Read : Application dt.12.06.2010 by M/s. Painterior (India), holder of TIN-27400001668V.
Heard : Shri Vinayak Patkar, Advocate alongwith Shri Keshavan, Manager (Accounts).

PROCEEDINGS

(Under section-56(1)(e) and (2) of the Maharashtra Value Added Tax Act, 2002)

No.DDQ-11/2010/Adm-3/29/B- 4 **Mumbai, dt.** 25/07/2014

M/s. Painterior (India) [the 'applicant' for short], having address at 1-A, Star Mansion, 66, Wodehouse Road, Colaba, Mumbai-400 005, has posed the following question for determination :

"What is the rate of tax payable under Section-42(3) Expl. (i) Read with Notification No. VAT-1506/CR-134/Taxation-1 dated 30-11-2006 on the sales effected by the applicant vide Invoice No.220 dated January 01, 2013 raised on Sangam Bhavan C.H.S. Ltd.?

02. FACTS AS INFORMED AND CONTENTION

It is stated that the applicant is a building contractor. The dispute has arisen as the classification of the contracts executed by the applicant as 'Construction Contracts' was disputed by the assessing authority. The applicant is of the firm view that the term 'Construction' includes 'Repairs/Reconstruction'. It is informed that such dispute had arisen in the applicant's own case under the erstwhile Bombay Sales Tax Act, 1959 and the matter is pending before the Tribunal. It is further informed that such issue has not been decided under the MVAT Act, 2002. It is prayed that the order be made effective prospectively u/s 56(2) so as to protect excess liability, if any, of the applicant till the date of determination order.

03. HEARING

The case was taken up for hearing on dt.17.06.2014 when Shri Vinayak Patkar, Advocate and Shri Keshavan, Manager (Accounts) attended on behalf of the applicant. The bill submitted alongwith the determination application being of the period 2010-11 for which period notice for assessment had been issued. Hence, the applicant agreed to submit a bill for an un-assessed period. It is stated that the issue is classification of repairs contract and the contention is that the same is a 'construction contract' as covered under section 42(3) Explanation I read with Notification No.VAT-1506/CR/134/Taxation-1 dt.30.11.2006 [under sr. no.(1)]. On merits, it is contended that the expression 'construction contract' is already explained by the Hon. Commissioner of Sales Tax in Circulars issued under the erstwhile Bombay Sales Tax Act, 1959 (BST Act) [circulars dt.06.01.2000 and dt.31.08.1999] The following case laws are cited :

(a) State of Tamil Nadu V/s.Polyweb Pvt. Ltd. (51-VST-364) on principles of interpretation.
(b) Commissioner of Sales Tax, U.P. V/s. Indra Industries (122 STC 100) on binding effect of circulars on departmental authority.
(c) Mercury Laboratories Pvt. Ltd. V/s. State of U.P. & Others (119-STC-271) on object of enactment required to be considered.
(d) B.R.Enterprises V/s. State of U.P. & Others (120-STC-302) on historical background to be considered.

In the alternative, it is prayed that if the submission is not acceptable, the order be given prospective effect. A written submission of dt.20.06.2014 is tendered with the bill for an unassessed period. It is stated therein thus -

" 3. *It is our submission that the term 'Construction Contract' used in Sec.42(3) of the MVAT Act,2002, includes therein the contract for 'Repair/Reconstruction'. The reasons are as stated below :*

I. The Commissioner of Sales Tax, Maharashtra State has in clear words explained the term' Construction Contract' in the Circulars issued under the identical provision in the erstwhile. Work Contract Act, 1989, to include therein the 'Repair, Reconstruction and maintenance to building etc'. Kindly see the Circulars No. 24-T, dated 31st August, 1999 and Circular No.2-T -of 2000 dated 6th Jan, 2000. The copies of these circulars have been submitted on your record. These circulars are binding even under the MVAT Act, 2002, since the provision is the same. Kindly see the Supreme Court judgment in the case of Indra Industries, reported in 122 STC 100.

