

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7400 OF 2015

WITH
WRIT PETITION NO. 7934 OF 2015

Johnson Matthey Chemicals	}	
India Pvt. Ltd.	}	
A company incorporated	}	
under the Companies Act,	}	
1956, having his office at	}	
Plot No. 6, MIDC Taloja,	}	
Raigad - 410 208	}	Petitioner
versus		
1. The State of Maharashtra	}	
through the Government	}	
Pleader, High Court, Mumbai	}	
	}	
2. The Commissioner of	}	
Sales Tax	}	
having his office at 3V-7,	}	
3 rd floor, Old Vikrikar	}	
Bhavan, Mazgaon,	}	
Mumbai - 400 010	}	
	}	
3. The Joint Commissioner,	}	
Sales Tax, HQ-1,	}	
Maharashtra, having his	}	
office at Old Vikrikar	}	
Bhavan, Mazgaon,	}	
Mumbai - 400 010	}	
	}	
4. The Deputy Commissioner	}	
of Sales Tax	}	
havinghis office at E-006,	}	
Business Audit Raigad	}	
Division, Navi Mumbai -	}	
400 703	}	Respondents

Mr. V. Sridharan – Senior Advocate with Mr. Prakash Shah, Mr. Rahul Thakar, Mr. Puneeth Ganapathy, Mr. Jas Sanghavi and Mr. Aniket Ghosh i/b. M/s. PDS Legal for the Petitioner.

Mr. V. A. Sonpal – Special Counsel for Respondent Nos. 1 to 4.

**CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.**

**Reserved on :- DECEMBER 15, 2016
Pronounced on:- FEBRUARY 16, 2016**

JUDGMENT :- (Per S.C.Dharmadhikari, J.)

- 1) Rule in both Petitions. Respondents waive service. By consent, Rule is made returnable forthwith.
- 2) By these Writ Petitions, under Article 226 of the Constitution of India, the Petitioner seeks the following reliefs (WP/7400/2015):-

“(a) that this Hon'ble Court be pleased to declare that the impugned Trade Circular No. 2T of 2010 dated 11.01.2010 is without jurisdiction, and is ultra vires Section 6A of the Act and is of no effect and accordingly, set aside the same;

(b) that this Hon'ble Court be pleased to further declare that the circular no. 16T of 2007 dated 20.2.2007 read with Circular No. 5T of 2009 dated 29.1.2009 alone are legal, valid and correct;

(c) that this Hon'ble Court be pleased to declare that the Section 6A is inapplicable to interstate movement of final goods returned by a job workers to his customer, after job work.

(d) In the alternative and without prejudice to prayer (c) above, this Hon'ble Court be pleased to declare that Section 6A is ineffective, incomplete and inoperative is of no avail.

(e) that this Hon'ble Court be pleased to issue a writ of Certiorari or a writ in the nature of Certiorari or any other writ, order or direction under Article 226 of the Constitution of India, calling for the records pertaining to the Petitioner's case and after going into the legality and validity thereof to quash and set aside impugned order dated 17.07.2015 passed by the Tribunal in Appeal No.447/2015 and impugned Assessment Order dated 14.08.2014;

(f) that this Hon'ble Court be pleased to issue a writ of Mandamus or a writ in the nature of Mandamus or any other appropriate writ or order or direction under Article 226 of the constitution of India ordering and directing the Respondents by themselves, their officers and subordinates (i) to withdraw and/or cancel impugned order dated 17.07.2015 passed by the Tribunal in appeal No. 447/2015 and impugned Assessment Order dated 14.08.2014; and (ii) to refrain from taking any steps or proceedings in pursuance of and/or in furtherance of and/or in implementation of the (i) impugned Trade Circular No. 2T of 2010 dated 11.01.2010 (ii) Impugned order dated 17.07.2015 passed by the Tribunal in Appeal No. 447/2015 and (iii) impugned Assessment Order dated 14.08.2014.”

3) The Petitioner before us is a private limited company incorporated under the Companies Act, 1956 and Respondent Nos. 1, 2, 3 and 4 are all exercising powers and discharging functions under the Maharashtra Value Added Tax Act, 2002 (for short “the MVAT Act”).

4) The Petitioner holds a registration number as set out in para 4 of the Petition. It is claimed that the Petitioner is manufacturer and job worker, engaged in the manufacture of

different grades of support catalyst, including activated charcoal support. It is stated that this is predominantly a process resulting in the production of recharged catalyst from spent catalyst. It is stated that the Petition relates to job work transactions. The Petitioner receives a specified quantity of spent catalyst from its customers from within as well as outside the state of Maharashtra. The Petitioner undertakes job work of converting the spent catalyst received from the customers into support catalyst and sends back the recharged support catalyst to such customers.

5) The mode of transactions undertaken between the Petitioner and its customers is described in para 6 of the Petition. From para 7 onwards, the Petitioner describes what is a catalyst and what is a support catalyst. We are not inclined to refer to all the details for the simple reason that the Petitioner claims that the process followed under the Central Excise Act, 1944 of receiving the spent catalyst and issuing processed catalyst is set out so as to appreciate that the Petitioner undertakes job work transactions and for which excise duty is not required to be paid.

6) The entire details from para 9.1, therefore, are unnecessary for our purpose.

7) It is claimed that the Petitioner received notices from the Deputy Commissioner of Sales Tax under the provisions of MVAT Act and the Central Sales Tax Act, 1956 (for short **“the CST Act”**). Annexure 'J' is a copy of one such notice.

