

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: January 27, 2015
Pronounced on: February 23, 2015

+ **ST.APPL.10/2014**

COMMISSIONER OF VAT Appellant
Through: Mr. H C Bhatia, Spl. Counsel.

Versus

JUPITOR EXPORTS Respondent
Through: Mr. Puneet Agrawal and Mr. Avjeet
Bhujabal, Advs.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.K.GAUBA

MR. JUSTICE R.K.GAUBA

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1. This appeal under Section 81 of Delhi Value Added Tax, 2004 (hereinafter referred to as “the Delhi VAT Act”), is directed against the order dated 07.01.2014 passed by the Appellate Tribunal : Value Added Tax (VAT) Delhi (hereinafter referred to as “the Appellate Tribunal”) in appeal which had been preferred before it and registered vide No. 75/STT/-05-06, in turn, questioning the legality, correctness and propriety of the order dated 06.06.2005 passed by the Commissioner, Sales Tax (hereinafter, “the Commissioner”) rejecting the request of the respondent herein (“the Assessee”) for compounding the offences allegedly committed by the latter under Section 50(1)(a) and (j) of Delhi Sales Tax Act, 1975 (hereinafter

referred to as “the Delhi Sales Tax Act”) in terms of the provisions contained in Section 54 thereof.

2. It may be mentioned here that by Section 106 of Delhi VAT Act, amongst others, the Delhi Sales Tax Act was repealed with effect from 01.04.2005. Notwithstanding such repeal, right, title, entitlement, obligation or liability already acquired, accrued or incurred under the repealed legislation survived. The authorities under the Delhi VAT Act have replaced the authorities created under the Delhi Sales Tax Act. The remedies of appeal against orders of such authorities, thus, are available through the machinery created by the new law.

3. It must also be added here that in the regime governed by Delhi Sales Tax Act, there was no provision of appeal to the High Court. The appeals under the said law would lie only before the Appellate Tribunal. After adjudication on the appeal by such Tribunal, the aggrieved party (the dealer or the Commissioner) could, however, request for a reference to the High Court under Section 45 on question of law. However, the new law (Delhi VAT Act) having now provided for a second appeal (Section 81) to the High Court against orders of the Appellate Tribunal, though confined to substantial questions of law, the impugned order having been passed by the Appellate Tribunal (constituted under Section 76 of Delhi VAT Act) after coming into force of the new law, the appeal has been entertained by this court.

4. A view to above effect was taken by another Division Bench of this court in *Shiv Shakti Kirana Kendra v. Commissioner, VAT*, ILR (2010) I Delhi 237, *inter alia*, relying on the decision of Supreme Court in *Gammon India Ltd. v. Spl. Chief Secretary & Others* [2006] 145 STC 1 (SC) setting

out its conclusions, with which we respectfully agree and follow, in the following words:

“...we find that the legislature, qua the forum of appeal, has taken a conscious decision on retrospective operation of Delhi VAT Act as regards forum of a second appeal to the High Court by virtue of Section 106(3) and which provision makes it clear that all orders passed under the Delhi Sales Tax Act will be treated as if they have been passed under the Delhi VAT Act. Thus vide Section 106(3) the order passed by the Appellate Tribunal will be an order, not under Section 44 of the Delhi Sales Tax Act, but one under Section 74 of the Delhi VAT Act. The unambiguous language of Section 106(2) can lead to no other conclusion than that the appeal will now lie to the High Court under Section 81 of the Delhi VAT Act even if the order which is passed by the Tribunal is in respect to proceedings which were initiated when the Delhi Sales Tax Act was in force.”

[emphasis supplied]

5. The questions of law raised in this appeal essentially concern the extent of discretion available to, or exercisable by, the Commissioner in considering a request for composition of offence under Section 54 of Delhi Sales Tax Act. The appeal was entertained by this court by order dated 28.07.2014 for considering the following two substantial questions of law:-

"1. Whether the Appellate Tribunal, Value Added Tax can give direction to the Sales Tax Department to compound a FIR which was registered and charge sheet has been filed by the police department?

2. In case question No.1 is answered in favour of the respondent-assessee, whether order dated 16.1.2006 passed by the Appellate Tribunal, Value Added Tax was a direction and a mandate to Ccompound the offence as held in the order dated 7.1.2014?"

6. In view of the submissions made at the hearing on this appeal, we formulate the following additional question of law:-

“3. Whether the order of Commissioner on application under Section 54 Sales Tax Act is final not subject to scrutiny by the Appellate Tribunal?”

7. The background facts need to be taken note of at this stage.

8. The assessee is an exporter-cum-wholesaler dealing in readymade garments and steel-make items since 1998 and was registered with Sales Tax Department of Govt. of NCT of Delhi during the relevant period. It is the case of the assessee that in the course of its business during the financial year corresponding to assessment year (AY) 2002-2003, it had sold steel balls to M/s DD Enterprises, G-134, Multani Dhanda, Pahar Ganj, New Delhi for a sum of ₹23,50,000/- against ST-1 form bearing No. 22A 893932 (hereinafter referred to as “the ST-1 form”), receiving the sale consideration by way of cheques from the purchasing dealer.

9. In its return for AY 2002-2003, the assessee submitted the ST-1 form and furnished the requisite declaration in support of the claim of exempted sale of ₹23,50,000/-. Upon verification, the ST-1 form was found by the assessing authority to be a forged document, inasmuch as it had not been printed under the authority of the Commissioner or obtained from the appropriate authority by a registered purchasing dealer in terms of Rule 8(1) of Delhi Sales Tax Rules, 1975 framed under the Delhi Sales Tax Act. The assessing authority, in these circumstances, levied sales tax at the rate of 8% on the sale amount (₹23,50,000/-) in addition to interest, also directing a First Information Report (FIR) to be lodged with the police against the assessee, on the accusation of it having committed offences punishable

under Section 50(1)(a) and (j). The assessee challenged the said assessment order by way of appeal but could not succeed.

10. The penal clause contained in Section 50 of Delhi Sales Tax Act, to the extent relevant here, may be noted as under:-

“50(1) Whoever—

(a) holds, gives, produces or accepts a declaration under the second proviso to clause (a) of sub-section (2) of section 4, or under the first proviso to section 5, which he knows or has reason to believe to be false; or

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(j) knowingly maintains or produces incorrect accounts, registers or documents or knowingly furnishes incorrect information; or

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shall be punishable with rigorous imprisonment for a term which may extend to six months or with fine, or with both and where the offence is a continuing one, with a daily fine not exceeding two hundred rupees during the period of the continuance of the offence:

(2) Notwithstanding anything contained in sub-section (1), if any person commits an offence under clause (a) or clause (f) or clause (j) or clause (l) or clause (m) or clause (o) of that sub-section and the court is satisfied that the offence has been committed willfully, he shall be punishable with rigorous imprisonment for a term which may extend to six months and with fine, and where the offence is a continuing one, with a daily fine not exceeding three hundred rupees during the period of the continuance of the offence.”

[emphasis supplied]

11. On facts, it is clear that a *prima facie* case for criminal action under the aforementioned penal clauses stood made out. By virtue of the provision

contained in Section 52(1), these offences being cognizable, the lodging of the FIR for appropriate proceedings before the criminal court of competent jurisdiction was in order. Noticeably, the prescription for enhanced punishment in Section 50(2) was not invoked and, therefore, it may be safely inferred that the Commissioner had not found it to be a case where the offences had been committed by the assessee “willfully”.