II. The view expressed by the highest administrative authority in this State has not been over-ruled either by the Tribunal or by our high-court and has held the filed for almost 15 years. The same cannot be disturbed now. See the judgment of our own high court in Merind Limited, reported in 136 STC 462.

III. The MVAT Act,2002 and the Notification no. VAT-1506/CR-134/Taxation-1 dated 30-11-2006 contain therein a provision identical to that existed under the erstwhile Work Contract Act,1989. As aforesaid, the expression' Construction Contract' has already been explained in the Circulars issued by the Commissioner of Sales Tax, Maharashtra State under that Act. In other words, the Commissioner of Sales Tax expressed the understanding of the Government qua those Contracts. In the understanding of that expression under the MVAT Act2002, your honour shall not be doing violence to the principles of statutory construction if your honour pay regard to how such an expression was understood not only by the trade or by high technology in general but also by the Sale Tax Department of the Government of Maharashtra, part of whose task is to put correct interpretation on the expression in question for the purpose of running the department. Kindly see the Madras High Court Judgment in the case of Polyweb Pvt. Ltd reported in 51STC 364.

IV. While interpreting any provision in the statute, the object of enacting that provision is required to be considered. If the Contracts mentioned in the above notification are infrastructure projects which are the basic necessity for building up the State/Nation. Therefore, a concessional rate of 5% has been enacted for such projects. It is ridiculous to say that the concessional rate of 5% has been enacted for the multistoried towers which are being newly constructed in our State and higher rate of 8% has been enacted for repairs, reconstruction of the old buildings which are s in major numbers in this State and also of MHADA. The object of the provisions be considered. Kindly see the Allahabad High Court Judgment in the case of Mercury laboratories Pvt. Ltd v/s the State of UP another reported in 119 STC 71.

V. Kindly also see the judgment of the apex court in the case of B.R. Enterprise V/s State of UP and another reported in 120 STC 302. The Court in this judgment has observed that in interpreting the statute the object and the historical background of any particular provision would be considered and if two interpretation are possible then the one which makes the provision valid be preferred.

4. *We request you to hold that the rate of tax payable qua the contracts under consideration, the major component of which is the civil work, is 5%.*

5. *In the case of any adverse determination, we request you to make your order effective prospectively u/s 56(2) for the same reasons as discussed above.*

04. OBSERVATIONS

I have gone through the facts of the case. I have perused the bill in respect of which the question as to rate of tax has been posed before me. The bill represents items as follows :

For Repairs – "Sangam Bhavan", Colaba, Mumbai

1. External Repairs and Painting – East side & Chowk area
2. Repairs of Internal Structural Damage – Inside Flats, Staircase
3. Replacement of Water Supply and Drainage Pipeline - East side & Chowk area
4. Extra Items – Plumbing Works - East side, Chowk area & Compound walls
5. Extra Items – Civil Works
6. Addendum Item : Civil Works

The bill, as mentioned above, as also the applicant has himself stated that the above bill represents a contract 'Repairs'. Since it is contended that the above transaction is covered by a notification issued for the purposes of section 42(3) of the MVAT Act,2002, let me have a look at the same –

Section 42(3)

Where a dealer is liable to pay tax on the sales effected by way of transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract, he may subject to such restrictions and conditions as may be prescribed, in lieu of the amount of tax payable by him under this Act, whether in respect of the entire turnover of sales effected by way of works contract or in respect of any portion of the turnover corresponding to individual works contract, pay lump-sum by way of composition,-

(a) equal to five per cent. of the total contract value of the works contract in the case of a construction contract, and

(b) eight per cent. of the total contract value of the works contract in any other case, after deducting from the total contract value of the works contract, the amount payable towards sub-contract involving goods to a registered sub-contractor.

Explanation.-For the purposes of this sub-section,-

(i) "construction contract" shall mean construction contract as may be notified by the State Government in the Official Gazette, from time to time, and

(ii) "the amount payable towards sub-contract involving goods " means the aggregate value of the goods on which tax is paid and the quantum of said tax paid by the sub- contractor or the subcontract value on which tax by way of composition is paid by the sub-contractor, as the case may be.