8) The Petitioner, during the course of assessment, appeared before the Deputy Commissioner and submitted that the present transaction is a job work only and hence not liable to sales tax. The Petitioner filed detailed written submissions and complains that despite this, an order of assessment has been passed on 14th August, 2014, which was received by the Petitioner on 7th November, 2014.

9) The case of the Sales Tax Department as reflected in the assessment order is then set out in the Petition from para 12 onwards and the Petitioner urges that it filed an Appeal to the Joint Commissioner of Sales Tax. An order on the stay application therein imposing a condition of part payment of Rs.7,96,00,000/- under the CST Act and Rs.35,00,000/- under the MVAT Act was passed dated 24th March, 2015. The Petitioner preferred an Appeal against this order of the Joint Commissioner of Sales Tax dated 24th March, 2015 before the Tribunal and the Tribunal dismissed the VAT Appeal No. 447 of 2015 under the CST Act and ordered deposit of Rs.7,96,00,000/-. The Appeal

under the MVAT Act was partly allowed and the part payment was reduced to Rs.11,00,000/-.

10) It is these orders which are challenged in this Petition and on various grounds.

11(a) Mr. Sridharan, learned Senior Counsel appearing for the Petitioner submitted that in para 17 of the impugned order, the Deputy Commissioner relied on Trade Circular No. 2T of 2010 dated 11th January, 2010. He held that the Petitioner has not produced the requisite 'F' forms for the inter-State return of catalyst. Therefore, such movement of the catalyst back to the customers in other States will be deemed to be inter-State sales liable to be taxed in the State of Maharashtra as per section 6 of the CST Act, 1956.

11(b) The Deputy Commissioner has consequently levied tax on notional value of the precious metal recovered from the spent catalyst apart from the job work charges received by the Petitioners.

11(c) As a result, while the Petitioner has an income with respect to job work charges, of approximately Rs.10 crores, the impugned assessment order has created a liability (including interest and a penalty of 25%) of Rs.14,58,98,608/-, far in excess of the actual job work consideration.

11(d) The breakup of the demand raised is as follows:-

Sr. No.	Particulars	Amount
1	Differential tax (excluding tax paid with returns)	7,96,71,551
2	Interest U/S 30(2)	80
3	Interest U/S 30(3)	4,63,09,089
4	Penalty U/S 29(3) @ 25% of Tax	1,99,17,888
5	Total Demand	14,58,98,608

11(e) In paragraphs 11-12 of the assessment order, the Deputy Commissioner also takes an alternate ground that transaction amounts to outright sale.

11(f) Therefore, the Petitioner is challenging the legality and validity of the Circular No. 2T of 2010 dated 11.1.2010.

11(g) The statement of object and reasons to the CST (Amendment) Act, 1972 reads as under:-

“.....

Central Sales Tax is not leviable in respect of transactions of transfer of goods from a head office (or a principal) to branch (or an agent) or vice-versa as these transactions do not amount to sales. This aids evasion, in that the dealers try to reflect even genuine sales to third parties as transactions of this nature. Accordingly it is proposed to provide that the burden of providing that the transfer of goods in such cases is “otherwise than by way of sale” shall lie on the dealer who claims exemption from tax on the ground that there was in fact no sale.”

11(h) Relevant portion of section 6A(1) (as initially enacted) (omitting unnecessary words) reads as follows:

“S. 6A. Burden of proof, etc., in case of transfer of goods claimed otherwise than by way of sale:-

Where any dealer claims that he is not liable to pay tax under this Act, in respect of any goods, on the ground that the movement of such goods from one State to another was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal, as the case may be and not by reason of sale, the burden of proving that the movement of those goods was so occasioned shall be on that dealer and for this purpose he may furnish to the assessing authority, within the prescribed time, a declaration,, containing the prescribed particulars, along with the evidence of despatch of such goods”

11(i) Vide Notification dated 9th February, 1973, Rule 12(5) was inserted in Central Sales Tax (Registration and Turnover) Rules, 1957. It states that declaration referred to section 6A(1) shall be in Form 'F'.

11(j) The said 'F' form would be obtained by the transferee from his sales tax authorities and forwarded to the transferor/dealer in the dispatching state. Transferor would furnish it to his tax authorities in despatching State. This would be proof that goods had been actually received by the transferee.

11(k) It is clear from the emphasised portions above that section 6A contemplates only three transferees, viz. (i) transfers made to one's own place of business (branch transfer) in another state or (ii) to his agent in another state or (iii) to his principal in another state.

11(l) There are no rules prescribed by Central Government or State of Maharashtra under the CST Act, 1956 governing the procurement forms in the case of transactions between two independent principals.

11(m) Central Government has framed Rule 12(5) of the CST (Turnover and Registration) Rules, 1957. The said Rule reads as under:-

“12(5) The declaration referred to in sub-section (1) of section 6-A shall be in Form F.
Provided that a single declaration may cover transfer of goods, by a dealer, to any other place of his business or to his agent or principal, as the case may be, effected during a period of one calendar month.”

11(n) As is clear from the provision above, even the Rule prescribing 'F' form under the CST Rules, 1957 does not contemplate 'F' form between two independent principals.

11(o) Similarly, Rule 4 of the CST (Bombay Rules), 1957, framed by the State Government under section 13(4) of the CST Act, provided as follows:

“R. 4

.....