12. At the hearing, it was submitted by the counsel that report of investigation (under Section 173 of the Code of Criminal Procedure) into the allegations made in the FIR (No. 126/04) thus registered came to be filed in the court of Metropolitan Magistrate on 20.10.2006 under Sections 50(1)(a) & (j) of Delhi Sales Tax Act and Sections 420/468/471 of Indian Penal Code. The counsel, however, were not aware as to whether charge has been framed in such proceedings for any offence other than one punishable under Delhi Sales Tax Act. To be specific, the counsel were not aware if the criminal court has *prima facie* found evidence as to facts constituting offences punishable under the Penal Code (i.e. cheating etc.). The counsel vaguely stated that the proceedings in criminal case are at final stages, pleading ignorance when asked to be specific.

13. Against the above backdrop, the assessee moved an application under Section 54 of the Sales Tax Act before the Commissioner for composition of the offences respecting which action had been initiated by registration of FIR, offering with the said request an amount of ₹50,000/- as composition money.

14. The Commissioner, however, by his order dated 01.06.2005 rejected the request of the assessee here, *inter alia*, observing that an amount of ₹22,50,000/- had been received by the assessee through pay orders dated

30.12.2002, 31.12.2002 and 01.01.2003 for ₹10,00,000/-, ₹4,50,000/- and ₹8,00,000/- respectively with the balance of ₹1,00,000/- having been received through cheque dated 08.02.2003. The Commissioner held that the assessee had not been able to furnish the details of the bank account of the purchasing dealer from which the pay orders had been secured and declined to compound, for the reason that “adequate composition amount” had not been offered.

15. It must be noted at this stage that the allegations that the ST-1 form purportedly obtained from M/s DD Enterprises, and submitted to Sales Tax authority in respect of the transaction mentioned earlier, is a forged or fabricated document is not being disputed by the assessee. The assessee concedes this to be a fact, its contention being restricted to the claim that he had no knowledge about the forgery and further that it had received the same from the purchasing dealer and had submitted it with the return to the Sales Tax authority under the *bona fide* belief that it was genuine and true document which had been lawfully issued. Thus, while insisting that there was no criminal intent involved the assessee claims to have moved the application for compounding of the offence under Section 54 of the Sales Tax Act with a view to buy peace. The application stood rejected for the reasons mentioned above.

16. The order dated 01.06.2005 of the Commissioner in the matter referred vide No. 547/CST/2005 was challenged before the Appellate Tribunal in appeal No. 75/STT/05-06. In the course of the said proceedings before the Appellate Tribunal, the assessee modified his request and offered to deposit as composition fee, unconditionally, an amount of ₹5,64,000/- which represented the amount three times of the Sales Tax chargeable on the

transaction in question, in addition to ₹5,000/- it being the maximum amount prescribed under the law for composition of the offence under Section 50(1)(j). The assessee reiterated even at that stage that it had no knowledge about the forgery and its anxiety was only to avoid stigma it would carry should the criminal action continue in these circumstances.

17. It appears that the Appellate Tribunal, in its order dated 16.01.2006, was satisfied that a case had been made out for the offences under Sales Tax Act to be compounded. The Tribunal, thus, remitted the matter to the Commissioner issuing the directions in following terms:-

“Keeping in view the facts and circumstances and considering the fact that the appellant dealer now has unconditionally offered an amount of Rs.5,64,000/- which, according to him, is three times of the tax levied on the subject amount under section 50(1)(a) of the Act and also an amount of Rs.5,000/- being the maximum amount prescribed under the law for compounding the offence committed under section 50(1)(j) of the Act, the Ld. Commissioner may consider for composition of the offence as provided for the commission of the offences under section 54 and consequently also consider not to proceed further in respect of the FIR already lodged in view of the provisions of section 54(2) of the Act. The records are ordered to be remitted to the Ld. Commissioner for the purpose. The appellant dealer is directed to appear before the Ld. Commissioner on 30.01.2006.”

[emphasis supplied]

18. The Commissioner VAT, before whom the matter had been remitted, registered the case vide No. 547/Revenue/CST/2005 but proceeded to reject the request for composition even on the modified terms. The concluding paragraph of the order passed on 07.03.2006 needs to be noted in *extenso* as under:-

“I have heard the arguments advanced by the DR for the revenue ex parte before this Court as well as looked into the case file, Order of the Ld. Tribunal passed by it on 10/1/06 and the Written Submissions received from the Counsel for the applicant on 15/02/06 and kept on record. It may be noted that as per report received from the Ward of the concerned purchasing dealer, the purchasing dealer M/s DD Enterprises had not confirmed the purchases having been made by him from the applicant and also that he had not accepted the fact that the ST-1 form furnished by the applicant before his assessing authority was issued by the purchasing dealer M/s DD Enterprises to the applicant. It is, therefore, a bare fact that the ST-1 form furnished by the applicant before his assessing authority as required under rule 8(1) of the DST Rules, 1975, was not printed under the authority of the Commissioner nor as envisaged u/r 8(2) of the said Rules, it was obtained by the concerned purchasing dealer M/s DD Enterprises from his appropriate assessing authority. As such, the ST-1 form furnished by the applicant at assessment was a fake one and the case against him for offences u/s 50(1)(a) and (j) of the DST Act was rightly made out by the Department and also an FIR against the applicant was validly lodged. Further, in so far as the submissions made on behalf of the applicant that he is prepared to pay u/s 54 of the Act, the maximum amount prescribed under the law is concerned, it is noted that for the offences committed by him u/s 50(1)(a) and (j) of the DST Act, a criminal case against the applicant has already been registered by the Department and the investigations etc. in the case are also in offing. As such, in view of the bare fact that the applicant’s sale claimed to have been made by him to M/s DD Enterprises of Multani Dhanda, New Delhi has not been confirmed by the latter and also the ST-1 form furnished by the applicant was absolutely a fake one being not printed under the authority of Commissioner and also that an FIR against the applicant for the offences has already been lodged by the Department and thus, acceptance of the composition of money by this Court will affect the FIR lodged and consequently the criminal proceedings initiated against him”

adversely, this Court finds itself unable to accept the composition money at this stage. Hence, for this reason, and also the fact that petitioner who has defrauded the revenue by furnishing the fake form, should not go unpunished and the others may not follow suit, the offer of the applicant is not accepted and the law is allowed to take its own course and to book the offender for appropriate action under it. Ordered accordingly”

[emphasis supplied]

19. It is clear from the afore-quoted observations of the Commissioner VAT that the request for composition was turned down again on the following considerations:-

- (a) The purchasing dealer had not confirmed the word of the assessee about it being the source of the fabricated ST-1 form;
- (b) Since fabricated ST-1 form had been furnished, criminal action had been rightly initiated and the FIR lodged was valid;
- (c) The criminal case registered at the instance of Sales Tax department was subject matter of investigation by the police which was underway;
- (d) Acceptance of composition money by the department would adversely affect the FIR/criminal proceedings; and
- (e) The compounding of the offence by the department would allow the assessee who had “defrauded the revenue” go unpunished and encourage others also to indulge in such acts.

20. It must also be noted that the Commissioner, VAT referred to the office he held as a “Court” giving the impression it was asserting its position as a quasi-judicial authority with autonomy in matters pertaining to its discretion.