A perusal of the above reveals that the section –

i. makes a provision for a lump-sum amount in lieu of the amount of tax payable by a dealer effecting sale by way of transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract by way of composition.

ii. identifies two types of contracts - construction contracts and other contracts. Accordingly, the rate of the lump-sum is different for construction contract and other contracts. It is at a lower side i.e 5% for construction contracts as compared to non-construction contracts which are taxable @8%.

iii. provides for a definition of 'construction contracts' as per which the 'construction contracts' would mean those construction contracts which have been notified by the State Government in the Official Gazette.

The point at (iii) above means that no contracts other than those which have been notified would get the benefit of the lower lump-sum rate. It goes without saying that if any construction contract has not been notified then despite, being a construction contract, the same would not get covered under the 5% tax bracket. Since the section in clear terms provides so by way of an 'Explanation', no claims for contracts other than those notified can be entertained for

consideration as 'construction contracts'. An attempt to go beyond the words of the statute would be futile. When the statute by express words has made the concessional rate conditional to inclusion of the contract in the notification, no case law to seek inclusion thereunder can be advanced to buttress the argument for inclusion by way of implied means. In fact, the Hon. Courts in numerable cases have laid down the law to respect the letter of the statute, unless the same was inherently unconstitutional. In the aforesaid case, the Legislature, has restricted the benefit of the concessional rate to construction contracts which have been notified and the Legislature is empowered to do so.

I would now look at the notification thus -

Notification

No VAT.1506/CR-134/Taxation-1-- In exercise of the powers conferred by clause (i) of the Explanation to sub-section (3) of section 42 of the Maharashtra Value Added Tax Act, 2002 [Mah. IX of 2005], the Government of Maharashtra hereby notifies the following works contracts to be the 'Construction Contracts' for the purposes of the said sub-section, namely :-

(A) Contracts for construction of,--

- *(1) Buildings,*
- *(2) Roads,*
- *(3) Runways,*
- *(4) Bridges, Railway overbridges,*
- *(5) Dams,*
- *(6) Tunnels,*
- *(7) Canals,*
- *(8) Barrages,*
- *(9) Diversions,*
- *(10) Rail tracks,*
- *(11) Causeways, Subways, Spillways,*
- *(12) Water supply schemes,*
- *(13) Sewerage works,*
- *(14) Drainage,*
- *(15) Swimming pools,*
- *(16) Water Purification plants and*
- *(17) Jettys*

(B) Any works contract incidental or ancillary to the contracts mentioned in paragraph (A) above, if such work contracts are awarded and executed before the completion of the said contracts.

A perusal of the above reveals thus -

i. The notification has two clauses or paragraphs, as the notification prefers to refer to.

ii. Paragraph A, the first clause, enumerates the construction contracts. Therefore, for the purposes of section 42(3), only the enumerated contracts would be the 'construction contracts'.

iii. Paragraph B, the second clause, provides that the contracts which are incidental and ancillary to the contracts enumerated in paragraph A would be covered by the scope of the notification and thereby, under 'construction contracts'.

iv. However only those incidental and ancillary contracts which are awarded and executed before the completion of the contracts enumerated in paragraph A would be covered by the scope of the notification.

Thus, it can be seen that 'construction contracts' for the purposes of sub-section (3) of section 42 of the MVAT Act,2002 would be –

1. the 17 contracts as enumerated in Paragraph A of the notification
2. the incidental and ancillary contracts awarded and executed before the completion of the 17 contracts enumerated in paragraph A

It should not be lost sight of that whatever exposition as to the scope of a construction contract that we are concerned hereunder in these proceedings is in terms of the provisions as appearing in the section and the notification therefor.