(13) The “counterfoil” of the declaration in Form F shall be retained by the dealer furnished the declaration and the other two portions marked “original” and “duplicate” shall be made over by him to the agent or as the case may be, principal.”

11(p) The CST (T&R) Rules or the CST (Bombay Rules) have not contemplated a form 'F' to be required in a transaction between two principals.

11(q) The Respondents had issued Trade Circular No. 16T of 2007 dated 20th February, 2007. By the said trade circular, the position about non requirement of 'F' forms in relation to job work transaction was clarified. It was also specifically mentioned in the circular that there is no applicability of section 6A of the CST Act, 1956 in the case of job work transactions executed on principal to principal basis.

11(r) This earlier trade circular 16T of 2007 dated 20th February, 2007 was re-affirmed by the Respondents themselves vide circular 5T of 2009 dated 29th January, 2009. The respondents, duly noted decision of the Hon'ble Allahabad High Court in *Ambica Steels Limited*, but distinguished it. Following is the relevant portion of said circular dated 29th January, 2009:-

“The High Court has take a view that it would be necessary to furnish declarations in Form F in such instances (job work). It also appears that the question whether section 6A of the CST Act deals only with transactions between agent and principal to principal basis was not raised before the High Court.

3. In the trade circular dated 20th February, 2007, a view has been taken that when goods are sent to another state for job work, the transaction will normally be on a principal to principal basis. It is further stated in the circular that section 6A will have no applicability as regards the transactions where the goods are sent on a principal to principal basis. There is, however, no change in the views of the Sales Tax Department as expressed in the said Trade Circular.”

11(s) The order dated 31st March, 2009 of the Supreme Court of India in the case of *Ambica Steels* does not lay down any

law, and with respect, on section 6A. Therefore, there was no justifiable basis on which trade circular 16T of 2007 was withdrawn by Trade Circular 2T of 2010.

11(t) This clearly evidences that the Respondents have misunderstood the effect of the order of the Supreme Court in Ambica Steels. In fact, unnumbered para 3 of the order of Supreme Court and penultimate para of said order dated 31st March, 2009 of the Supreme Court dated 31st March, 2009 itself recognises that view taken by the Sales Tax authorities in U. P. is not the view taken by Sales Tax authorities of other States about applicability of section 6A(1) for a job work transaction.

11(u) Therefore, there was no reason for the Respondents to have changed their well-founded views as mentioned in the earlier trade circulars 16T of 2007 dated 20th February, 2007 and 5T of 2009 dated 29th January, 2009 and issued the impugned Circular 2T of 2010 dated 11th January, 2010. It has thus been issued on a premise which is patently incorrect and is required to be set aside by this Court.

11(v) Section 6A (2) of the Act, reads as follows:

“(2) If the assessing authority is satisfied after making such enquiry as he may deem necessary that the particulars contained in the declaration furnished by a dealer under sub-section (1) are true and no inter-state

sale has been effected, he may, at the time of, or at any time before, the assessment of the tax payable by the dealer under this Act, make an order to that effect and thereupon the movement of goods to which the declaration relates shall, subject to the provisions of sub-section (3), be deemed for the purpose of this Act to have been occasioned otherwise than as a result of sale” (Emphasis Supplied)”

11(w) Therefore, as clearly provided in section 6A(2), the assessing authority is required to ascertain two independent things (i) whether the particulars of the F form are true, (ii) whether an inter-state sale has been effected. That these are independent requirements, is clear from the words “and no inter-state sale has been effected” employed in section 6A(2).

11(x) Therefore, even after furnishing of declaration in 'F' form, whether an inter-state sale has been effected has to be independently looked into by the assessing authority. The requirements of an inter-state sale are only provided in section 3. Therefore, under section 6A(2) the assessing officer would have to establish the requirements of section 3 i.e. (i) a transaction of sale has taken place and (ii) the sale occasioned a movement of the goods sold inter-state. While section 6A(1) may aid in proving the latter, it will not dispense with primary requirement that a completed sale has indeed taken place.

11(y) If section 6A is interpreted in such a manner so as to conclude that the mere non production of the prescribed form will

itself deem a return of goods as a sale, then clearly the expression “no inter-state sale has been effected” employed in section 6A(2) would become redundant. Such an interpretation of section 6A is therefore not warranted.

11(z) Therefore, when contextually interpreted, with regard to the scheme of the CST Act, the object and purpose of section 6A and the words employed therein, it is clear that section 6A(1) itself does not deem a movement to be a sale, but only aids in characterising an already concluded sale as an inter-state sale.

11(aa) Accordingly, section 6A is applicable only for an established sale effected by a dealer from wherever effected. It can never apply to goods returned after job work which never involves a sale.

11(ab) Therefore, section 6A was only meant to counteract avoidance of tax and not to authorise the imposition of a new levy on transactions involving no sale whatsoever. Clearly, section 6A was never intended to 'deem' any transaction as a sale transaction, but purely as a machinery to identify whether a sale transaction involving inter-state movement would be an inter-state sale from despatching state or an internal/intra-state/local sale in the destination state.