21. The assessee challenged the afore-quoted views of the Commissioner, VAT by way of appeal No. 2/ATVAT/06-07 before the Appellate Tribunal which was allowed by order dated 07.01.2014 taking strong exception by observations to the following effect:-

“3. By passing the impugned order, as quoted above, majesty of law has been undermined by the respondent which is a serious matter such a practice is an attempt to derail the process of justice. Such unprecedented orders lead to demoralize, lower the dignity and negate jurisdiction of the court of law. The Tribunal being part of the constitution functionary, its jurisdiction and decisions need to be upheld by the executive, which is binding on the respondent as well, who is a respondent before this Tribunal. The appellant being a bonafide litigant, has approached this Tribunal against the impugned order as appellant and not as an applicant condemn the impugned order as contempt of the court orders and accordingly, reasserted his remedy in term of the original order dated 10.01.2006 (16.01.2006?) already passed in favour of the appellant.”

[emphasis supplied]

22. Taking note of the language used in Section 54(1) of the Sales Tax Act (which begins with the words “Subject to such conditions as may be prescribed, the Commissioner may...”), the Appellate Tribunal held as under:-

“The word 'may' used by this Tribunal while passing the order dated 10.01.2010 (16.01.2006?) seems to have led the Commissioner to pass the impugned orders. As such, a lenient view is taken though the word 'may' should have been given meaning by the respondent while accepting the direction in toto and not to pass such like orders, which is appealed against by the appellant seeking the same relief which was, earlier granted. The respondent, should, have given meaning to the word 'may consider' a positive meaning in compliance of direction required to be followed' by the respondent. However,

considering that for such forced filing of instant appeal by the appellant despite disobedience by the respondent which is nothing short of contempt for which appellant can be compensated, who is forced to file the present appeal because of such meaning given to the word 'may' by the respondent without taking into consideration the provisions as existed in this regard and quoted above. Not only the respondent shall act in compliance of the directions in term of order dated 06.01.2006 but also compensate the appellant with cost of Rs.10,000/- to be adjusted or to be paid by the respondent separately. As submitted by the Ld. Counsel for the Revenue, there seems to be no case to absolve the respondent from his liability to act as per law as compensation shall suffice the purpose. The respondent shall report compliance after appearance of the appellant before the Commissioner for the purpose. The impugned order is, accordingly, set aside, the appeal is accepted and the appellant is directed to appear before the Commissioner for compliance of the order dated 06.01.2006 (16.01.2006?). The appellant shall appear before the' Commissioner on 21.01.2014."

[emphasis supplied]

23. The above-noted observations of the Appellate Tribunal show that it found the order of the Commissioner, rejecting the request for composition, objectionable for the following reasons:-

- (a) The earlier order of the Tribunal may have used the expression "may consider" but it was in the nature of a "direction" which the Commissioner was "required" to follow; and
- (b) The rejection of the prayer for composition against the backdrop of the said earlier direction of the Tribunal amounted to "disobedience" on the part of the Commissioner which was "nothing short of contempt", meriting compensation to be awarded.

24. The appellant (VAT Commissioner – hereafter called “the Revenue”) is aggrieved with the above-noted directions contending that the question as to whether an offence under the Sales Tax Act was to be compounded or not pertains to the discretion of the authority in which the jurisdiction for the purpose had been vested by the statute and, thus, a direction/mandate for compounding could never have been issued. The Revenue submits that it is for this reason primarily that the Appellate Tribunal in its order dated 16.01.2006 had called upon the Commissioner, Sales Tax only to “consider” afresh the request of the assessee for composition on modified terms and had refrained from formulating its order as a mandate. The Revenue argues that the Appellate Tribunal in the impugned order dated 07.01.2014 has fallen in error by misconstruing not only the statutory provisions as to composition of offences under Sales Tax Act but also the order rendered by its predecessor forum on 16.01.2006.

25. In order to address the questions arising, it is necessary to examine the status, position and role of the Commissioner, Sales Tax (now Commissioner, VAT) in the overall scheme of the statute(s).

26. The Delhi Sales Tax Act was enacted to consolidate and amend the then existing law relating to levy of tax on sale of goods in the Union Territory of Delhi. The legislation contained detailed provisions, among others, in relation to incidence and levy of the tax, the statutory authorities (for assessment, appeal etc.) and powers conferred on such authorities, registration of traders for purposes of sales tax, submission of returns leading to assessment and recovery (and refund, where admissible), remedies in the nature of appeal, reference and revision besides defining

offences and penalties and the procedure for requisite action in such context.

27. Section 9 of the Act would provide for the Sales Tax Authorities as under:-

“9. Sales tax authorities

- (1) For carrying out the purposes of this Act, the Lieutenant Governor shall appoint a person to be Commissioner of Sales Tax.*
- (2) To assist the Commissioner in the execution of his functions under this Act, the Lieutenant Governor may appoint as many Additional Commissioner of Sales Tax, Sales Tax Officers and such other persons with such designations as the Administrator thinks necessary.*
- (3) The Commissioner shall have jurisdiction over the whole of Delhi and the other persons appointed under sub-section (2) shall have jurisdiction over such areas as the Commissioner may specify.*
- (4) The Commissioner and the other persons appointed under sub-section (2) shall exercise such powers as may be conferred, and perform such duties as may be required, by or under this Act.”*

28. As mentioned earlier, Delhi VAT Act has replaced the Delhi Sales Tax Act with effect from 01.04.2005. The authorities under the repealed sales tax law accordingly stand substituted by the authorities under the new law, known by the description “Value Added Tax Authorities” [Section 66(2) of Delhi VAT Act].

29. It is pertinent to note that Section 66(4) of Delhi VAT Act describes the role and position of VAT Authorities as under:-

“66(4) The powers exercised by the Value Added Tax Authorities for the making of assessments of tax, the computation and imposition of penalties, the computation of interest due or owed, the computation of the entitlement and the amount of any refund, the determination of specific questions

under section 84, the making of general rulings under section 85, and the conduct of audit or investigations shall, for the purposes of this Act, be the administrative functions.”

[emphasis supplied]

30. There is no provision in Delhi Sales Tax Act comparable to Section 66(4) of Delhi VAT Act. Nonetheless, having regard to the scheme of Delhi Sales Tax Act, in general, and the powers or functions conferred or assigned unto various authorities including the Commissioner, Sales Tax thereunder, there is no doubt that in enforcing the law for the Revenue (in the nature of sales tax), the Commissioner, Sales Tax represented the executive arm of the State, though some of the functions exercisable by him may carry trappings of an adjudicatory authority.

31. As would be seen with reference to some of the duties and functions of the Commissioner appointed under the Delhi Sales Tax Act noted hereinafter, the overall responsibility to take care of the interest of Revenue and for such purposes the appropriate functioning of the department in a fair and impartial manner is placed on his shoulders.

32. Section 9(1) of Delhi Sales Tax Act quoted above declares upfront that the Commissioner of Sales Tax is appointed “for carrying out the purposes” of the legislation. All other authorities appointed under this law are made available “to assist” the Commissioner. While Section 9(2) conceives of functionaries known as Additional Commissioner and Sales Tax Officers (STOs), Rule 12 of Delhi Sales Tax Rule, 1975 (hereinafter referred to as “the Delhi Sales Tax Rules”) prescribes the “other persons” to be appointed to include those designated as Deputy Commissioner, Assistant Commissioner, Assistant Sales Tax Officer, Sales Tax Inspector, Deputy

Superintendent of Police and Inspector of Police on deputation to Sales Tax Department.

