

READ : 1. Application dt.06.08.2010 by M/s. VED PMC LTD, having TIN 27590009760V.

2. Submission dt.23.07.2014 received on dt.24.07.2014.

Heard : None.

## PROCEEDINGS

(under section 56(1) (d) and (2) of the Maharashtra Value Added Tax Act,2002)

No. DDQ 11/2010/Adm-3/38/ B- |

Mumbai, Date: 7/8/2014

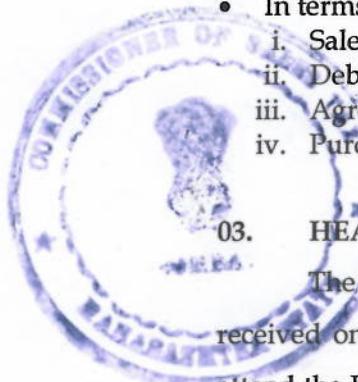
An application is received from M/s. VED PMC Limited, having address at A-83/1, MIDC, Taloja, Dist. Raigad, Maharashtra, requesting to determine the sale price u/s 2(25) of the MVAT Act,2002, of the goods sold by the sale invoice no. 1226 dt.15.7.2010. It is also prayed that the order be made with prospective effect in case of any adverse decision.

### 02. FACTS AND CONTENTION

The facts of the case as stated in the application are thus -

- The applicant is the limited company registered under the MVAT Act, 2002 and is the supplier of Concrete Building Blocks.
- Upto 30.9.2008, the terms of agreement of the applicant with the customers were 'ex-factory delivery'. Effective from 1.10.2008 all new contracts were for F.O.R. Delivery. In other words, on and from 1.10.2008 the applicant paid tax on the sale price inclusive of transport charges.
- The applicant desires and is entitled to get the 'sale price' determined from the highest authority of the Sales Tax Department. Therefore, the applicant has now entered into a contract of sale identical to those which he had effected prior to 30.09.2008.
- In terms of the following documents, the applicant requests determination of the sale price -
  - Sale Invoice
  - Debit Note for reimbursement of Freight, Handling, Octroi and other incidental charges
  - Agreement with the customer
  - Purchase order

### 03. HEARING

  
The case was taken up for hearing on dt.15.07.2014. By communication of dt.nil, received on dt.14.07.2014, it was informed by Sh. Vinayak Patkar (Advocate) that he had to attend the High Court on the aforeslated date. It was further requested to fix up the hearing on any other day except Tuesday. On dt.23.07.2014, when the applicant's case was not taken up for hearing but other scheduled hearings were on board, Sh. Patkar (Adv.) attended and requested to decide his case on the basis of a written submission which he would be tendering. Accordingly, the submission dt.23.07.2014 was furnished on dt.24.07.2014. The contention as to merits as stated therein is thus -

- *"We are effecting ex-factory sales of the concrete blocks. We have enclosed with the application the contract dated 1/07/2010 with M/s A J Build Con Pvt. Ltd. In this contract the customer has in clear terms stated that the delivery is ex-factory and the applicant would arrange for the agency for transportation of the blocks from the factory to the site of the customer i.e. M/s. A.J Build Con Pvt. Ltd. thus, the transfer of property in the concrete blocks sold vide Invoice No.1226 dated 15 July, 2010 was at our factory gate. Thereafter, the goods were transported to the customer's site as the*

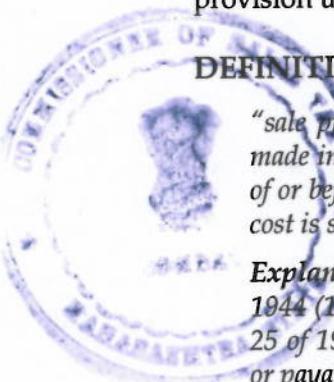
agent of that customer. Actual transportation charges were reimbursed by the customers as against Debit Note no.3 dated 15/07/2010. These are two separate contracts. One contract is for the sale of goods and another contract is for transportation. The transport charges so received were post sale receipts. The definition of 'sale price' u/s. 2(25) includes therein all the sums in respect of goods at the time of or before delivery of the goods. Therefore such post sale receipts are not includable in the sale price.

