IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3105 OF 2014

M/s. Lubrizol India Pvt.Ltd. ... Petitioner.
Versus
Commissioner of Sales Tax. ... Respondents.

Mr. S.P. Surte a/w. Mr. P.V. Surte, advocate for Petitioner.

Mr. B.B. Sharma, AGP for Respondent.

CORAM : B.R. GAVAI & A.S. GADKARI, JJ
DATE : MARCH 24, 2015

P.C.:

1 Rule. Rule made returnable forthwith. Heard by consent of the parties.

2 The Petition challenges the order passed by the learned Maharashtra Sales Tax Tribunal dated 7/10/2014 in Reference Application No. 120 to 123 of 2012, thereby holding that the application as preferred by the Petitioner was not tenable and as such rejected the same as not being tenable.

3 The facts which gives rise to the present petition are as under : The Petitioner was assessed by the Assistant Commissioner of Sales Tax (Assessment), for the assessment period 1994-1995, 1995-1996 under Bombay Sales Tax as well as Central Sales Tax wide an order dated 31st March, 1998. The appeals preferred therein came to be dismissed by the Appellate Authority vide order dated 27th August, 2006. Second appeals were preferred before the Maharashtra Sales Tax Tribunal, which also came to be dismissed on 23rd August, 2012. Being aggrieved by the Judgment of the Tribunal, the Petitioner filed four reference applications. All the four reference applications were drawn and signed by the advocate for the applicant in accordance with the provisions of Section 61 of the Bombay Sales Tax Act, 1959 read with Regulation No. 7(4)(a) of the Maharashtra Sales Tax Tribunal Regulations under which Form 'A' is prescribed as a Form of Reference Application. On 1/12/2012 the said application was signed under the signature of the Counsel for the Petitioner as his agent. The registry of the learned Tribunal had accepted the said application.

However, it appears that the respondent filed an application before the learned Tribunal on 19/9/2014 taking objection that since the application for reference was not signed by the assessee, the same was not tenable. The said objection was taken at the stage of final hearing of the reference. The learned Tribunal vide impugned order has upheld the said objection and rejected the references. Hence, the present petition.

4 Shri Surte, learned Counsel appearing on behalf of the Petitioner submits that Form A is prescribed under Regulation 7(4)(a) before the Sales Tax Tribunal, in which the application is to be made for reference under Section 61(1). It provides that the application can be signed either by the applicant or by his agent. The learned Counsel submits that as a matter of fact, the applications for all these years are entertained under the signature of advocate appearing in the matter. The learned Counsel submits that only in this single matter, an objection was taken by the respondent and upheld by the learned Tribunal. The learned Counsel further submits

that in view of Rule 61 of the Bombay Sales Tax, 1959 authority of the agent is to continue till termination of the proceedings. The learned Counsel therefore, submits that the order is not sustainable in law.

5 Shri Sharma, learned Counsel for the respondent submits that the learned Tribunal has relied on his earlier judgment to hold that unless the application is signed by a person aggrieved, same would not be tenable. He therefore, submits that the impugned order deserves no interference and the Petition deserves to be dismissed.

6 For appreciating rival controversy, it will be necessary to refer to Section 61 of the Bombay Sales Tax Act, 1959, which reads thus :

> S.61 Statement of case to the High Court.-(1) Within ninety days from the date of the communication of the order of the Tribunal, passed in appeal being an order which affects the liability of any person to pay tax or penalty or interest or to forfeiture or any sum or which affects the recovery from any person of any amount under section 39, that person, the Additional Commissioner of Sales Tax having jurisdiction over

> the whole of the State or the Commissioner, may by application in writing(accompanied, where the application is made by that person, by a fee of one hundred rupees) required the Tribunal to refer to the High Court any question of law arising out such order; and where the Tribunal agrees, the Tribunal shall, as soon as may be after the receipt of such application, draw up a statement of the case and refer it to the High Court."

Perusal of Section 61 would reveal that when any person's liability is affected to pay tax, penalty, interest or forfeiture or any sum or which affects the recovery from any person of any amount under section 39, such a person may by application in writing and when such an application is made by a person, by a fee of one hundred rupees, requires the Tribunal to refer to the High Court any question of law arising out of such order.