33. While the functions of the Commissioner are broadly delineated in the statute, the other Sales Tax Authorities placed at his disposal for assistance exercise the powers which are delegated to them by the Commissioner, subject, of course, to “restrictions and conditions”, if any prescribed by the rules [Section 10].

34. Delhi Sales Tax Act would not specifically provide for functions of any Sales Tax Authority other than the Commissioner. Clearly, this is so, because all such authorities other than the Commissioner exercise only the delegated powers.

35. The powers and functions of the Commissioner are of wide amplitude and cover almost all processes required to be undertaken for carrying out the purposes of the law. They range from the subject of registration (Chapter IV), submissions of return, assessment leading to the enforcement by way of recovery (Chapter V), production and inspection of accounts, calling information, search and seizure, taking of evidence (Chapter VII), etc. The Commissioner has the power not only to confer jurisdiction but also to transfer proceedings from one appointee to the other (Section 11). It is his responsibility to determine disputes regarding territorial jurisdiction (Section 12). The returns of Sales Tax are submitted to the Commissioner and periodical payments of Sales Tax made into the Government treasury in his name (Section 21). The assessment is finalized by the Commissioner (Section 23) through the delegated authority. It is the responsibility of the Commissioner to take necessary steps (in terms of Section 24), should there be “reason to believe” that turnover declared in the return by the dealer has

escaped assessment to tax. The action for recovery (Sections 25 and 26), including by way of special modes (Section 28) is taken by the Commissioner and where satisfied about the entitlement, refund is granted with his approval (Section 30). He is entrusted with the power to rectify mistakes if any (Section 48), as may have occurred, but, of course, subject to rules of natural justice wherein he must give reasonable opportunity of being heard to the assessee should such rectification be leading to enhancing the tax liability. It is the duty of the Commissioner to guide other Sales Tax Authorities assisting him in the process, *inter alia*, by determining “disputed questions” (Section 49). That the Commissioner, Sales Tax represents the interest of revenue is declared clearly by including it in his functions the revisional jurisdiction to bring in suitable corrections where erroneous orders “pre-judicial to the interest of revenue” have been passed by other Sales Tax Authorities assisting him (Section 46).

36. Chapter IX of Delhi Sales Tax Act deals with “offences and penalties”. As in the case of processes involving submission of returns, assessment, recovery, refund etc., the power to initiate action for prosecution of offences or imposition of penalties is conferred by the law on the Commissioner. As noted earlier, “offences under Delhi Sales Tax Act are defined and provided for in Section 50.

37. Sections 52 and 53 are also relevant for present discussion and may be extracted as under:-

“52. Cognizance of offences

(1) No court shall take cognizance of any offence under this Act or rules made thereunder except with the previous sanction of the Commissioner, and no court inferior to that of a Metropolitan Magistrate shall try any such offence.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) all offences punishable under this Act or rules made thereunder shall be cognizable and bailable.

53. Investigation of offences

(1) Subject to such conditions as may be prescribed, the Commissioner may authorize either generally or in respect of a particular case or class of cases any person appointed under sub-section (2) of section 9 to assist him to investigate all or any of the offences punishable under this Act.

(2) Every person so authorized shall, in the conduct of such investigation exercise the powers conferred by the Code of Criminal Procedure, 1973 (2 of 1974) upon an officer in charge of a police station for the investigation of a cognizable offence.”

38. The above provisions clearly show that the offences under the special law are “cognizable” and triable before the court of Metropolitan Magistrate. The prosecution for such offences, however, requires, as a pre-requisite, “previous sanction of the Commissioner”. Though the offences having been classified “cognizable” it is permissible for FIR to be lodged by the Sales Tax Authorities, wherever deemed expedient in the facts and circumstances of the case, for investigation by the police (amongst others, to collect such further evidence as may be necessary), “investigation” may also be entrusted by the Commissioner, subject to conditions prescribed in the rules, to other Sales Tax Authorities appointed for his assistance under Section 9(2). Rule 43 of Delhi Sales Tax Rules prescribes only one condition in this respect, namely, that an investigation into an offence found prima facie committed may not be entrusted to a Sales Tax Authority lower in rank than an Assistant STO. Clearly, however, the option to choose either course

(investigation by the police or by other Sales Tax Authority) is a matter of discretion resting with the Commissioner.

39. The power to compound the offence under Delhi Sales Tax Act is vested in the Commissioner by virtue of Section 54. The provision is at the core of this controversy and needs to be quoted verbatim as under:-

“54. Composition of offences

- (1) Subject to such conditions as may be prescribed, the Commissioner may accept, from any person alleged to have committed an offence under section 50 or under any rules made under this Act, either before or after the commencement of the proceedings against such person in respect of such offence, by way of composition for such offence, a sum not exceeding five thousand rupees or where the offence alleged to have been committed is under any of the clauses (a), (b), (c), (d), and (f) of that section, not exceeding three times the amount of the tax which would thereby have been avoided, whichever is higher.*
- (2) On payment in full of such sum as may be determined by the Commissioner under sub-section (1);*
- (a) no proceedings shall be commenced against such person as aforesaid; and*
- (b) if any proceedings have already been commenced against such person as aforesaid, such proceedings shall not be further proceeded with.”*

[emphasis supplied]

40. It would be seen that the power of composition is given unto the Commissioner and conceived to be exercised subject to guidance provided by the rules (“such conditions as may be prescribed”). Rule 44 of Delhi Sales Tax Rules is relevant in this context and must be noted as under:-

“44. Conditions subject to which offences under the Act may be compounded.

- 1. The conditions subject to which the Commissioner may*

accept any sum under sub-section (1) of section 54 by way of composition of any offence under the Act or the rules shall be as follows, namely, --

(a) the person alleged to have committed an offence shall apply in writing giving his consent to compound the offence;

(b) the amount offered by such person shall be stated in his application;

(c) the composition money accepted by the Commissioner shall be adequate and shall not be illusory;

(d) the acceptance by the Commissioner of the offer to compound an offence shall broadly be based on the general principle of justice and of public policy.

2. Where under section 54 the Commissioner accepts from any person a sum by way of composition of any offence, he shall send an intimation in writing in that behalf to that person and also to the authority referred to in clause (c) below specifying therein,--

(a) the sum determined by way of composition;

(b) the date on or before which the same shall be paid into the appropriate government treasury;

(c) the authority before whom and the date on or before which a receipted treasury challan shall be produced as proof of such payment; and

(d) the date on or before which the person shall report the fact to the Commissioner.

3. An intimation about the composition of an offence shall be sent forthwith to the court trying the case."

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[emphasis supplied]

41. It would be necessary to note at length the guidance provided by Rule 44 quoted above, but a little later. For the present discussion, it only needs to be noted that the composition of an offence under the law is by the Commissioner, for and on behalf of the revenue, leaving no room for doubt that in dealing with a request for composition (by the assessee) the

Commissioner is essentially in the position of an adversary, rather than an adjudicatory authority.

42. Delhi Sales Tax Act also provided for the remedy of appeal. Sections 43 and 44 read as under:-

“43. Appeals

(1) Any person aggrieved by any order, not being an order mentioned in section 44 passed under this Act or the rules made thereunder, may appeal to the prescribed authority:

PROVIDED that where an order, not being an order mentioned in section 44 or made under section 47 is passed by the Commissioner, the person aggrieved may appeal therefrom to the Appellate Tribunal.