- In fact this issue is not now debatable. Kindly see the following judgments in which it has categorically been held that such post sale receipts are not includable in the sale price for the purpose of levy of tax.
  - i. State of Karnataka and Another V/s. Bangalore soft drink Pvt. Ltd. 117 STC 413 (SC)
  - ii. The Additional Commissioner of Sales Tax V/s. M/s. Sehgal Auto Rider Pvt. Ltd. 43 VST 398(BH)
  - iii. Parle Products Pvt. Ltd. V/s. The State of Maharashtra (Appeal No.154 of 1998, MSTT(Larger Bench)
- We request you to determine our application accordingly.
- We had followed the above referred judicial pronouncement, and had not collected the tax on the transport charges. We therefore request you to give prospective effect to your order, in case of adverse determination. "

#### 04. OBSERVATIONS

The issue under the invoice for determination before me is -Whether freight charges form part of the sale price of the goods? Seeking reliance on certain clauses of the Agreement entered into by the applicant seller and his purchaser, it has been contended that the transport charges received by the applicant seller would not form part of the sale price of the goods sold by the invoice no. 1226 dt.15.7.2010. The Maharashtra Value Added Tax Act,2002 (MVAT Act,2002) provides for a definition of 'sale price' under clause 25 of section 2 of the Act. The said provision under consideration is thus -

#### DEFINITION OF 'SALE PRICE'

  
 "sale price" means the amount of valuable consideration paid or payable to a dealer for any sale made including any sum charged for anything done by the seller in respect of the goods at the time of or before delivery thereof, other than the cost of insurance for transit or of installation, when such cost is separately charged.

**Explanation I.**— The amount of duties levied or leviable on goods under the Central Excise Act, 1944 (1 of 1944) or the Customs Act, 1962 (52 of 1962) or the Bombay Prohibition Act, 1949 (Bom. 25 of 1949), shall be deemed to be part of the sale price of such goods, whether such duties are paid or payable by or on behalf of, the seller or the purchaser or any other person.

**Explanation II.**— Sale price shall not include tax paid or payable to a seller in respect of such sale.

**Explanation III.**— Sale price shall include the amount received by the seller by way of deposit, whether refundable or not, which has been received whether by way of a separate agreement or not, in connection with or incidental or ancillary to, the said sale of goods;

The above definition provides that in addition to the consideration paid or payable for any sale, the sale price also includes any sum charged for anything done by the seller in respect of the goods at the time of or before delivery thereof. It is with regard to the words 'any sum charged for anything done by the seller in respect of the goods at the time of or before delivery thereof' that the applicant has contended that the definition of 'sale price' u/s. 2(25) includes therein all the

sums in respect of goods at the time of or before delivery of the goods and therefore transport charges received post sale are not includable in the sale price. To ascertain the claims with regard to the available provisions, I would have to look at the documents brought on record thus -

#### **AGREEMENT DT.01.07.2010 - Clauses relevant for determination -**

**Sub - Agreement for the supply of Concrete Building Blocks for various projects**

**Ref. - Agreement for F.Y.2010-11 & separate purchase orders issued hereafter during the year**

#### **Scope of Work**

*The scope of VPL's work shall be the supply of Concrete Building Blocks from time to time as per the specifications given in AJB's purchase orders released from time to time.*

**[Note - Agreement uses the short forms VPL and AJB for Ved PMC Ltd. and A J Buildcon Pvt Ltd. respectively]**

#### **Standards**

*The supply of all materials supplied under this contract shall confirm to the technical specifications as per IS Code 2185.*

#### **Inspection & Testing**

- AJB or its representative shall have the right to inspect and/or test the blocks at VPL's premises to confirm their conformity to the contract. All reasonable facilities and assistance including access to the drawings and production data shall be furnished to inspectors at no extra charge to AJB.
- If any inspected or tested goods fail to conform to the specifications of AJB the same is liable for rejection.
- VPL shall be liable to replace the rejected goods or make all alterations necessary to meet specifications at no extra cost to AJB within the committed delivery period.
- The Supplier shall declare the readiness of blocks for testing well in advance.