Having seen as above, I would turn to the facts of the case before me. As has been mentioned earlier, the bill presented for determination is for repairs to an existing building. Repair or reconstruction of an existing building is normally carried out after a certain period has elapsed since its construction. Of course, the quality of construction would be an important determinant of the period. The construction contract as notified at sr. no.1 is 'Building'. A 'Building' here means the construction of a structure, a building which has been built from the ground i.e the plinth level. Brick by brick, a structure comes into existence. It is common knowledge that when repairs are carried out, the entire edifice is not constructed but only the concerned problem areas are touched. Like the plastering, plumbing, drainage, external colouring, fixing of tiles on the terrace or in the lobby and such other work. Therefore, carrying out repairs to a building would not mean the construction of a building. A contract to carry out repairs to an existing building cannot, in any possibility, be equated to mean a contract for the construction of a new building. Further, the contract for repairs to a building cannot also fit within the parameters laid down in paragraph B of the notification. This is because the incidental or ancillary contracts as covered under paragraph B are the ones which have been awarded and executed before the completion of the 'Building' contract as enlisted at sr. no.1 in paragraph A. As mentioned earlier, repairs to a building are carried after a considerable period of time as in one or two decades has elapsed since its construction. *When the notification restricts even incidental or ancillary contracts to those executed before the completion of the 'Building', do repairs contracts awarded much later than the completion of the 'Building' hold any good a chance?* The impugned bill is for repair works to an existing building and not the construction of a new building and therefore would not fall under the construction contract at sr. no.1 of the impugned notification. The applicant seeks to know the rate of tax on the impugned bill in terms section 42(3) of the MVAT Act,2002. Therefore, in terms of section 42(3) of the MVAT Act,2002, the rate of tax on the impugned repairs contract would be 8% and not 5% which happens to the rate for construction contract as may be notified.

I have further to observe that the above rate would be applicable in terms of the repairs works contract. However, if the bill presents certain items in respect of which there could be identified a 'sale' and not a works contract, a 'deemed sale' then the assessing authority, after due verification of the facts, is to tax the same at the applicable rate as per the provisions of the MVAT Act,2002.

Having seen thus, I would now look at the arguments made in favour of the contention that the impugned contract is a construction contract. The applicant has referred to certain case laws and Trade Circulars issued by the then Commissioner of Sales Tax under the repealed Acts. I would deal with each of them thus –

TRADE CIRCULARS

Trade Circular No.24T of 1999 dt.31.08.1999

The subject of the Circular is *'Clarification regarding TDS under Works Contract (Re-enacted) Act,1989'*. In the second para of this Circular, it is mentioned that after issue of Circular No.13-T of 1999 dated 17th May 1999 bringing the salient features of 'tax deduction at source' under section 6B of Works Contract Act,1989 to notice of the trade, various queries, suggestions etc., were received from the dealers/Trade Association/Sales Tax Practitioner Association etc. Hence, clarifications were being issued. In point no.4, the following query and clarification has been given :

> *"4) Repairs, reconstruction and maintenance to buildings etc. are construction contracts*
>
> *Queries have been received as to whether the contract of repair, reconstruction and maintenance to buildings, roads, drainage etc. will fall under the 'Construction Contracts'.*
>
> *In this regard, it is clarified that the Works Contract of repair, reconstruction and maintenance of buildings, dams, bridges, canals and barrage etc. will be covered under the expression of 'Construction Contract'."*

Referring to the above clarification, it is sought to put forth the claim that the impugned repairs contract would be a 'construction contract'. I have already reproduced the provisions under consideration in the present proceedings. The present provisions are abundantly clear. The construction contracts have been defined and further the definition of incidental and ancillary contracts helps bring out the meaning more explicitly. When incidental and ancillary contracts are restricted to those awarded and executed before the completion of the construction contracts, there would not even be a remote possibility of repair contracts awarded and executed about 15-20 years down the line to be included under the definition of 'construction contracts' for the purposes of the notification. Coming back to the Circular, then, I have seen the provisions under the Works Contract Act. Let me explain the provisions and then explain the context in which the above clarification was offered.