(3) The Commissioner or any person aggrieved by an order passed in appeal by the prescribed authority may appeal to the Appellate Tribunal against such order.

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(6) The appellate authority may, after giving the appellant an opportunity of being heard,--

- (a) confirm reduce, enhance or annul the assessment (including any penalty imposed), or*
- (b) set aside the assessment (including any penalty imposed) and direct the assessing authority to make a fresh assessment after such further inquiry as may be directed, or*
- (c) pass such order as it may think fit.*

(7) Save as provided in section 45, an order passed by the Appellate Tribunal on appeal shall be final.

44. Non-appealable orders

No appeal and no application for revision shall lie against--

- (a) a notice issued under this Act calling upon a dealer for assessment or asking a dealer to show cause as to why he should not be prosecuted for an offence under this Act ; or*

- (b) an order pertaining to the seizure or retention of books of accounts, registers and other documents; or*
- (c) an order sanctioning prosecution under this Act; or*
- (d) an interim order passed in the course of any proceedings under this Act.”*

[emphasis supplied]

43. Rule 35 indicates that the appellate authority may be designated by the Commissioner who would also specify in the order the limits of territorial or pecuniary jurisdiction. Section 45 referred to in Section 43(7) quoted above relates to Reference to High Court.

44. It is clear from a bare reading of the above provisions that appeal before the Tribunal is a remedy available to the assessee against such orders passed by the Commissioner as are specified. Section 44 excludes certain orders from amenability to challenge in appeal, each of them noticeably being interlocutory in nature. Two other provisions, also contained in the same Chapter (Chapter VIII), viz., Sections 46 and 47, confer revisional jurisdiction on the Commissioner. The said clauses clearly are designed to provide course correction wherever, during assessment proceedings etc., errors are committed by the other Sales Tax Authorities. The revisional jurisdiction conferred on the Commissioner is essentially intra-department remedy and would not render him as an adjudicatory forum akin to the status of the Appellate Tribunal.

45. That the Appellate Tribunal which adjudicates upon the appeals preferred before it, in terms of Section 43, is a quasi judicial forum is beyond question, this also in view of its very composition as prescribed by Section 13, wherein its Chairman (or sole member) must fulfill the prescribed eligibility criteria indicative of judicial or legal experience as

indeed its obligation to decide the disputes impartially and following rules of natural justice.

46. Thus, on a broad view of the scheme of Delhi Sales Tax Act, it emerges that the Commissioner represents the interest of the Revenue and all action for realization of the tax is through or by him or in his name by other Sales Tax Authorities. At the cost of repetition, it may be said again that in this scheme of things, the Commissioner is an adversary vis-à-vis the assessee. Because of the volume of the work involved, the assistance of other Sales Tax Authorities is provided to the Commissioner. Such other authorities exercise the delegated powers. But, having delegated such powers, the Commissioners cannot meddle in the processes involved, except by exercising his supervisory role which includes the revisional jurisdiction (Sections 46 and 47), power to rectify mistakes (Section 48) or determine disputed questions (Section 49). Since he cannot intervene, except while exercising above-noted powers, the other Sales Tax Authorities (though delegates of the Commissioner) are conferred with requisite independence or autonomy in functioning. This is clearly why the Commissioner himself may feel aggrieved by an order passed by other Sales Tax Authorities and, thus, has been given the right to prefer appeal before the Appellate Tribunal by virtue of Section 43(2).

47. The above analysis of the Delhi Sales Tax Act, from the above perspective of the Commissioner's role, brings to the fore the fact that in the hierarchy of authorities under the special law, the Commissioner represents the revenue and thus, is a party before the Appellate Tribunal, as appellant or respondent, as the case may be. This being the position of the Commissioner he is bound by the orders passed by the Appellate Tribunal

within the jurisdiction conferred on the said forum.

48. As mentioned earlier, the Commissioner is expected to delegate some of his powers under the law to the other Sales Tax Authorities, but subject to the circumspection indicated in Section 10, which reads as under:-

“10. Delegation of Commissioner’s powers

Subject to such restrictions and conditions as may be prescribed, the Commissioner may by order in writing delegate any of his powers under this Act except those under sub-section (3) of section 9 and sub section (1) of section 52 to any person appointed under sub-section (2) of section 9:

PROVIDED that the powers of the Commissioner under clauses (i) to (vi) (both inclusive) of sub-section (3) of section 41 shall not be delegated to any person lower in rank than that of a Sales Tax Officer, and those under sub-section (1) of section 49 shall not be delegated to any person other than an Additional Commissioner of Sales Tax appointed under sub-section (2) of section 9.” [emphasis supplied]

49. Rule 13 of Delhi Sales Tax Rules also must be noted in this context.

It reads as under:-

“13. Conditions for delegation of powers by the Commissioner.

Without prejudice to the provisions of section 10, the Commissioner may delegate any of his powers to any persons not below the rank of an Assistant Sales Tax Officer but he may delegate his powers under sub-section (1) or sub-section (2) or clause (b) of sub-section (8) of section 41 to a Sales Tax Inspector.” [emphasis supplied]

50. A conjoint reading of Section 10 and Rule 13 brings out that the Commissioner may delegate any of his powers to other sales tax authorities (generally not below the rank of Assistant STO) except the following:-

(a) The power to confer territorial jurisdiction on the other sales tax

authorities [Section 9(3)];

(b) The power to accord “sanction”, requisite for taking cognizance of an offence under the law [Section 52(1)];

(c) Certain powers relating to requisitioning (Section 41) of account book etc. (conferrable on authority not below the rank of Assistant STO);

(d) The power of search and seizure (Section 41) (conferrable on authority not lower than STO); and

(e) The jurisdiction to determine disputed questions (Section 49), (though conferrable on Additional Commissioner).

51. It is clear that the authority to deal with the request for composition of offence (Section 54) rests solely with the Commissioner and is not delegable. The rationale is simple. The prosecution does not proceed unless the Commissioner accords sanction, which is a jurisdiction he must himself exercise and cannot delegate.

52. It is also clear that an order passed under Section 54 by the Commissioner on the request of an assessee for composition of offence is subject to remedy of appeal before the Appellate Tribunal under Section 43 (“any order, not being an order mentioned in Section 44”). Section 44, as noted earlier, does not exclude from the purview of remedy, an order passed by the Commissioner under Section 54.

53. The above findings must put to rest doubts raised, at the hearing on this appeal by this court, as to the jurisdiction of the Appellate Tribunal, to entertain appeal against the rejection of the prayer for composition made by the assessee in the matter at hand. The Sales Tax Act envisaged [Section 43(7)] finality only for the orders of the Appellate Tribunal, subject to

remedy before High Court under Section 45. No such finality can conceivably be claimed qua orders of the Commissioner under Section 54.

54. Though the request for composition of the offence in this case pertains to action initiated under the repealed law (the Delhi Sales Tax Act), since during the pendency of the dispute the law has undergone change and, consequently, the questions arising require to be determined also bearing in mind the new law (the Delhi VAT Act), it must be observed here that the position, functions and role of the Commissioner, VAT in the new regime is, more or less, similar to that of the erstwhile Commissioner, Sales Tax. As mentioned earlier, with reference to Section 66(4) of Delhi VAT Act (already quoted), the new law only adds clarity by (now) declaring expressly that the powers exercised by the VAT authorities (which includes the Commissioner, at the helm) are nothing but “administrative functions”. The new law also confers on the Commissioner, VAT responsibilities concerning registration of dealers, submission of returns, assessment, recovery, search, seizure, audit, investigation etc., as indeed the task of overall superintendence and control, as were exercisable earlier by Commissioner, Sales Tax. The Commissioner, VAT also provides the guidance to the VAT authorities lower down in order through the powers of revision (Section 74A), rectification of mistakes and review (Section 74B), addressing objections including against assessment orders (Section 74), determination of specific questions (Section 84) or ruling on general questions (Section 85).