11(ac) It is then urged that non production of the prescribed forms under section 6A only deems the movement to be linked to a sale and does not itself define movement to be a sale. Thus, the movement will not be deemed to be a sale. In that regard, reliance is placed upon several judgments. It has been contended that movement when is covenant or incident of the contract of sale, the movement will be considered as linked to the sale. For such a transaction, section 6 will apply to levy tax on the same. Section 6A(1) is only aid in establishing connection between movement and sale. If there is no sale at all, such a link need not be inquired into. The words “where a dealer claims that he is not liable to pay tax under this Act” it was because the inter-state movement of the goods ultimately sold was to be proved as not occasioned by or linked to the sale. This is the reason why the absence of a 'F' form will deem the movement to have been occasioned as a result of sale. The absence of the 'F' form does not deem the movement itself to be a sale, but only deems the movement to be linked to the ultimate sale so that tax may be levied under section 6 on such inter-state sale. Therefore, section 6A clearly presumes the existence of connection between inter-state movement and eventual sale by a dealer. Accordingly, when no sale by a dealer ever takes place in a transaction, such transactions clearly do not fall within the scope of section 6A. It

was also submitted that two other sections 18A and section 22(1B) of the CST Act would throw light on this aspect and therefore ought to be noticed. There is elaboration of this argument.

12) Hence, the entire foundation of the submissions is that section 6A, when read with its object and purpose, applies only in case a dealer claims that he is not liable to pay tax under the CST Act and not when a dealer claims that he has effected no sale.

13) In the written arguments, all these submissions are elaborated and with the assistance of additional materials.

14) In support of the contentions, Mr. Sridharan places reliance on the following decisions:-

- (i) Sales Tax Officer, Pilibhit vs. Budh Prakash Jai Prakash, **AIR 1954 SC 459.**
- (ii) Balabhagas Hulaschand vs. State of Orissa, **(1976) 2 SCC 44.**
- (iii) Consolidated Coffee Ltd. and Anr. vs. Coffee Board, Bangalore, **(1980) 3 SCC 358.**
- (iv) Tata Iron and Steel Co. Limited, Bombay vs. S. R. Sarkar and Ors., **AIR 1961 SC 65.**
- (v) The State of Bihar and Anr. vs. Tata Engineering and Locomotive Co. Ltd., **1970(3) SCC 697.**
- (vi) C. I. T., Bangalore vs. B. C. Srinivasa Setty, **(1981) 2 SCC 460.**
- (vii) Tata Sky Limited vs. State of Madhya Pradesh and Ors., **(2013) 4 SCC 656.**
- (viii) Govind Saran Ganga Saran vs. Commissioner of Sales Tax and Ors., **1985 (Supp) SCC 205.**
- (ix) Ambika Steels Limited vs. State of U. P. and Ors., **(2008) 12 VST 216 (All).**

- (x) Ambika Steels Limited vs. State of U. P. and Ors., **(2009) 24 VST 356(SC)**.
- (xi) A. C. P. L. Jewels Private Ltd. vs. Union of India and Ors., **(2011) 39 VST 44 (All)**.
- (xii) B. S. N. Industries Pvt. Ltd. vs. State of U. P. and Ors., **(2013) 61 VST 460 (All)**.
- (xiii) Hindustan Shipyard Ltd. vs. State of A. P., **(2000) 6 SCC 579**.
- (xiv) Patnaik and Company vs. the State of Orissa, **XVI STC 364**.
- (xv) Sentinel Rolling Shutters and engineering Company Pvt. Ltd. vs. The Commissioner of Sales Tax, **(1978) 4 SCC 260**.
- (xvi) Union of India vs. The Central India Machinery Manufacturing Company Ltd. and Ors., **(1977) 2 SCC 847**.
- (xvii) The South India Metal Works and Rolling Mills vs. The State of Madras, **(1960) 11 STC 507 (Mad)**.
- (xviii) Vishweshwardass Gokuldass vs. The Government of Madras, **(1962) 13 STC 113 (Mad)**.
- (xix) Motibhai Fulabhai Patel and Co. vs. R. Prasad, Collector of Central Excise, **1978 (2) ELT J370 (SC)**.
- (xx) M/s. Kirloskar Copeland Ltd. vs. The State of Maharashtra, **Second Appeal No. 428 of 2009, dated 18th April, 2011 (Maharashtra Sales Tax Tribunal, Mumbai)**.
- (xxi) M/s. Vishnu Agencies Pvt. Ltd. vs. Commercial Tax Officer and Ors., **(1978) 1 SCC 520**.
- (xxii) K. Yegnasankaranarayana Iyer vs. The Government of Madras, **(1965) 16 STC 257**.
- (xxiii) Century Shipping and Manufacturing Company Ltd. vs. Union of India, **1981 (8) ELT 676 (Bom.)**.
- (xxiv) Dhampur Sugar Mills Ltd. vs. Commissioner of Trade Tax, U. P., **(2006) 5 SCC 624**.
- (xxv) Sree Akilandeswari Mills (P) Ltd. vs. Commercial Tax Officer, **(2004) 138 STC 397 (TNTST)**.
- (xxvi) State of Tamil Nadu vs. T. M. T. Drill (Private) Ltd., **(1991) 82 STC 59 (Mad)**.
- (xxvii) Cheerans Auto Agencies vs. State of Kerala, **(2011) 38 VST 488 (Ker)**.
- (xxviii) C. Mohammedali vs. State of Kerala, **(2010) 31**

VST 427 (Ker).

(xxix) Sale Tax Commissioner, U. P. vs. Ram Kumar Agarwal, (1967) 19 STC 400.

(xxx) M. Jaihind vs. State of Kerala, (1998) 111 STC 374 (Ker).