Section 6A - Composition of Tax

Sub-section (1)

Section 6A of the Act is for 'Composition of Tax' and clause (i) of sub-section (1) of this section provides to pay lump sum by way of composition in lieu of the amount of tax payable. By the Maharashtra Act No.XVII of 1999, dated 30-3-1999, the Act was amended to provide for, for the first time, different rates for construction contracts and other contracts. Though the amendment was made on dt.30-3-1999, it was made effective from 1-5-1998. The sub-section (1) was also amended to provide for an *Explanation*. This *Explanation* was inserted by Maharashtra Act No. I of 2000, dated 1-1-2000. The *Explanation* is similar to the one under the MVAT Act,2002 – *"For the purposes of this sub-section, the expression "construction contract" shall mean such contract as may be notified by the State Government from time to time."*. The notification under this *Explanation* was issued on dt.08.03.2000. The notification under the MVAT Act,2002 is on the same lines as under the Works Contract Act. Thus, the said notification under the Works Contract Act, too, had two paragraphs – paragraph A enumerating construction contracts and paragraph B explaining incidental and ancillary contracts.

There also exist three other sub-sections in section 6A, which need a mention –

Sub-section (1A)

This sub-section was inserted by the Maharashtra Act No.XVII of 1999, dated 30-3-1999 made effective from 6-2-1999. This sub-section (1) began with *'Notwithstanding anything contained in section 6 or sub-section (1).....'*. Section 6 provides for levy of tax other than the composition rate. This sub-section was specifically introduced to provide for lump sum by way of composition at a prescribed rate to a dealer who has entered into any contract for execution of work during the period commencing on the 1st April 1992 and ending on the 30th April 1998 and has commenced execution during such period and the execution of such contract has continued on or after the 1st May 1998.

Rule 8A was inserted and deemed to have been inserted w.e.f 1-5-1998 by amendment dt.6-3-1999. This rule was for 'Tax rate for contracts under section 6A(1A). Again this rule, too, provided for different rates for construction contracts and other contracts.

Sub-section (7)

This sub-section was added and deemed to have been added w.e.f 1-4-2000 by the Maharashtra Act No.28 of 2000 w.e.f 1.5.2000. This sub-section begins with *'Notwithstanding anything contained in clause (i) of sub-section (1) but subject to provisions of sub-section (8),...'*. This sub-section, with subsequent amendments thereto, basically provided for amount payable by way of composition in respect of any types of contracts awarded -

a. on or after the 1st April 2000 till the 31st March 2001
b. on or after the 1st April 2001

This sub-section did not make any distinction between construction and other contracts.

Sub-section (8)

This sub-section was added by the Maharashtra Act No.22 of 2001 dt.26.04.2001 w.e.f 1.4.2001. There were subsequent amendments to this sub-section. But this sub-section was about amount payable by way of composition in respect of contract involving transfer of property in ready-mix concrete.

I would summarize, hereunder, the above provisions with a view to explain the Trade Circular dt.31.08.1999 :

i. *Prior to 1-5-1998, the provisions of the Works Contract Act did not have different rates for construction contracts and other contracts under both normal levy as well as under composition scheme.*

ii. *W.e.f 1-5-1998 and 6-2-1999, composition rates under sub-sections (1) and (1A) respectively were provided for construction and other contracts.*

iii. *Sub-section (1) would be applicable for contracts awarded from 1-5-1998 to 31-3-2000 only as sub-section (7) provided for contracts awarded from 1-4-2000.*

iv. *Only sub-section (1) had an Explanation expounding the meaning of construction contracts.*

v. *Though Explanation was inserted w.e.f 1-1-2000, the notification under this Explanation was issued on dt.08.03.2000.*

vi. *Sub-section (1) providing for different rates for construction and other contracts was inserted by amendment dt.30-3-1999 but was made effective from 1-5-1998.*

vii. *Since notification was not made operative retrospectively, the meaning of construction contracts was available from dt.08.03.2000.*

viii. *The Trade Circular No.24T of 1999 on which the applicant seeks to rely upon was issued on dt.31.08.1999.*

It can be seen from the above that the Trade Circular was not issued in interpretation of the notification providing for the construction contracts and explaining the coverage of incidental and ancillary contracts. Even if notification was made operative retrospectively, the same could have been operative from 1-1-2000 only as the same is the date from which the Explanation was inserted. The present Circular is of dt.31.08.1999 when neither the Explanation nor the notification was available. Therefore, reliance on this Circular is a classic case of bringing about a stretched parity.