#### **Delivery**

- VPL shall not dispatch any blocks until necessary tests have made performed and the certificate of inspection issued by AJB.
- The delivery shall be ex-factory.
- VPL shall arrange for the agency for transportation of the blocks from the factory to our site on our behalf.
- The transportation charges shall either be directly paid by AJB to the transport agency or if those are paid by the VPL, the same shall be reimbursed by AJB.

#### **Octroi**

*Octroi charges shall be paid by AJB. If those are paid by VPL, we shall reimburse the same.*

#### **Delays in Supply**

*Supply of goods shall be made by agency to suit the completion period for the works.*

*An unexcused delay by the VPL in supply of material shall render the following action.*

1. If VPL fail to deliver any or all of material within the time period specified or any extension thereof, AJB shall without prejudice to other remedies, deduct from invoice value at the rate of 1% of the Ex-factory price of that portion of goods which is delayed per each week of delay. The maximum amount of liquidated damages for delays shall not exceed 5% of total invoice value.

#### **Termination of Default**

*AJB may, without prejudice to any other remedies for breach of contract by written notice of default sent to supplier, terminate the contract in whole or in part if the supplier fails to deliver above goods within the time period specified in contract or any extension thereof granted by AJB.*

#### **Prices**

*All rates indicated are inclusive of all applicable taxes VAT/CST, Cesses, Duties, levies, Entry Tax but exclusive of transportation, Loading & Unloading charges, & free of road at site, insurance and any other*

unspecified charges, expenses. The VAT/CST on supplies should be specifically indicated in the bill. If CST, VAT or such other applicable Tax registration numbers are not printed on VPL's Bill, then appropriate tax, cess, duties, charges etc. will be deducted at the time of payments or thereafter.

**PURCHASE ORDER DT.01.07.2010**

Particulars	Basic	Central Excise @10.30%	M-Vat @5%	Being Re-imbursement of Freight, Handling, Octroi and other incidental Charges	Total
Concrete Block 390x190x190mm Solid	Rs 27.98	Rs.2.88	Rs 1.54	Rs 10.20	Rs 42.60

*The quantity will be intimated to you as required.*

**TAX INVOICE CUM DELIVERY CHALLAN – INVOICE NO. 1226 DT.15.07.2010**

Description and Specification of goods	Quantity Nos./Sq. Mtrs. Ton/Kg	Assessable Value Rate/Unit	Total Assessable Value
Concrete Building Blocks – 8" Solid	525	Rs 27.98	14689.50
		Central Excise @10%	1468.95
		Cess @ 2%	29.38
		HSE Cess @ 1%	14.69
		Vat @5% on Sales	810.13
		Round Off	0.35
		Total	17013.00

**VED PMC LTD DEBIT NOTE NO.3 DT.15.07.10 (INVOICE REF. NO.1226)**

*Being Re-imbursement of Freight, Handling, Octroi and other incidental Charges awarded by us on behalf of you.*

Challan No.	Product	Quantity	From	To	Rate/Unit	Amount
1226	Concrete Building Blocks – 8" Solid	525	Taloja	T22, Taloja	10.20	5,355.00

A perusal of the above documents makes me to infer as follows :

1. The Annual Contract states that the delivery is Ex-factory.
2. A Purchase Order has been issued for the bill under consideration which states the price at which the goods are to be made available.
3. The Purchase Order stipulates a price of Rs.42.60/- for the transaction.
4. This price of Rs.42.60/- includes the charges on account of the basic cost, duties, sales tax and the freight, etc.
5. The amount on account of 'Freight, Handling, Octroi and other incidental Charges' has been referred to as '*amount to be re-imbursed*'.
6. The said price of Rs.42.60/- is the price per unit of the goods which have been sold under the impugned sale invoice.
7. The sale invoice mentions only the basic cost, the duties and the taxes. It does not refer to the charges on account of freight, etc.

