicant is the purchaser and not the seller liable to pay tax into the Government Treasury. And furthermore, the decision in the determination order dt.05.1.2015 in the case of BPCL evidencing a transaction of supply of ATF to the applicant by BPCL would not alter the position as regards tax liability being shifted on the buyer i.e the applicant in the present proceedings.

In view of the applicant's request for an adjournment for 4 weeks, the hearing in the matter was fixed on dt.08.07.2015. Smt. Purnima Singh (Advocate) attended on behalf of the applicant and submitted that the submissions as made earlier are reiterated. She informed that the applicant had filed a request for clarification with the office of the Director General of Civil Aviation (DGCA) with regard to the status of the registration of aircraft registered in India and leased to a foreign operator and the position with respect to substitution of the State of Registry with the State of Operator with respect to the leased aircraft. Therefore, the applicant requested for 4 weeks' time to produce the details. It was again brought to the notice of the applicant that the maintainability aspect be seen first. No arguments as to the maintainability of the present application were made in the written submission of dt.08.07.2015 given during hearing.

Thereafter the hearing was fixed on dt.12.08.2015 but the same was adjourned to dt.02.09.2015 due to some unavoidable circumstances. On dt.02.09.2015, Smt. Purnima Singh (Advocate) attended and reiterated the submissions as made earlier. A clarification by DGCA was submitted to claim that United Arab Emirates (UAE) being the State of Operator, the leased aircrafts shall be deemed to be registered in the UAE substituting India as the State of Registry. The points as regards maintainability as made in the written submission of dt.02.09.2015 are as follows :

3. With respect to our eligibility to seek a DDQ clarification, we most humbly submit that the provisions of Section 56(1)(e) of the MVAT Act, 2002 states as under:

"56. Determination of disputed questions:-

(1) If any question arises, otherwise than in a proceedings before a Court or the Tribunal under section 55, or before the Commissioner has commenced assessment of a dealer under section 23, whether, for the purposes of this Act,-

.....

(d) any transaction is a sale or purchase, or where it is a sale or purchase, the sale price or the purchase price, as the case may be, thereof, or

(e) in the case of any person Or dealer liable to pay tax, any tax is payable by such person or dealer in respect of any particular sale or purchase, or if tax is payable, the rate thereof, or...."

It is pertinent to point out that the right for making an application for DDQ is not limited to a dealer and the term used in Section 56(1) (e) is any "person or dealer" and not a person who is a dealer. Hence it is clear that being a dealer is not a necessary pre-requisite as clearly the person being aggrieved would be the person who would have to bear the burden of the tax i.e. the purchaser which in this case is the applicant.

4. *We have now received a copy of the Order passed against the application made by BPCL vide order No.DDQ-11/2013/Adm-6/39/B-I, dated 05.01.2015 in the case of BPCL (Determination order) in which certain conclusions were made merely based on the submissions of BPCL, without taking our views and evidence on record even though we are an aggrieved party (being the purchaser and hence being liable to pay tax). We firmly believe that we are eligible for a refund of the tax based on the evidence that we are in a position to provide, given a fair opportunity. Thus the Determination Order on the application of M/s BPCL has been passed summarily without granting us a reasonable opportunity of being heard or allowing us to adduce evidence even though we are an aggrieved party being the purchaser.*

It may be observed that the Bombay High Court in the case of Commissioner of Sales Tax vs Maharashtra Sales Tax Tribunal : 2004 137 STC 1 Bom has allowed an opportunity to the affected and aggrieved party RIL to participate in the proceedings before the Tribunal, and also allowed RIL to adduce evidence given that the decision of the Tribunal was based simpliciter on the admissions of BPCL in that case and not on evidence. Thus the matter was remanded to the Tribunal, allowing both RIL and BPCL to adduce evidence in order to avoid a decision based on admissions of the seller alone, as has been done in the present case.