I would now examine the circumstances under which the second Circular, relied upon by the applicant, was issued -

Trade Circular No.2T of 2000 dt.06.01.2000

The subject of this Circular is "Extension of Amnesty Scheme 1998 under Works Contract (Re-enacted) Act,1989 and Lease Tax Act,1985 and other clarification". Point 3 of this Circular clarifies thus –

> *"3. Repairs, reconstruction and maintenance to buildings etc. are construction contracts*
>
> *Queries have been received as to whether the contract of repair, reconstruction and maintenance to buildings, roads, drainage etc. will fall under the 'Construction Contract' for the purpose of amnesty scheme.*
>
> *In this regard, it is clarified that the Works Contracts of repair, reconstruction and maintenance of buildings, dams, bridges, canals and barrage etc. will be covered under the expression of 'Construction Contract'."*

It can be seen that the query is being clarified in terms of the Amnesty Scheme. There are five other Circulars, which have been referred to in this Circular. Each of them seeks to explain the Amnesty Scheme 1998. Though the duration of the Amnesty Scheme 1998 was extended from time to time, it was available only in respect of the assessment orders passed for the periods ending before the 1st April 1998. Thus, it was for the periods upto 1997-98 only when the Scheme of the Works Contract Act did not have different rates for construction contracts and other contracts as I have mentioned above that the different rates were first introduced w. e. f 1-5-1998 by the amendment of dt.30-3-1999. The very first Circular referred to in this Circular is 1T of 1999 dt.5-1-1999. Point 18 of this Circular is worth referring –

> *"18. The term "बांधकाम कार्य कार्यकंत्राट" means construction contract and will include contract for construction of Buildings, Dams, Roads, Bridges, Canals, Barrages, etc. If contracts such as plumbing, electrification, sanitary fittings, fittings of overhead tanks, panting, provision of lifts, airconditioning etc. have been awarded and executed before the completion of the construction contract, and if such contracts are incidental and ancillary contracts will be considered to be construction contracts but not in any other circumstances."*

Thus, it can be seen that even on dt.5-1-1999 when the notification was not in existence, a stand similar to be taken at a later stage was sought to be propagated through the Circular. A perusal of the Amnesty Scheme shows that the tax amnesty was to be available as under :

1. Contracts awarded by the Maharashtra Government – Exempted from payment of total tax
2. (A) Construction contracts - 1% of the Gross amount of the works contracts and the rest of the amount of tax dues or demands will be waived off

   (B) Any Other Type of Contracts - 3% of the gross amount of the contract and the rest of the amount of tax dues or demands will be waived off

From the above, it can be seen that the differentiation in construction contracts and other contracts was introduced through the Government Resolution for the purposes of the Amnesty Scheme. The Trade Circular No. 1T of 1999 dt.5-1-1999 in Point 20 had mentioned that *the different portions of the scheme apply (or do not apply) to certain types of contracts. The first mode of distinction is construction contracts and other contracts. The second mode of distinction is Government contracts and other contracts. The third mode of distinction is contracts wherein tax has been collected*

separately, contracts wherein the contract price is inclusive of works contract tax and contracts wherein tax is neither collected separately nor is the contract price inclusive of works contract tax. Thus, it can be seen that the clarification in the above Circular was in respect of the parameters for waiver of works contract tax under the Amnesty Scheme 1998. The said Scheme introduced the waiver at different rates for construction and other types of contracts. The differentiation was not for any provision under the Works Contract statute. The interpretation in the Circular was an attempt to explain the Amnesty Scheme. It was certainly not an interpretation of a provision in a statute under which a notification similar to the one in the present proceedings had been issued. Further, the above Circular was issued on dt.06.01.2000 when the notification dt.08-3-2000 was not yet issued. Therefore, this Circular explaining the mode of tax relief under the Amnesty Scheme cannot be relied upon to apply the principles laid therefor to interprete a legislative provision enacted for the purposes of a statute.