55. Though the Commissioner, VAT is responsible to guide the other VAT authorities by issuing from time to time such orders, instructions or directions as are deemed necessary for due and proper administration of the

law, it does not extend to requiring any such authority to determine any objection or question “in a particular manner” (Section 67).

56. It is of interest to note that, under the new law, the right of the Commissioner to prefer appeal to the Appellate Tribunal has been taken away. It is only an assessee aggrieved by a decision of the Commissioner under Sections 74 (objections against assessment or other orders or decision of the other VAT authorities), 84 (determination of specific questions) or 85 (rulings on general questions involving interpretation etc.) as may prefer an appeal before the Appellate Tribunal.

57. The Delhi VAT Act also provides for “offences and criminal penalties” (Section 89). A provision similar to the one contained in Section 54 of Delhi Sales Tax Act is included in Delhi VAT Act for compounding of offences in the form of Section 93 which reads as under:-

“93 Compounding of offences: (1) The Commissioner may, before the institution of proceedings for any offence punishable under sub-section (4) of section 89 of this Act or under any rules made under this Act, accept from any person charged with such offence by way of composition of offence, a sum not exceeding fifty thousand rupees or a sum not exceeding three times the amount of tax which would thereby have been avoided, whichever is higher.

(2) On payment of such sum as may be determined by the Commissioner under sub-section (1) of this section, no further proceedings shall be taken against such person in respect of the same offence.” [emphasis supplied]

58. It is clear that Section 93 of Delhi VAT Act differs materially from Section 54 of Delhi Sales Tax Act. Under the repealed law, the composition is permissible either before or even “after the commencement of the proceedings” in respect of the offence. In contrast, under Section 93 of

Delhi VAT Act, the authority to compound is restricted to the period “before the institution of proceedings” for an offence under the law.

59. The order dated 07.03.2006 of Commissioner, VAT which was challenged before the Appellate Tribunal (leading to the impugned order) was passed after the Delhi VAT Act had come into force. But, since Section 106(4) saves the provision of the repealed act for purposes “connected with or incidental to any of the purposes” under the old law, the move of the assessee herein for composition is bound to be examined in light of provisions contained in Section 54 of Delhi Sales Tax Act read with Rule 44 quoted earlier.

60. The general criminal law also permits compounding of offences. For purposes of the offences specified in the Indian Penal Code (IPC), there is an elaborate scheme available for such purposes, particularly, in the form of Section 320 of the Code of Criminal Procedure. Broadly speaking, the IPC offences are split into two categories; first, where the parties involved are at liberty to compound and approach the criminal court with the request for closure, and secondly, the class of offences where some further scrutiny is necessary by the court before the offence can be compounded. The check provided by the law in the latter category is in the form of “permission of the court”.

61. Given the nature of the corresponding provision in the special law with which we are presently concerned, it is the first category, provided for in Section 320(1) of the Code of Criminal Procedure, which is more relevant. The clause indicates, in a tabular form, as to the offences (of IPC) which may be compounded and by whom. Noticeably, it is invariably the victim who was at the receiving end of such offence as must come forward

to inform the criminal court that he is ready to bury the hatchet by agreeing to compound with the offender. To illustrate, in case of voluntarily causing hurt (Section 323 IPC), it is the person to whom hurt has caused who is allowed to compound. Similarly, in a case of voluntary restraint or confinement (Sections 341 to 344 IPC), it is the person restrained or confined who is competent to compound. Further in, a case of theft (Section 379 IPC), the owner of the property which was stolen only may agree to forgive and forget and compound the offence. Of course, there are necessary provisions made to cover the disability (minority etc.) or death. The criminal court in seisin of the matter only needs to inquire as to the voluntariness of the move by both sides. Upon satisfaction to that effect being recorded, the court accepts the composition which has the effect of acquittal [Section 320(8) of Code of Criminal Procedure]. In such cases, the criminal court is not expected to go behind the terms of the compromise leading to the compounding of the offence. Undoubtedly, the hallmark is voluntariness of the consent of the victim (person competent) to compound. It is purely his discretion and his call in which respect his hand cannot be forced.

62. But then, the above is the scheme for compounding of offences defined in the Penal Code, where, generally speaking, private interests are involved. Besides such offences specified as compoundable by the Code of Criminal Procedure, special enactments which create other offences (constituted on account of breaches of the provisions of such laws) add to the list of other compoundable ones. The special enactments also generally specify not only the forum where such offences are to be tried but also the special procedure (if any) required to be followed (having regard to the

exceptional purposes of such law). Chapter XXII of the Income Tax Act, 1961 is a case in point.

63. The appellant has relied on *Assistant Commissioner, Assessment-II, Bangalore and others v. Valliapa Textiles Ltd. and Anr* (2003) 263 ITR 551 (SC) and *V.G. Paneerdas & Co. Pvt Ltd. & Ors. V. Nagarthana, Assistant Commissioner of Income Tax & Anr* (2004) 267 ITR 283 (Mad.) to argue that compounding of an offence is not a right of the accused nor is it a unilateral act. It is submitted that if the statutory authority vested with the discretionary power in this behalf does not accord consent, a direction cannot be issued to the contrary, not even in exercise of power under Section 482 of Code of Criminal Procedure for compounding of the offence.

64. While there is no quarrel with the above proposition of law, it is trite that if the special law providing for a new offence (taking care of breaches of its provisions) also prescribes a certain procedure for its trial, pre-requisites for investigation or prosecution, presumptions or its classification (cognizable, bailable, compoundable etc.), the general procedural law (including rules of evidence) is to be applied as amended or modified by such special law. To put it simply, the criminal procedure (for investigation, trial etc.) in such cases is to be read as a complete code for such purposes, in the form it takes in light of modifications brought in by the special Law.

65. Seen in above light, Section 54 of the Delhi Sales Tax Act, read with Rule 44 of Delhi Sales Tax Rules is the complete code within which the Commissioner, Sales Tax had to examine and decide on the application for composition by the assessee. Drawing parallel with the provision contained in Section 320(1) of the Code of Criminal Procedure, the Commissioner, Sales Tax is the “person”, specified by Section 54, by whom the offences

under Section 50 of Delhi Sales Tax Act might be compounded. But, in contrast of Section 320(1) of the Code of Criminal Procedure, the Commissioner, Sales Tax while dealing with such requests for composition would not be a person representing a private or personal interest. Being a public functionary, and a custodian of the Revenue's interest, he is expected to deal with such requests not on the basis of whims or caprice, not the least uncanalized or arbitrarily, but in a manner that subserves the best interest of the cause he is expected to espouse. This, indeed, is the spirit of the guidance (in the form of "conditions") provided to the Commissioner by Rule 44(1) read with Section 54(1) of the Delhi Sales Tax Act quoted earlier.