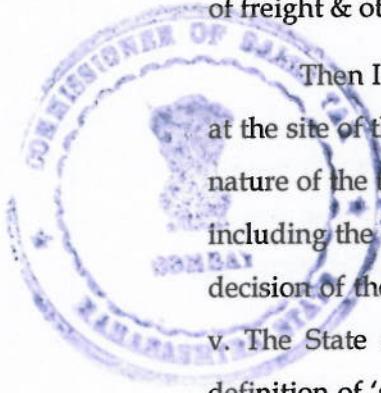
8. A Debit Note has been raised stating that it reimburses the amount on account of 'Freight, Handling, Octroi and other incidental Charges'.

It can be seen from the above that as per the Purchase Order, the price per unit of Rs.42.60 would be the price which the seller would receive in respect of the transaction. It represents the cost for one Block of the item to be sold. As mentioned earlier, this price has been fixed in terms of the Purchase Order which has been placed prior to completion of sale. Therefore, before the sale is complete, both the seller and the buyer are aware of the cost involved in the transaction. The Purchase Order when stipulating a price or amount per unit for Freight, Handling, Octroi and other incidental Charges makes the seller aware of the obligations to be performed thereunder. Since the freight & other charges have been decided in advance, the sale would be complete only when the obligations under the Purchase Order are fulfilled. Though the Annual Agreement may refer to the transactions between the seller and the buyer as 'Ex-factory', a different intention is brought out by the Purchase Order by fixing a price at which the obligations in respect of the transaction would be completed, one of them being delivery of the goods. Sale price under the MVAT Act,2002 is *the amount of valuable consideration paid or payable to a dealer for any sale made including any sum charged for anything done by the seller in respect of the goods at the time of or before delivery thereof*. In the present case, the amount towards freight & other charges as spelt out in the Purchase Order for the impugned transaction is actually a sum charged for obligations to be performed for executing the delivery and thereby completing the sale. Both the Annual Contract and the Purchase Order are silent about the transit risk. Even if it was explicitly known, the nature of the transaction would have remained unchanged. This I say in view of fixing or stipulating for the purposes of the impugned transaction, prior to completion of the sale, the price and the obligations to be performed therefor. In *Hindustan Sugar Mills v. State of Rajasthan & Ors. [1978 SCC (4) 271]*, the clause under interpretation was - "*any sum charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof other than the cost of freight or delivery or the cost of installation in case where such cost is separately charged.*". In respect of the underlined portion, the Supreme Court held thus:

- *This exclusion clause does not operate as an exception to the first part of the definition. It merely enacts an exclusion out of the inclusive clause and takes out something, which would otherwise be within the inclusive clause.*
- *It is not intended to apply to a case where the cost of the freight is part of the price but the dealer chooses to split up the price and claim the amount of freight as a separate item in the invoice. Where the cost of freight is part of the price, it would fall within the first part of the definition and to such a case, the exclusion clause in the second part have no application.*

The above definition, as regards the second part, as well as the facts of the case are different than the definition and the facts in the present case. However, the interpretation in respect of the first part is a clear law and would, therefore, apply. The Hon. Supreme Court has very unambiguously laid down that where the cost of freight is part of the price, it would fall within the first part of the definition which is '*any sum charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof*'. In the present case, though the annual purchase order mentions the delivery to be ex-factory, the purchase order for the transaction under consideration fixes the consideration for the transaction and this includes the price plus taxes plus transportation charges. The consideration of Rs.42.60/- fixed for the transaction stipulates that the same involves cost towards transportation charges. The contention of the applicant that the transaction involves two contracts one for sale and the other for transportation is very misleading. The transaction is represented by the stipulations in the Purchase Order. Therefore, even though the cost of transportation is not mentioned in the bill and is separately charged, the same would form part of the sale price as it forms a part of the consideration for the sale of the goods evidenced by the invoice presented for determination. *This is in keeping with the principle laid down by the Hon. Supreme Court that where the cost of freight is part of the price, it would fall within the first part of the definition.*