The above discussion would be concluded to observe that on the date of issuance of both the Circulars, the 'construction contracts' were yet to be enumerated under a notification which brought in clarity to the concept. At no point of time, the Commissioner clarified the issue with reference to notification dt.08.03.2000 enumerating the types of construction contracts. Further, the paragraph B of the notification with its unambiguous stand as regards incidental and ancillary contracts to be construction contracts only when they have been completed before the completion of contracts notified in paragraph A was such as to put down any query to rest. I would go on further to observe that the notification issued for the purposes of the notification elucidated the issue and therefore, the position clarified as regards repairs, reconstruction and maintenance to buildings could not be a query emanating from the notification. In view thereof, the Trade Circulars would not be useful to the applicant as reliance on them is not in context with the provisions in respect of which the applicant seeks to lay a claim.

CASE LAWS

The applicant has placed reliance on a few case laws. At the outset, I have to observe, that the applicant seeks coverage under the notification issued under section 42(3) of the MVAT Act, 2002 in view of his understanding that for the purposes of a similar provision, a notification, under the repealed Act, the repairs contracts were held as construction contracts. The fallacy of this understanding of the applicant has been elaborately dealt with in the preceding paras. It is imperative for me to appreciate the case laws cited by the applicant in the above context.

The applicant has cited case laws dwelling on principles of interpretation, object of enactment and historical background. With regard to the same, I have to observe that the case laws on the aforesaid topics would not be useful to the applicant as I have elaborately dealt

with the provision and the unambiguous interpretation that could come therefrom. When the statute in clear terms has enacted a provision in terms of which a notification has been issued, there would be hardly any reason to resort to any means of interpretation or any external aids, other than the intrinsic meaning of the provision.

As regards the case law on the binding effect of circulars, then I have to say that there arises no reason to place reliance on the same as I have very elaborately explained the circumstances in which the impugned Circulars were issued and while explaining so, sought to elucidate that they were not in interpretation of the provision in respect of which claim has been laid in the present proceedings.

05. PROSPECTIVE EFFECT

The applicant has prayed for prospective effect in the event his contention is not found acceptable. A prayer for prospective effect is to be weighed in terms of the existing provisions and the available facts. The present case stands weak on both the aforesaid measures. The notification for the purposes of the *Explanation* u/s 42(3) of the MVAT Act,2002 was clear in its import. There was no misguidance of any kind. However, the applicant was content applying his own understanding to the clarifications issued in the Circulars. When the provisions are abundantly clear and further when the facts of the applicant's case are different from the facts as applicable to the Circulars and the case laws on which reliance has been placed, I have to observe that the applicant makes out no convincing case for favourable consideration of the request for prospective effect.

06. In the circumstances, I pass the following order -

ORDER

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

No.DDQ-11/2010/Adm-3/29/B- 4 **Mumbai, dt.** 25/07/2014

1. *The contract effected with Sangam Bhavan C.H.S. Ltd. is a repairs contract and not covered under the notification issued under the Explanation to section 42(3) of the Maharashtra Value Added Tax Act,2002. The rate of tax on the sales effected by the applicant through invoice no.220 dated January 01, 2013 raised on Sangam Bhavan C.H.S. Ltd. is 8%.*
2. *For reasons as discussed in the body of the order, the request for prospective effect is rejected.*

(DR. NITIN KAREER)

COMMISSIONER OF SALES TAX,
MAHARASHTRA STATE, MUMBAI