(xxxi) Commercial Taxes Officer vs. Ceat Tyres of India, (1988) 68 STC 53 (Raj).

(xxxii) Commissioner of Commercial Taxes, West Bengal and Anr. vs. West Bengal Commercial Taxes Tribunal and Anr., (1995) 99 STC 425 (WBTT).

(xxxiii) Coleman vs. Harvey, In the Court of New Zealand, C. A. No. 151 of 1987, dated 22nd March, 1989.

(xxxiv) Moriroku UT India (P) Limited vs. State of Uttar Pradesh and Ors., (2008) 4 SCC 548.

(xxxv) Merecer and Ors. vs. Craven Grain Storage Ltd., (1994) CLC 328, House of Lords.

(xxxvi) Ariyaputhira Padayachi vs. Muthukumara-swamy Padayachi (1914) 37 ILR Mad. 423.

(xxxvii) Commissioner of Central Excise and Customs, Kerala vs. Larsen and Toubro Ltd., 2015 (39) STR 913 (SC).

(xxxviii) The Additional Commissioner of Sales Tax vs. M/s. Kirloskar Copeland Ltd., Sales Tax Application No. 10 of 2012 (Bombay High Court), dated 8th May, 2014.

15) On the other hand, Mr. Sonpal, learned Counsel appearing on behalf of the Respondents would firstly submit that this Writ Petition itself cannot be entertained, as the Petitioner has ample opportunities to challenge the impugned order of assessment of tax.

16) Secondly, Mr. Sonpal would submit that it is futile to urge that this controversy is alive. The controversy stands fully answered and concluded by the authoritative pronouncement of

the Hon'ble Supreme Court of India in the case of *Ashok Leyland Ltd. vs. State of Tamil Nadu and Anr.* reported in **AIR 2004 SC 2836**.

17) Mr. Sonpal also relies upon the circulars and to submit that the understanding of the officer would not be decisive and conclusive. Further, the circular now impugned does not run counter to the legal position as enunciated. The enunciation of the legal position is that the CST Act contains in Chapter III provisions under the head "Inter-State Sales Tax". Section 6 sets out the liability to tax on the inter-state sale and by section 6A, on whom the burden of proof would fall in case of transfer of goods is claimed otherwise than by way of sale. Therefore, section 6A enacts a presumption or a rule of evidence. That presumption can be rebutted by the dealer claiming that he is not liable to pay tax under the CST Act in respect of any goods on the ground that the movement of such goods from one State to another was occasioned by reason of transfer of such goods by him to any other place of business or to his agent or principal as the case may be and not by reason of sale. If he has to discharge the burden, he must produce the material and which material can be accepted only after an inquiry and satisfaction is reached with regard to the truth and genuineness of the contents thereof. Read

thus, the section presents no difficulty. Read thus, it is not absence of or non issuance of form by any State or practice adopted by that State which is conclusive. Nothing can be derived from judgment in the case of *Ambika Steels Limited vs. State of U. P. and Ors.* reported in **(2009) 24 VST 356**. The Hon'ble Supreme Court of India in this judgment did not pronounce the law but passed an order. That order must be read as a whole. That only recorded the statement of the learned Senior Counsel appearing for Ambika Steel Limited and when that party was aggrieved by and dissatisfied with the judgment and order of the Division Bench of Allahabad High Court. Beyond noting the stand, the provisions relevant for our purpose, namely sections 6 and 6A have not been interpreted otherwise or contrary to what is submitted above. The provision has not been diluted nor the presumption or rule of evidence enacted is commented upon or otherwise.

18) For the above reasons, he would submit that the Petitions deserve to be dismissed.

19) For properly appreciating the rival contentions, at the cost of repetition, we must notice the essential facts. The Petitioner does not dispute that it is manufacturer and job worker both. It is engaged in the business of converting spent catalyst

into support catalyst through processing. After describing the role of the catalyst, it is the case of the Petitioners that because the metals contained in the spent catalyst are precious and highly expensive, their customers use them by subjecting them to reprocessing, which is the work undertaken by the Petitioner. It has described the process of receipt of spent catalyst from various customers from outside and within the State of Maharashtra and how the reprocessing is done. The spent catalyst are reprocessed and recharged and such transactions have been termed as job work/labour undertaken by the Petitioner. The Petitioner claims to have charged their customers only for this job work. In the assessment order, the Assessing Officer has held that the remarkable aspect of the entire process is that there is no one to one co-relation between the spent catalyst received and the fresh catalyst supplied to the customers. The Petitioner levy charges on the basis of weight of fresh catalyst supplied, which are obviously based on the price of the fresh catalyst, after considering the cost of the recovered precious metals from the spent catalyst and cost of such recovery. The Assessing Officer observes that the Petitioner has the facility of accelerated delivery on payment of extra charges and this is possibly only if fresh catalyst containing equivalent of metal in the spent catalyst is delivered.

20) The Revenue has held that there is a sale of fresh Nickel/Palladium catalyst and consideration of the same is received in the form of processing charges plus spent catalyst which contain 97 to 98 per cent precious metal. That is how the Assessing Officer added the price of spent catalyst and processing charges received by the Petitioner to determine the sale price.