Having seen thus, I have to observe that the treatment of the applicant by raising an invoicee for value of the goods and taxes only and issuance of a separate Debit Note in respect of freight & other expenses is only an attempt to give a different colour to the transaction.

  
Then I would refer to the points in the Agreement about octroi and inspection of goods at the site of the seller i.e the applicant. I have to observe that these clauses would not alter the nature of the transaction as portrayed by the Purchase Order which fixes the sale price as being including the cost on account of freight. My observations in the present case find support in the decision of the Hon. Maharashtra Sales Tax Tribunal (MSTT) in Haldyn Glass Works Pvt. Ltd. v. The State of Maharashtra (17 MTJ 214). The Hon. MSTT in interpretation of the same definition of 'sale price' as in the present proceedings, on the facts mentioned below, observed as under :

#### **Facts**

*The sales are effected to various parties wherein the transport is arranged by the appellant. The appellant charges the value of goods separately and thereafter prepares a Debit Note in order to recover incidental expenses i.e collecting charges, freight charges, interest, Stampduty, Bank charges & Discount. It was the contention that what has been recovered subsequently in form of debit notes, constitutes 'something done' after the sale was effected and, therefore, not includable in sale price.*

#### **Held**

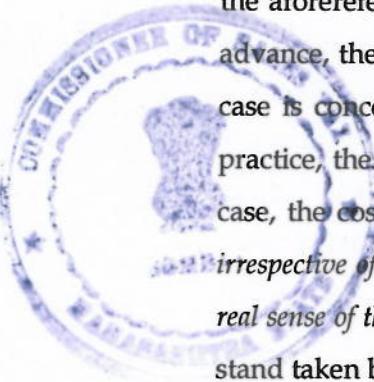
*"In this regard it was argued by the revenue that charges do not appear to be actual expenses incurred by*

the appellant. On the other hand, charges are recovered on the some basis of fixation of Said Price. For example charges are fixed for 1000 pieces. Sale price is also with reference to thousand pieces. Thus, it is very clear that the amount received under the Debit Notes is nothing but the sale price of the goods sold. It has not been established that what is received is actual amount of expenses incurred.

13. A copy of purchase order is found on page 9 of compilation produced by the revenue. The bill is numbered 59391/12 dated 12.8.1992. In the column 'quantity' you find "30,000 numbers". In the column 'price' you find "Rs.850/- for 1000 numbers". Under the heading 'particulars' you find "excise duty at 35 per cent ad valorem, special excise duty at 5 per cent on basic excise duty, taxes at 4 per cent and handling and service charges Rs.80/- for 1000 numbers". Thereafter, the total of this purchase order is made. It, therefore, appears that price is fixed in advance. In other words, the purchaser knows what he is supposed to purchase and at what cost and the seller also knows the same. This will clearly indicates that all the incidental expenses incurred by the seller are carried out before the delivery of the goods. The mention of delivery 'X-factory' is clearly an eye-wash

.....

The billing alongwth the terms and conditions on the reverse of the sale bill are nothing but a contrivance adopted by the appellant in order to by-pass taxation on the extra element of dispatch, handling of the goods, etc.. We have no doubt in our mind that these activities take place before the sale is complete in terms of section 2(29) of the Bombay Act."

