Read : Application for determination dt.22.10.2009 by M/s. Cummins India Limited holder of TIN-27410344315V.

Heard: Nobody attended.

PROCEEDINGS

(under section-56(1) of the MVAT Act, 2002 read with rule-64(3)(d) of the MVAT Rules, 2005)

No.DDQ-11/2009/Adm-3/50/B- 13 **Mumbai, dt:** 29/11/2014

M/s. Cummins India Limited ('the applicant') carrying on business at Power Generation Business Unit, 35A/1/2, Erandawana, Pune-411 038, had requested determination of the following question:

> *"Whether Pursuant to a Business Transfer Agreement dated 20th day of November 2008 ('Agreement'), the applicant has transferred Power Rental Division ('Transferred Business') as a going concern, on slump sale basis to Aggreko Energy Rental India private Limited ('ARIPL') for a lump sum consideration can be regarded as a sale of business and hence, outside the purview of any sales tax (State VAT/CST)."*

02. By letter dated 05.11.2014, it was brought to your notice that the financial year, in which the transaction presented for determination falls, has been assessed in your case. Therefore, it was conveyed that the issue relating to a period which has been assessed cannot be taken in determination proceedings as the said issue stands decided by the assessment order and the remedy, if aggrieved by the assessment order, would lie by way of an appeal to the appropriate authority as provided under the Maharashtra Value Added Tax Act, 2002 (the MVAT Act, 2002). In this regard, applicant's attention was invited to ratio of various decisions, namely, M/s.Bharat Pulverising Mills Pvt. Ltd. (Appeal No.28 of 1979 decided on 22.08.1988), M/s.Lutf Foods Private Ltd. (41 MTJ 220) and M/s.Zincop Engravers (34 MTJ 442) wherein it has been held that if the particular question qua the particular transaction, in the context of which the determination application has been made, has already been decided by any authority by passing any order under the Sales Tax Act, then such question shall not be entertained for determination under the section for determination of disputed questions. The Larger Bench of the Hon.Maharashtra Sales Tax Tribunal in Bharat Pulverising Mills Pvt. Ltd. (cited supra) has interpreted that *the provisions clearly indicate that when an adjudication in respect of a transaction has already been made in the assessment/appeal proceedings, then any dispute arising from such order has to be raised by filing appeal/revision before the proper forum.* This issue has been elaborately dealt with in the determination order No.DDQ-11/2012/Adm-6/32-34,36,40/B-2-6 dt.30.11.2013 in the case of M/s.Kalyan Keti Toll Pvt. Ltd, M/s.Kalyan Toll Highway Pvt. Ltd., M/s.Kalyan Infratech Pvt. Ltd., M/s.Keti Sangam Infrastructure (I) Ltd. and M/s.Kalyan Toll Infrastructure Ltd. In view thereof, it was conveyed that the determination application has become infructuous and therefore, non-maintainable.

03. The issues addressed in para no. 2 of this order were elaborately discussed and brought to the notice of the applicant in the letter dt.05.11.2014. However, the applicant was also requested

to attend for a hearing in the matter on Friday, the 28th November 2014 in the event that the view as expressed was not acceptable. It was duly cautioned that in the event of failure to attend the hearing, it would be presumed that the applicant has nothing to say in the matter and the application would be liable to be rejected summarily in terms of rule-64(3) of the Maharashtra Value Added Tax Rules, 2005.

04. The applicant has failed to attend on the aforesaid date either in person or through his authorized representative. In view thereof, it is inferred that the applicant has nothing to say in the matter. Further, the assessment also having been completed, the application becomes infructuous and therefore, non-maintainable. As such the application is required to be rejected summarily.

ORDER

(under section-56(1) of the MVAT Act, 2002 read with rule-64(3)(d) of the MVAT Rules, 2005)

No.DDQ-11/2009/Adm-3/50/B- 13 **Mumbai, dt:** 29/11/2014

For reasons as discussed in the body of the order, the application for determination dated 22.10.2009 having become infructuous and therefore, non-maintainable, is rejected summarily.

(DR. NITIN KAREER)
COMMISSIONER OF SALES TAX,
MAHARASHTRA STATE, MUMBAI