Hence in view of the above, it is clear that a DDQ order should be based on evidence to be adduced by Etihad as the purchaser and not on the basis of mere submissions of BPCL alone. Moreover, an affected and aggrieved party ought to be permitted to be given a fair and reasonable opportunity to adduce evidence as was held in the aforesaid matter decided by the Bombay High Court. The opportunity of hearing ought to be meaningful action, and not a hurried action post the Determination Order, designed simply to fulfill a formality, and hence we are grateful for your kind consideration of the substantive issues in the present case. We highlight that we are being granted a hearing after a lapse of several months from the date of the passing of the BPCL order, the decision of which results in ourselves, as the purchaser, being aggrieved.

We are confident that based on these submissions you will review your aforementioned BPCL order or will pass an order based on our present application after granting us an opportunity to place our say on record before passing any order summarily rejecting our application as stated in your letter dtd. 14 May, 2015.

5. *Grounds and key evidence that needs to be considered before arriving at any decision in accordance with the principles of natural justice.*

In response to the issue of sustainability of our application dated 8.11.2013 for determination, we wish to point out that we wish to seek determination as a purchaser and accordingly seek a reasonable opportunity to be heard. At the same time as we are an affected and aggrieved party by your said DO in the case of BPCL the same may be reviewed."

As can be seen, the applicant has not made any fresh argument as regards maintainability of the present application. I have already dealt with in detail with the applicant's claim as regards the applicant being an affected party. The reliance on the BPCL-RIL decision of the Hon. Bombay High Court (cited supra) has also been differentiated in the preceding paragraphs.

As regards, the applicant coming up with some communication from DGCA, the cognizance of the same does not form a part of the present proceedings. The veracity of the claims made therein would be dealt with separately. And necessary action would be taken. It suffices to mention herein that any submission, other than the one submitted in the determination order dt.05.01.2015 on merits in respect of supplies of ATF to Etihad by BPCL would be taken note of.

I see that the applicant has tried to stress that they were granted a hearing after a lapse of several months from the date of the passing of the BPCL order. As can be seen from the facts, despite several opportunities of hearing in the present proceedings granted after passing of the determination order in BPCL dt.05.01.2015, it was the applicant who has sought additional time to give his say. The first hearing in the present proceedings was held on dt.24.12.2013 on which date the applicant requested time of 2 weeks to present his say on maintainability. However, that was not given even till the letter communicating hearing on dt.03.06.2015 in view of the application being liable to be rejected summarily. The said hearing was postponed to

dt.05.06.2015 on which date the applicant submitted a letter seeking additional time of 4 weeks to make a submission. Again on the hearing scheduled on dt.08.07.2015, the applicant requested for additional time of 4 weeks. The submission was made finally on dt.02.09.2015. It is not indeed amusing that when the applicant was not in a position to make a submission on a hearing scheduled six months after passing of the determination order in BPCL of dt.05.01.2015, the applicant makes a hue and cry about the delay of six months. Additionally, it need be put on record that in the intervening period, there were a transfer of the earlier Commissioner.

Further, I see that the applicant has constantly claimed that in the said determination order only the applicant therein i.e BPCL has made arguments. This is not the case as BPCL, the applicant therein, has submitted in the said proceedings, the contention or stand of Etihad, as made from time to time. The portion from the submission dt.11.11.2013 of BPCL in the said determination proceedings titled "Etihad Submissions Overview" which says that the arguments of Etihad in support of their stand regarding nil levy of sales tax are put forth for consideration is word-to-word (more specifically from the point "Specific Facts") same as the submission made in the present proceedings in the application dt.08.11.2013 beginning from the point "Etihad Submissions Overview" (even the Heading is the same), more specifically from the point "Specific Facts" (again the sub-point Heading is the same). The hearing in the said matter had taken place on dt.29.10.2013. On the hearing day, Etihad's representatives had attended alongwith BPCL representatives to put forth the stand regarding nil levy of sales tax on the transaction of supply of ATF to Etihad by BPCL. The order in the matter was passed on dt.05.01.2015 as the applicant therein repeatedly requested time to produce the evidence as wanted to be put forth by Etihad through BPCL in the said proceedings. Thus, it is just that the applicant therein was BPCL but the submissions of Etihad, though not a party to the proceedings, as conveyed by BPCL, have been considered before passing of the determination order.