21) We are not required to refer to the Assessing Officer's order in further details, as, admittedly, appeal against the same is pending. The matter has been brought at the stage of interim relief/stay of recovery of taxes pending the Appeal. The Petitioner claims that it received spent catalyst from their customers under the agreement for recharging/reactivating/re-energising the same and enhancing its strength after processing the spent catalyst received from the customers. Such catalyst contains precious metal. The recovery of precious metal is determined on the result of the process carried out and which is communicated to the customers. The recovery of precious metal may be as high as 97 to 98 per cent, but after the approval from the customers, the entire material received from the customers is processed for recovery of the precious metal and the same is further used in order to bringing into existence fresh Nickel/Palladium, which are fully charged or activated.

22) The Petitioner is finding fault with the approach of the Assessing Officer in not applying section 6A to this whole transaction, simply because the Petitioner failed to produce 'F' forms from outside Maharashtra customers in support of their plea that the movement of catalyst is not by way of sale.

23) Since that is the only issue presently arising and of interpreting the two provisions, it is necessary to refer to the scheme of the Central Sales Tax Act, 1956. That is an Act brought into effect on 21st December, 1956. It is an Act to formulate principles for determining when a sale or purchase of goods takes place in the course of inter-state trade or commerce or outside a State or in the course of imports into or export from India, to provide for the levy, collection and distribution of taxes on sale of goods in the course of inter-state trade or commerce and to declare certain goods to be of special importance in inter-state trade or commerce and specify that restrictions and conditions to which State laws imposing taxes on the sale or purchase of such goods of special importance shall be subject.

24) Therefore, it is an enactment formulating principles for determining when a sale or purchase of goods takes place in the course of inter-state trade or commerce or outside a State or in the course of imports into or export from India. The enactment

also seeks to levy, collect and distribute taxes on sales of goods in the course of such trade. Chapter I contains the preliminary provisions. Section 2 falling thereunder is titled as 'Definitions'. In that, term "dealer" is defined in section 2(b). The term "goods" is defined in section 2(d). Section 2(e) defines the term "prescribed" to mean prescribed by rules made under this Act and then comes section 2(g), which defines the term "sale". Section 2(g) and 2(h) read as under:-

"2(g) "sale", with its grammatical variations and cognate expressions, means any transfer of property in goods by one person to another for cash or deferred payment or for any other valuable consideration, and includes,-

- (i) a transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;
- (ii) a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;
- (iii) a delivery of goods on hire-purchase or any system of payment by instalments;
- (iv) a transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;
- (v) a supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;
- (vi) a supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration,

but does not include a mortgage or hypothecation of or a charge or pledge on goods;

2(h) "sale price" means the amount payable to a dealer as consideration for the sale of any goods, less any sum allowed as cash discount according to the practice normally prevailing in the trade, but inclusive of any sum charged for anything

done by the dealer in respect of the goods at the time of or before the delivery thereof other than the cost of freight or delivery or the cost of installation in cases where such cost is separately charged:

Provided that in the case of a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract, the sale price of such goods shall be determined in the prescribed manner by making such deduction from the total consideration for the works contract as may be prescribed and such price shall be deemed to be the sale price for the purpose of this clause.”

25) Therefore, a perusal of the two definitions would reveal as to how unless the context otherwise requires, “sale” with its grammatical variations and cognate expressions, means any transfer of property in goods by one person to another for cash or deferred payment or for any other valuable consideration and includes the acts specified in sub-clauses of clause (g) of section 2, but does not include a mortgage, or hypothecation of or a charge or pledge on goods. Similarly, section 2(h) defines “sale price” to mean the amount payable to a dealer as consideration for the sale of any goods, less any sum allowed as cash discount according to the practice normally prevailing in the trade, but inclusive of any sum charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof other than the cost of freight or delivery or the cost of installation in cases where such cost is separately charged.

26) Chapter II contains sections to enable formulation of principles for determining when a sale or purchase of goods takes

place in the course of inter-State trade or commerce or outside a state or in the course of import or export.

27) Section 3 is the first section falling in this Chapter and reads as under:-

“3. When is a sale or purchase of goods said to take place in the course of inter-State trade or commerce. – A sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase –

(a) occasions the movement of goods from one State to another; or

(b) is effected by a transfer of documents of title to the goods during their movement from one State to another.

Explanation 1. – Where goods are delivered to a carrier or other bailee for transmission, the movement of the goods shall, for the purposes of clause (b), be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee.

Explanation 2. – Where the movement of goods commences and terminates in the same State it shall not be deemed to be a movement of goods from one State to another by reason merely of the fact that in the course of such movement the goods pass through the territory of any other State.

28) A perusal thereof would indicate as to how by a deeming fiction, a sale or purchase of goods takes place in the course of inter-State trade or commerce if the sale or purchase occasions the movement of goods from one State to another or is effected by a transfer of documents of title to the goods during their movement from one State to another.

29) Thus, the sale or purchase of goods shall be deemed to take place in the course of such trade, if the sale or purchase occasions the movement of goods from one State to another or

that is effected by a transfer of documents of title to the goods. There are two explanations and explanation 1 deals with delivery of goods to a carrier or other bailee for transmission. That is to provide for commencement of the movement of goods. Then, by *Explanation 2*, it is clarified that merely because in the course of movement in the same State, the goods pass through the territory of any other State, then, that shall not be deemed to be a movement of goods from one State to another.