66. As indicated by the provision and Rule referred to above, the move for composition of offence under Delhi Sales Tax Act is initiated by the person sought to be prosecuted. Such applicant makes the offer of composition money. The Commissioner is called upon to examine the said offer on the touchstone of "justice" and "public policy". If the Commissioner is satisfied that in the facts and circumstances, the application for composition deserves to be considered further, it having passed the muster of the said two touchstones, the only thing remaining for him to consider is if the composition money offered is "adequate". Rule 44(1)(c) enjoins upon him to take care that the composition money he accepts is not "illusory", since it is antithetical to the requirement of it being "adequate".

67. The money which the Commissioner accepts for composition of offence is meant for Revenue. To examine the adequacy of the money offered, he has available to him the necessary guidance from the law. Generally, minimum amount of composition is prescribed by Section 54(1)

as ₹5,000/- but for specified offences, including under Section 50(1)(a) the amount of composition money may be higher though subject to ceiling of three times the amount of tax that would have escaped from the levy but for the discovery of true facts.

68. In the scheme for composition of offences under Delhi Sales Tax Act, the matter cannot end merely by rejection of the request of the offender on the ground that the composition money offered is “inadequate”. Rule 44(2), quoted earlier, clearly envisages that it is the obligation of the Commissioner to “determine” the amount of money subject to deposit of which he is agreeable to the composition. He cannot close the request for composition merely by conveying the composition money offered is inadequate. He must determine the appropriate amount of money and intimate to the offender giving him requisite time for its deposit.

69. Lest it is misunderstood, it must be clarified that the law does not expect or compel the Commissioner to accept the request for composition in each case. It only enjoins upon him to consider the request in light of the guidance provided by the law. As observed above, the process on the application for composition involves several stages. At the first stage, the Commissioner examines the request for composition on the principles of “justice” and “public policy”. The Commissioner is within his jurisdiction to reject the prayer for composition if he finds it fails on such tests. If, on the other hand, he finds no such inhibition, the Commissioner proceeds further to examine the adequacy of the compensation offered. As mentioned above, inadequacy of the sum offered does not result in immediate rejection. The Commissioner must determine the adequate amount and call upon the offender to pay up accordingly. It may be added that given the scheme of

the law, these stages have to be covered in that order.

70. Though for purposes of the present discussion it may be a digression, considering the directions that we intend to issue, it must also be observed here that unlike the scheme of Section 320 of the Code of Criminal Procedure (referable to the general penal law), in case of composition of offences under Section 54 of Delhi Sales Tax Act, the matter does not depend upon the approval of the criminal court which is seized of such prosecution. The composition is brought about and given effect to by the offender and the Commissioner on their own. The terms are settled, formalized and acted upon outside the criminal court. Once the Commissioner accepts the composition on conditions as to which he has reached an appropriate satisfaction, within the sphere of guidance given to him by the law, further “proceedings” before the criminal court (even if already commenced) for such offence under the special law can “not be further proceeded with” [Section 54(2)].

71. To put it simply, the Commissioner, who initiates the prosecution is also authorized by this law to compound and withdraw the case from the prosecution. There is no role or discretion given to the criminal court (court of Metropolitan Magistrate) to insist on its scrutiny or withhold its approval.

72. Seen in the above light, the power vested in the Commissioner to accept composition of offence (under Section 54) is of great significance and far-reaching consequences. All the more for this reason, that the decision taken by the Commissioner in matters pertaining to his jurisdiction under Section 54 of Delhi Sales Tax Act be subject to scrutiny by the higher forum(s) in appellate jurisdiction.

73. It is necessary to also take note of Section 56 of the Delhi Sales Tax

Act which permits imposition of penalty by the Commissioner (or other sales tax authorities) in case an assessee is found having indulged in concealment of sales or furnishing inaccurate particulars or making false representation. Noticeably, the penalty that may be imposed under this clause is generally a sum not exceeding two and half times the tax that would have been levied but for such concealment etc. There is indeed some overlapping in the situations constituting the mischiefs sought to be discouraged by Section 56 or those made penal by Section 50.

74. There, however, cannot be a punitive action on both fronts. If the Commissioner chooses to proceed under Section 56 to impose penalty, he is not allowed to launch prosecution. The first proviso to Section 50(1) prohibits criminal action if penalty has already been imposed.

75. It must be observed in above context that the law expects the Commissioner to take a conscious and informed decision. The prosecution for criminal offence under Section 50 is to be launched not as a general rule but in exceptional cases. If the Commissioner finds that enough deterrence can be provided by penalty to be imposed under Section 56 (inasmuch as it permits him to impose penalty two and half times the tax that has accrued in favour of the Revenue), he would choose that course instead of sending the matter to criminal court under Section 50. Noticeably further if, given the gravity of the facts involved, the matter has been taken to the criminal court for prosecution, the consequences for the wrongdoer are stiffer, even if he is able to persuade the Commissioner to compound, for the reason the composition money might represent even a higher revenue in the form of three times the tax that would have been evaded.

76. Examined in the light of the position of law noticed above, we find

that the authorities below, in the facts and circumstances of the case, have failed to properly deal with the request for composition.

77. The amount of sales tax which would have been evaded, if the fabricated ST-1 form had been accepted, has not been computed at any stage. At least, we are not able to locate any finding of fact in such regard in any of the orders placed before us. It is found from the order dated 16.01.2006 of the Appellate Tribunal that the Commissioner had rejected the request for composition by his order dated 01.06.2005 essentially for the reason “adequate composition amount” had not been offered. The amount offered with the application for composition initially moved was only ₹50,000/-. Given the quantum of amount subsequently offered, in the course of appeal before the Appellate Tribunal, it is apparent that the initial offer was “illusory” and so was bound to be rejected in view of Rule 44. But then, the Commissioner failed to carry out his statutory obligation to determine, or intimate, appropriate amount on deposit of which the offence could be lawfully compounded. He was bound to do so since he had not indicated any other inhibition except the inadequacy.

78. When the matter was carried in appeal, the respondent offered (what is described in the relevant proceedings as) an amount equivalent to three times of the sales tax chargeable on the transaction in question. Assuming the calculation was correct, this would be the maximum amount that the State could demand of the offender for composition. The Appellate Tribunal by its order dated 16.01.2006 clearly indicated that a case had been made out for composition. It would have been within its jurisdiction to close the matter by issuing requisite directions for the deposit and follow-up action by the Commissioner under Section 54. But, assumably because

confirmation had to be reached as to whether the amount now offered actually represented three times the sales tax leviable, the matter was remitted by the Appellate Tribunal to the Commissioner with operative part of its order dated 16.01.2006 using the expression “may consider”. Since the Commissioner had not rejected the request earlier for any reason but of adequacy and no other adverse consideration had been mentioned before the Appellate Tribunal, the scrutiny at that stage was restricted to determination of the composition money only. As noticed earlier, the criminal action was initiated in this case for offence under Section 50(1) and not under Section 50(2) of Delhi Sales Tax Act. It only means that in the assessment of the sales tax authorities, there was no “willful” conduct on the part of the respondent.

79. In the above facts and circumstances, the expression “may consider” used by the Appellate Tribunal in its order dated 16.01.2006 could not have been construed by the Commissioner as anything but a direction. By using such phraseology, the Tribunal was being courteous. The only task remitted was to determine if the amount offered was the maximum permissible composition money that could be levied. In this fact situation, it was the turn of the Commissioner to show due deference to the views of the higher forum (Appellate Tribunal) and restrict his inquiry only to the subject of determination of the composition money.