Now, the applicant has alleged that there would be a hurried action decision in his case designed simply to fulfill a formality. A decision, whether hurried or otherwise, whether dealt in detail or otherwise, is always a decision, a conscious decision. So pre-conceived attributes cannot be attached to a decision and not the present one, in the least.

In the present proceedings, I have seen that to proceed to deal with the application would require it to satisfy the provisions of the very section under which it has been preferred. If the application fits within the parameters of an application for determination as understood by the section 56 of the MVAT Act, 2002, the issue involved would need a decision on merits. However, as extensively discussed above, the applicant being a purchaser of goods, not being cotton and oilseeds, is not liable to pay tax into the Government Treasury. And hence, the section doesn't permit such an application. The Rules require me to summarily reject an application in respect of

the impugned clause of section 56(1) when the applicant is not liable to pay tax into the Government Treasury. The applicant has argued that the right for making an application for DDQ is not limited to a dealer and the term used in section 56(1) (e) is any "person or dealer" and not a person who is a dealer. Hence it is contended that being a dealer is not a necessary pre-requisite as clearly the person being aggrieved would be the person who would have to bear the burden of the tax i.e. the purchaser which in this case is the applicant. This argument would again require me to reiterate the position which is the essence of the Sales Tax Act that the seller is liable to pay tax into the Government Treasury. The purchaser is liable to pay tax only in respect of the commodities of oilseeds and cotton and that too when the specified contingencies are fulfilled and more importantly when the purchases are from a *person who is not a dealer OR a dealer, who is not a registered dealer*. The section rightly enables a person or a dealer who is liable to pay tax into the Government Treasury to pose a question as to rate of tax. The burden to pay tax in the present proceedings is not on the applicant. As has been observed by the Hon. Bombay High Court *the liability of the applicants (the purchaser therein) to pay, or not to pay, sales tax charged under the bills by the Port Trust for the material supplied by them, is purely a question resting on the terms of the agreement between the parties. The Revenue has nothing to do with it and the Commissioner of Sales Tax, nor the Tribunal nor this Court is a forum to adjudicate on the matter. This is a dispute solely between the parties inter se and no question of liability for revenue arises under such circumstances.*

In view of all above. I reiterate my observations made hereinafter that the present application is not maintainable for reasons as discussed above. I would, therefore, refrain from discussing in the present proceedings under section 56 of the MVAT Act, 2002, the merits of the question in terms of the applicable tax rate. It could be summarized thus :

1. *The transaction whose tax rate needs to be determined involves a supply of ATF by BPCL to Etihad, the present applicant.*
2. *The applicant is a purchaser.*
3. *The purchase, not being of cotton or oilseeds, the applicant purchaser is not liable to pay Purchase Tax into the Government Treasury.*
4. *The applicant being a purchaser of ATF, the liability to pay Sales Tax into the Government Treasury in respect of the transaction is on the seller and not the purchaser.*
5. *The applicant not being liable to pay tax into the Government Treasury on the impugned transaction, the application is liable to be rejected summarily.*

04. In view of the detailed deliberations held hereinabove, it is determined thus -



ORDER

(under section 56(1)(e) of the Maharashtra Value Added Tax Act, 2002)

No.DDQ-11-2013/Adm-6/46/B-2

Mumbai, dt. 16/12/15

For reasons as discussed in the body of the order, the application is herewith rejected
summarily.



(RAJIV JALOTA)

COMMISSIONER OF SALES TAX,
MAHARASHTRA STATE, MUMBAI