7 It will also be appropriate to refer to Rule 66 and 67 of the Bombay Sales Tax Rules, 1959. Perusal of Rule 66A provides for form of authority under Section 71. It provides that authority to attend before any sales tax authority in connection with any proceedings

under the Act shall be in Form 43-A. Rule 67 provides that an authority is given to an agent for the purpose of appearance in proceedings in an appeal against, or on application for revision of an order passed in the proceedings in respect of which such authority was given. The only rider is that a separate authority is required to be furnished for appearance in proceedings relating to each period for which a separate order of assessment is required to be made or has been made.

8 It will also be relevant to refer to Section 71 of the said Act, which reads thus :

> **S. 71. Appearance before any authority in proceedings.-** (1) Any person who is entitled or required to attend before any authority in connection with any proceeding under this Act, may attend-
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> (a) by a relative, or a person regularly employed by him, or
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> (b) by a legal practitioner [Chartered Accountant or Cost Accountant], who is not disqualified by or under sub-section (2), or

(c) by a sales tax practitioner who possesses the prescribed qualifications and is entered in the list which the Commissioner shall maintain in that behalf and who is not disqualified by or under sub-section (2).

[If such relative, person employed, legal practitioner, [Chartered Accountant, Cost Accountant or] sales tax practitioner is authorised by such person in the prescribed form and such authorisation may include the authority to act on behalf of such person in such proceedings.]

Perusal of Section 71 would reveal that any person who is entitled or required to attend before any authority in connection with any proceedings under the said Act, can be represented by a relative, or a person regularly employed by him or or by legal practitioner, CA or Cost Accountant who is not disqualified by or under sub-section (2), or by a sales tax practitioner who possesses the prescribed qualification and is entered in the list which the Commissioner shall maintain in that behalf and who is not disqualified by or under sub-section (2). Perusal of said section further provides that if such relative, person employed, legal practitioner, CA, Cost Accountant or sales tax practitioner is authorised by such person in the prescribed form and such authorization can include the authority to act on behalf of such person in such proceedings.

9 Conjoint reading of Section 71 of the said Act with Rule 66A and 67 would clearly reveal that any person who is mentioned under Section 71 and who is authorised as an agent, can act on behalf of such person in the said proceedings before the authorities.

10 Undisputedly, the person who had signed the application was a legal practitioner and had filed vakalatnama before the first authority by virtue of Rule 67. Authority of the legal practitioner continued till the termination of the proceedings. Not only this, Form-A which is prescribed under Regulation 7 provides for signature either by the applicant as well as appointed agent, if any. Undisputely, the legal practitioner was an appointed agent. In any case, if the learned Tribunal was of the view that the signature of the assessee was also required, the learned Tribunal could have very well called upon the

authorised agent to get the signature of the applicant on the application. However, in the present case, the legal practitioner who was appearing on behalf of the assessee had himself offered to get the signature of the applicant after the Tribunal was of the view that it was necessary. The learned Tribunal could have very well permitted the applicant to put up signature on the application, in as much as it was only a technical error, if any.

11 In so far as the reliance placed by the learned Tribunal in its own judgment in the case of **M/s. Shah Darkwadas Vallabhdas & Co. v/s. The State of Maharashtra** is concerned, on the facts, that case is distinguishable. In the said case, vakalatnama of the advocate was also not filed on record on behalf of the applicant. Such was not the case here.

12 In that view of the matter, application by the legal practitioner who was an agent was very much tenable. In any case, lacuna was not of such nature, that the applicant should have been non-suited on

hyper technical approach. The learned Tribunal could have very well permitted the Counsel for the applicant to get signature of the applicant as the advocate for the applicant had himself offered to do so.

13 In the result, the impugned order is quashed and set aside. The matter is remanded back to the learned Tribunal for considering fresh and deciding in accordance with law.

14 The Rule is made absolute in the above terms. Writ Petition is disposed of accordingly.

(A.S. GADKARI, J) **(B.R.GAVAI,J)**