30) By section 4(1), it is stated that subject to section 3, sale or purchase of goods is inside a State, but it is deemed to have taken place outside all other states when a sale or purchase of goods is determined in accordance with sub-section (2). Therefore, in cases which are dealt with by section 3, the sale shall be taken to take place inside a State and that is clarified by sub-section (1) of section 4. However, such sale shall be deemed to have taken place outside all other States when the sale is determined in accordance with sub-section (2) of section 4. Sub-section (2) comes in for the purposes of indicating that in the case of specific or ascertained goods at the time the contract of sale is made and in the case of unascertained or future goods at the time of their appropriation to the contract of sale by the seller or by the buyer, then, the goods are deemed to be sold inside a State.

31) Similarly, by section 5, when a sale or purchase of goods is said to take place in the course of import or export is specified.

32) By Chapter III, inter-State Sales Tax and the liability to tax on the same is the aspect dealt with and section 6 and 6A falling in the same Chapter read as under:-

“6. Liability to tax on inter-State sales. -

(1) Subject to the other provisions contained in this Act, every dealer shall, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, not being earlier than thirty days from the date of such notification, be liable to pay tax under this Act on all sales of goods other than electrical energy effected by him in the course of inter-State trade or commerce during any year on and from the date so notified:

Provided that a dealer shall not be liable to pay tax under this Act on any sale of goods which, in accordance with the provisions of sub-section (3) of section 5 is a sale in the course of export of those goods out of the territory of India.

(1A) A dealer shall be liable to pay tax under this Act on a sale of any goods effected by him in the course of inter-State trade or commerce notwithstanding that no tax would have been leviable (whether on the seller or the purchaser) under the sales tax law of the appropriate State if that sale had taken place inside that State.

(2) Notwithstanding anything contained in sub-section (1) or sub-section (1A), where a sale of any goods in the course of inter-State trade or commerce has either occasioned the movement of such goods from one State to another or has been effected by a transfer of documents of title to such goods during their movement from one State to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods to a registered dealer, if the goods are of the description referred to in sub-section (3) of section 8, shall be exempt from tax under this Act:

Provided that no such subsequent sale shall be exempt from tax under this sub-section unless the dealer

effecting the sale furnishes to the prescribed authority in the prescribed manner and within the prescribed time or within such further time as that authority may, for sufficient cause, permit, -

- (a) a certificate duly filled and signed by the registered dealer from whom the goods were purchased containing the prescribed particulars in a prescribed form obtained from the prescribed authority; and
- (b) if the subsequent sale is made to a registered dealer, a declaration referred to in sub-section (4) of section 8:

Provided further that it shall not be necessary to furnish the declaration referred to in clause (b) of the preceding proviso in respect of a subsequent sale of goods if, -

- (a) the sale or purchase of such goods is, under the sales tax law of the appropriate State exempt from tax generally or is subject to tax generally at a rate which is lower than three per cent. or such reduced rate as may be notified by the Central Government, by notification in the Official Gazette, under sub-section (1) of section 8 (whether called a tax or fee or by any other name); and
- (b) the dealer effecting such subsequent sale proves to the satisfaction of the authority referred to in the preceding proviso that such sale is of the nature referred to in this sub-section.

(3) Notwithstanding anything contained in this Act, no tax under this Act shall be payable by any dealer in respect of sale of any goods made by such dealer, in the course of inter-State trade or commerce, to any official, personnel, consular or diplomatic agent of -

- (i) any foreign diplomatic mission or consulate in India; or
- (ii) the United Nations or any other similar international body, entitled to privileges under any convention or agreement to which India is a party or under any law for the time being in force, if such official, personnel, consular or diplomatic agent, as the case may be, has purchased such goods for himself or for the purposes of such mission, consulate, United Nations or other body.

(4) The provisions of sub-section (3) shall not apply to the sale of goods made in the course of inter-State trade or commerce unless the dealer selling such goods furnishes to the prescribed authority a certificate in the prescribed manner on the prescribed form duly filled and

signed by the official, personnel, consular or diplomatic agent, as the case may be.

6A. Burden of proof, etc., in case of transfer of goods claimed otherwise than by way of sale. -

(1) Where any dealer claims that he is not liable to pay tax under this Act, in respect of any goods, on the ground that the movement of such goods from one State to another was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal, as the case may be, and not by reason of sale, the burden of proving that the movement of those goods was so occasioned shall be on that dealer and for this purpose he may furnish to the assessing authority, within the prescribed time or within such further time as that authority may, for sufficient cause, permit, a declaration, duly filled and signed by the principal officer of the other place of business, or his agent or principal, as the case may be, containing the prescribed particulars in the prescribed form obtained from the prescribed authority, along with the evidence of despatch of such goods and if the dealer fails to furnish such declaration, then, the movement of such goods shall be deemed for all purposes of this Act to have been occasioned as a result of sale.

(2) If the assessing authority is satisfied after making such inquiry as he may deem necessary that the particulars contained in the declaration furnished by a dealer under sub-section (1) are true and that no inter-State sale has been effected, he may, at the time of, or at any time before, the assessment of the tax payable by the dealer under this Act, make an order to that effect and thereupon the movement of goods to which the declaration relates shall, subject to the provisions of sub-section (3), be deemed for the purpose of this Act to have been occasioned otherwise than as a result of sale.

(3) Nothing contained in sub-section (2) shall preclude reassessment by the assessing authority on the ground of discovery of new facts or revision by a higher authority on the ground that the findings of the assessing authority are contrary to law, and such reassessment or revision may be done in accordance with the provisions of general sales tax law of the State."