The highlighted portion would show that similar facts as in the present case existed in the aforerferred case too. The conclusions in the above case are that the price being fixed in advance, the plea of delivery being 'ex-factory' was clearly an eye wash. As far as the present case is concerned, the fact that the cost of the block is fixed per unit is very significant. In practice, the cost of freight may vary as per weight, distance, etc. However, in this particular case, the cost of transportation is fixed and the buyer has to pay a specific amount per unit irrespective of the actual cost of freight. The reimbursement is therefore not a reimbursement in the real sense of the term though couched in those terms in the purchase order. In view of the above stand taken by the Hon. MSTT, I have to observe that my inferences on the facts as presented in the case before me are well founded and are supported by case laws.

The decision in the above case was sought to be distinguished and thereby, upheld as to its correctness by the Larger Bench of the Hon. Tribunal in the very case on which reliance has been placed by the applicant in the present proceedings, namely, M/s. Parle Products Limited V. State of Maharashtra(2003-(028)-MTJ -0832). The Larger Bench was constituted to deal with an interesting question referred by the Second Bench as to whether the Freight Amount incurred and collected by the Appellant for transporting the goods from the Factory Gate to the Wholesaler's destination is a post-sale expense not forming the part of the "Sale Price" within

the meaning of Section 2(29) of the Bombay Sales Tax Act, 1959 (Bombay Act). It would be useful to reproduce the observations in support of the above case thus -

*"It may be noted that in the case of M/s. Haldyn Glass Works Pvt. Ltd. (supra) the price has been found fixed in advance. The purchaser was knowing what he was supposed to purchase at what cost. The seller also knows the same. It is also very clear from the invoices or bills that all the incidental expenses incurred by the seller are carried out before the delivery of the goods. On that background it was held that the billing alongwith the terms and conditions on the reverse of the Sale Bill are nothing but contrivance adopted by the Appellant in order to bypass taxation on the extra element of despatch, handing of the goods etc. In the case before us, there is clear-cut Agreement that the cost of freight is to be borne by the Wholesaler and, therefore, the Wholesaler or the dealer has to reimburse the same if the arrangement of transportation is made by the Appellant."*

Thus, it can be seen that the Larger Bench has in clear words observed that the facts in M/s. Parle Products Limited (cited supra) which the applicant seeks to rely upon are different from the facts in Haldyn Glass Works Pvt. Ltd. (cited supra).

The other case relied on by the applicant is *State of Karnataka and Another V/s. Bangalore Soft Drinks Pvt. Ltd. (cited supra)*. The Hon. Supreme Court in a short order upheld the order of the Hon. Karnataka High Court on the question of freight. Here, on the basis of the condition as reproduced below, it was argued that freight charges and octroi duty should have been excluded in the computation of the taxable turnover of the assessee as they have been incurred subsequent to the sale.

*"4. That the company will sell its products to you at the rate applicable from time to time on ex-factory rate basis only. That however at your option the company can carry out transportation of the products you may purchase from the company and that the transport charges for the services rendered, will be charged extra. Though the company maintains special types of transport vehicles to avoid the transport breakages however the transportation carried out by the company will be at the wholesalers risk only and any transit breakages of fulls or empty bottles will be wholesalers account only except when such breakages are due to accident of the vehicle concerned."*

The Hon. High Court held that the Petitioner in his capacity or while acting as a seller or manufacturer of the goods, sold and delivered the goods at the site of the factory and in his other capacity, while acting as a transporter or the carrier of the goods, had undertaken to deliver the goods at the place of the buyers, which is very clear from the nature of the contract entered into between the parties as well as from the fact that he had collected the freight charges separately from the buyer. I have reproduced the facts of the present case hereinearlier. The facts in Bangalore soft drink Pvt. Ltd. (cited supra) and the present case can be distinguished as here we have a purchase order which stipulates the total cost on account of various counts at which the impugned purchase would be available to the purchaser. Alongwith the cost and the taxes, the purchase order also specifies the amount on account of freight, handling, octroi and other incidental charges which would have to be paid by the