80. As already found by us in earlier part of this judgment, the decision of the Commissioner on application under Section 54 for composition cannot be treated as final or immune from further scrutiny by the appellate authority. It necessarily follows that the Appellate Tribunal scrutinizing such order is competent to pass all such orders as the lower authority

(subject to its appellate jurisdiction) is competent to pass. Since the Appellate Tribunal allowed the request for composition on modified terms and remitted the matter to the Commissioner, the latter was bound by the said mandate.

81. We, thus, answer the questions of law formulated by order dated 28.07.2014 and additionally framed in Para 6 above accordingly against the appellant and in favour of the respondent.

82. In this view, it was not correct for the Commissioner, to whom the matter had been remitted by the Appellate Tribunal by its order dated 16.01.2006, to assume that it was not bound by the views of the Appellate Tribunal, particularly by relegating the case back to the stage of scrutiny of the request for composition on considerations other than that of adequacy of the composition money.

83. The order dated 07.03.2006 passed by the Commissioner, VAT in the remand proceedings has been quoted earlier. The considerations on which the request for composition was again rejected have been culled out by us in Para 18. Noticeably, these reasons had not prevailed that the Commissioner at the time of earlier rejection of the request. Even otherwise, the said considerations do not appeal to us as valid considerations for rejection of the request in the case at hand, particularly in the wake of remand order dated 16.01.2006 rendered by the Appellate Tribunal. They are general in nature and if allowed to be applied in such fact situations, they would render the provision for composition of offences under Section 54 nugatory.

84. While we affirm the conclusion reached by the Appellate Tribunal in the impugned order dated 07.01.2014 as to the impropriety of the second rejection of the request for composition, we do not uphold the findings that

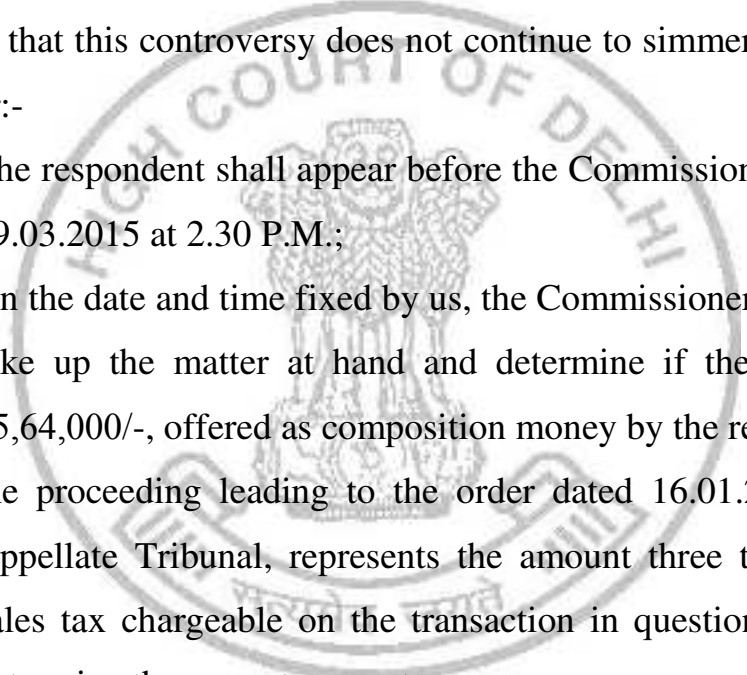
the Commissioner had indulged in “disobedience” or that his order bordered on “contempt”. There is no foundation for such adverse views to be recorded. We must also point out to the Appellate Tribunal that errors do occur and the hierarchy of superior forums (appellate etc.) is provided to bring in corrections. Wrong orders passed by the forum lower in order, unless actuated by malice, do not necessarily undermine “majesty of law” or lower the dignity of superior authorities. We, thus, direct the observations appearing in Para 3 of the impugned order dated 07.01.2014 to be struck out.

85. We, however, must add that by rejecting the request for composition, first on 01.06.2005 and then again on 07.03.2006, the Commissioner has failed to live up to the cause of Revenue for protecting which he is deployed. But for the manner in which the request has been handled, the composition money in the sum of ₹5,64,000/- (assuming it represents three times the sales tax leviable) would have come as revenue in 2005-2006. In terms of the directions that we propose to issue in this matter, this money would hopefully now come to be deposited. Given the period of virtually a decade that has passed by, having regard to the effect of inflation, the real value of the money in the hands of the Revenue now would be a fraction of what would have been earned originally. Regrettably, the delay in the decision on appeal No.2/ATVAT/06-07 by the Appellate Tribunal (in which impugned order dated 07.01.2014 was passed), for which no apparent reasons have been cited before us, has only added to the loss to the exchequer.

86. Given the fact that no “willful” conduct was alleged by the Commissioner, Sales Tax in the report of the criminal case, in our view, the modified application of the respondent for composition, as submitted before the Appellate Tribunal at the stage of consideration of appeal No.

75/STT/05-06, deserves to be accepted subject, of course, to confirmation that the composition money offered (₹5,64,000/-) in fact represents the amount three times of the sales tax chargeable on the transaction in question, this insofar as the prosecution for offence under Section 50(1)(a) is concerned. For the other offence under Section 50(1)(j), the amount of ₹5,000/- offered as composition money is the maximum prescribed in law. There is no reason why the composition money thus offered ought not to be accepted.

87. In order that this controversy does not continue to simmer further, we direct as under:-

- 
- (i) The respondent shall appear before the Commissioner, VAT on 09.03.2015 at 2.30 P.M.;
 - (ii) On the date and time fixed by us, the Commissioner, VAT shall take up the matter at hand and determine if the amount of ₹5,64,000/-, offered as composition money by the respondent in the proceeding leading to the order dated 16.01.2006 of the Appellate Tribunal, represents the amount three times of the sales tax chargeable on the transaction in question and if not determine the correct amount;
 - (iii) After such determination, the Commissioner, VAT shall give opportunity to the respondent to deposit the said amount in the Government treasury as composition money for offence under Section 50(1)(a), along with ₹5,000/- for the offence under Section 50(1)(j) of Delhi Sales Tax Act, giving suitable further instructions in terms of Rule 44 of Delhi Sales Tax Rules;
 - (iv) Upon deposit of the amount(s) as above, in terms of the above

directions, the offences punishable under Section 50(1)(a) and (j) Delhi Sales Tax Act, for which the respondent is facing criminal prosecution on report by the Commissioner, Sales Tax, shall stand compounded and the Commissioner shall forthwith send an intimation about the composition of such offences to the criminal court trying the said case in terms of Rule 44(3) of Delhi Sales Tax Rules; and

- (v) Upon intimation about composition of offences under Delhi Sales Tax Act being received by the criminal court seized of the matter, the proceedings to that extent shall stand terminated and be not further proceeded with. We clarify that such discontinuance of the proceedings for offences under Section 50(1)(a) and (j) of Delhi Sales Tax Act shall not affect, in any manner whatsoever, the criminal proceedings on the report of the police for other offences and the trial in that regard may continue further in accordance with law.

88. While disposing of the appeals in above terms, insofar as it pertains to the matter involving the respondent, we also set aside the directions of the Appellate Tribunal in the impugned order dated 07.01.2014 whereby cost of ₹10,000/- has been ordered to be paid by the appellant to compensate the respondent.

R.K.GAUBA
(JUDGE)

S. RAVINDRA BHAT
(JUDGE)

FEBRUARY 23, 2015/ik