applicant so as to get the possession of the goods. The purchase order is placed by the applicant himself before the transaction of sale and it brings out an inescapable conclusion that the applicant as well the purchaser are in agreement at the cost at which the goods would be available to the purchaser and this cost includes the cost on account of freight, etc. *The levy on account of freight, etc. in terms of the facts of the present case represents a pre-delivery event and is in consequence of a bargain or an understanding reached between the seller and the buyer as to the cost of the goods. It has an inextricable link to the consideration flowing from the transaction and, therefore, would inevitably form a part of the sale price.* We have seen above that the facts of the present case are similar to the facts in Haldyn Glass Works Pvt. Ltd. (cited supra). And even when the case law of Bangalore soft drink Pvt. Ltd. (cited supra) was cited before the Hon. MSTT in M/s. Parle Products Limited (cited supra), the Larger Bench specifically observed that the facts in Haldyn Glass Works Pvt. Ltd. (cited supra) are different. I have to observe herein that while discussing the various case laws of the Hon. Courts, the fact that the case law in Haldyn Glass Works Pvt. Ltd. (cited supra) was discussed and preferred to be distinguished by the Larger Bench endorses its acceptance as a good law. I would conclude the deliberations in this regard by observing that reliance on the decision in Bangalore Soft Drinks Pvt. Ltd. (cited supra) would not be useful for reasons of the facts being different.

The other decision on which reliance is placed is *The Additional Commissioner of Sales Tax V/s. M/s. Sehgal Auto Rider Pvt. Ltd. (cited supra)*. The issue herein was *whether Handling Charges or Service Charges for the registration of Motor Cycles constitute a part of the Sale Price within the meaning of Section 2(25) of the MVAT Act*. To decide the question, the Hon. Bombay High Court had to refer to the scheme for registration as embodied in the Motor Vehicles Act, 1988 and the rules which have been framed thereunder. Such are not the facts and circumstances of the present case. Here inference has to be drawn on the basis of the available documents and no inference to any other statute is called for.

Thus, with respect to the case laws relied on by the applicant, I have to observe that the facts therein are different and therefore, reliance thereon would not make out a case for the applicant. I have to mention here that the issue of what forms a part of sale price has been the subject matter of a number of decisions. However, the underlying principles are –

- a. *All the case laws are in interpretation of the facts as presented by the Agreement.*
- b. *The behaviour of the seller and the purchaser.*
- c. *The intention as comes out from a perusal of the facts.*

Therefore, reliance cannot be had on any particular case law. Any reference to decided cases can only be had to understand the guiding principles. This I say as each case law is delivered in interpretation of the available facts of the case. Therefore, the facts of the case are the very vital aspects which determine the course of taxation. In the present case, we have seen

that the facts in Haldyn Glass Works Pvt. Ltd. (cited *supra*) are similar to the ones in the present case and therefore, the decision therein which is the same as the inferences drawn by me on the peculiar facts of the present case should put an end to all debate in the matter.

In view of all above, I have to observe that inspite of the Annual Contract, the transaction is truly represented by the Purchase Order which is issued for the bill under consideration and which brings about the intention, the essence of the arrangement between the seller and the buyer for the purposes of the transaction. In Hindustan Sugar (cited *supra*), the Hon. Supreme Court has clearly laid down that where the cost of freight is part of the price, it would fall within the first part of the definition. In the present case, though the annual purchase order mentions the delivery to be ex-factory, the purchase order for the transaction under consideration fixes the consideration for the transaction and this includes the price plus taxes plus transportation charges. Therefore, even though the cost of transportation is not mentioned in the bill and is separately charged, the same would form part of the sale price as it forms a part of the consideration for the sale of the goods evidenced by the invoice presented for determination. The price per unit fixed for the transaction specifies, rather requires that certain obligations are to be performed therefor. Merely because Debit Notes are raised to show that the transport cost has been reimbursed would not alter the nature of the obligations which are, without any doubt, obligations to be performed before the sale is complete. In this view of the matter, the definition of sale price would call for such costs to be included thereunder. This is in keeping with the principle laid down by the Hon. Supreme Court that where the cost of freight is part of the price, it would fall within the first part of the definition.

In view of the above, the sale price of the impugned transaction would include the basic cost, Central Excise levies (including Cess, HSE Cess), freight, handling, octroi and other incidental Charges and all other charges which represent sums charged for anything done by the applicant in respect of the goods at the time of or before delivery thereof, *other than the cost of insurance for transit or of installation, when such cost is separately charged*. Thus, in the case of the impugned transaction, the amount of freight, etc. being incurred at the time of or before delivery of the goods would form part of the 'sale price' and thereby liable for levy of Sales Tax. With the details as given, the sale price would be -

Basic	Rs 27.98	14689.50
Central Excise @10%		1468.95
Cess @ 2%		29.38
HSE Cess @ 1%		14.69
Freight, Handling, Octroi and other incidental Charges		5,355.00
Total		21557.52

## 05. PROSPECTIVE EFFECT

The applicant has requested to give prospective effect to the determination order, in

case if the determination is not given in his favour. I have seen the documents and elaborately dealt with the inferences which can be had therefrom. The conclusions are not based on any external findings but on the facts with which the applicant was already acquainted with. The provisions were unambiguous. There was a decision of the Hon. MSTT on similar facts in Haldyn Glass Works Pvt. Ltd. (cited *supra*). Above all, the case law on which reliance is sought to be placed by the applicant had referred to the aforesaid case law and further also distinguished the facts of the said case. It seems the applicant was content applying his reasoning to the facts which unquestionably gave no interpretation other than as inferred by me. In view thereof, no case for favourable consideration of the request for prospective effect is made out by the applicant.

06. In view of the detailed deliberations, it is determined thus -

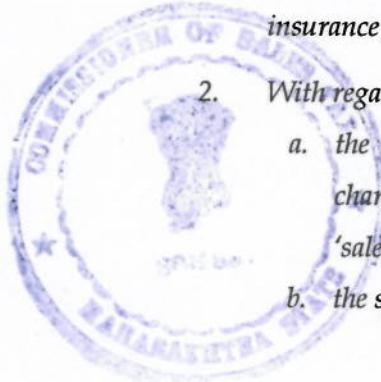
**ORDER**

(under section 56(1) (d) and (2) of the Maharashtra Value Added Tax Act,2002)

No. DDQ 11/2010/Adm-3/38/ B- 1

Mumbai, Date: 7/08/2014

1. *The sale price of the goods sold under sale invoice no. 1226 dt.15.7.2010 would include the basic cost, Central Excise levies (including Cess, HSE Cess), freight, handling, octroi and other incidental Charges and all other charges which represent sums charged for anything done by the applicant in respect of the goods at the time of or before delivery thereof, other than the cost of insurance for transit or of installation, when such cost is separately charged.*
2. *With regard to the documents brought on record,*
  - a. *the amount towards freight, handling, octroi and other incidental charges and all other charges being incurred at the time of or before delivery of the goods would form part of the 'sale price' and thereby liable for levy of Sales Tax.*
  - b. *the sale price of the goods sold by the sale invoice no. 1226 dt.15.7.2010 would be -*



<i>Basic</i>	<i>Rs 27.98</i>	<i>14689.50</i>
<i>Central Excise @10%</i>		<i>1468.95</i>
<i>Cess @ 2%</i>		<i>29.38</i>
<i>HSE Cess @ 1%</i>		<i>14.69</i>
<i>Freight, Handling, Octroi and other incidental Charges</i>		<i>5,355.00</i>
<i>Total</i>		<i>21557.52</i>

3. *For reasons as discussed in the body of the order, the request for prospective effect is rejected.*



(DR. NITIN KAREER)  
7/08/14

COMMISSIONER OF SALES TAX,  
MAHARASHTRA STATE, MUMBAI