33) A perusal of sections 6 and 6A would indicate that by section 6, the liability to tax on inter-State sales is set out and by the amendment made to section 6 by introduction of sub-section (1A), it is apparent that a dealer shall be liable to pay tax under this Act on a sale of any goods effected by him in the course of inter-State trade or commerce notwithstanding that no tax would have been leviable (whether on the seller or the purchaser) under the sales tax law of the appropriate State if that sale had taken place inside that State. Sub-section (2) of section 6 deals with a sale of any goods in the course of inter-State trade or commerce occasioning the movement of such goods from one State to another or having been effected by a transfer of documents of title to such goods during their movement from one State to another. The subsequent sale during such movement would be exempt from tax under the CST Act, provided the goods are of the description referred to in sub-section (3) of section 8. Thus, the exemption is in specified case and that is why sub-section (2) contains a non obstante clause. However, there is a proviso and which requires furnishing of a certificate to the prescribed authority. The first proviso to sub-section (2) sets out this requirement and by second proviso, other requirement and to furnish a declaration referred to in clause (b) of the first proviso is dispensed with on the condition specified in the second proviso.

Then, by sub-section (3), certain sales in the course of inter-State trade or commerce would not attract the tax provided the sale in the course of inter-State trade or commerce is to any official, personnel, Consular or diplomatic agent of any foreign diplomatic mission or consulate in India or to United Nations or any other similar international body. The requirement to furnish a certificate also for the purpose of sub-section (3) is set out in sub-section (4) of section 6.

34) Section 6A deals with burden of proof in case of transfer of goods claimed otherwise than by way of sale. Split up for understanding the section applies in case there is a claim that there is no sale. In that case and on such claim, the burden of proof is on the dealer making such claim as this claim would relieve him from the liability to pay tax under the CST Act. That liability is in respect of any goods sold within the meaning of preceding sections. The dealer would have to establish and prove the ground raised, namely, that the goods have moved from one State to another, but that movement was occasioned by reason of transfer of the goods by the dealer to any other place of his business or to the place of his agent or to the place of the principal and not by reason of sale. For discharging that burden, the dealer would have to produce and furnish to the assessing authority,

within prescribed time or such further time as the authority may, for sufficient cause, permit a declaration within the meaning of sub-section (1) of section 6A. Along with the declaration, the evidence of despatch of goods has to be furnished. If the dealer fails to furnish that declaration, then, the movement of goods shall be deemed for all purposes of the CST Act to have been occasioned as a result of sale. By sub-section (2) and despite the declaration being furnished, the Assessing Officer can make such inquiry as he may deem necessary with regard to the particulars contained in the declaration furnished. That inquiry is about the truth of such contents and to arrive at a conclusion or decision that no inter-State sale has been effected. That enables the Assessing Officer at the time of or at any time before the assessment of the tax payable by the dealer under the CST Act to make an order within the meaning of sub-section (2). While making that order and despite making it, it is apparent that it is subject to sub-section (3). Hence, the conclusion rendered that the movement has been occasioned otherwise than as a result of sale is subject to sub-section (3) of section 6A.

35) Mr. Sridharan has relied upon on the 4 trade circulars in challenging the circular dated 11th January, 2010. Firstly, we will reproduce the circular under challenge, which reads as

under:-

“
Office of the
Commissioner of Sales Tax,
829, 8th Floor, Vikrikar Bhavan,
Mazgaon, Mumbai - 400 010

TRADE CIRCULAR

To

.....
.....

No. VAT/MMB/1008/15/Adm-6/B

(Trade Cir. No. - 2 of 2010) Mumbai, Dt. 11/01/2010

Sub: Tax Treatment of Goods sent to other States.

Ref: 1. Trade Circular 16T of 2007 dated 20th
February 2007.
2. Trade Circular 5T of 2009 dated 29th
January 2009.

Gentlemen/Sir/Madam,

This office had issued above referred Trade Circulars explaining scope of section 6A of CST Act, 1956. In the Trade Circular dated 20th February 2007, a view had been taken that section 6A of CST Act, 1956 deals only with transactions between principal and agent and that it applies in those cases where the movement of goods is to the place of business of the dealer himself in another state or to his agent or his principal in another state. It was viewed that section 6A does not deal with transactions which are on a principal to principal basis. Hence, the non-sale transactions like job work which are transactions from principal to principal basis were viewed to be out of purview of section 6A of CST Act, 1956 and not requiring F Forms.

2. Thereafter, the Allahabad High Court delivered a Judgment dated 17th August 2007 in the case of M/s. Ambica Steels Ltd. V/s. The State of Uttar Pradesh. The issue before the Court was whether the petitioner is required to submit the declaration in Form F in respect of the transaction of job work performed by it. The High Court decided that it would be necessary to furnish declarations in Form F in such instances. In view of this Judgment, it was decided to issue F Forms to the dealers in Maharashtra who

received goods for job work or as goods return. This aspect has been elaborated in Trade Circular 5T of 2009 dated 29th January 2009.

3. The decision of Allahabad High Court in M/s. Ambica Steel Ltd. was challenged before the Hon'ble Supreme Court. In the brief order passed by the Hon'ble Supreme Court (24 VST 356) in this case, it is stated that the dealer agreed to produce the required declarations. Hon'ble Supreme Court has not done away with the need of mandatory F Forms applicable to such transactions as job work which was outcome of the Allahabad High Court decision. In view of this, the decision of the Allahabad High Court in case of M/s Ambica Steel Ltd. (12 VST 216) stands and following instructions are issued.

4. The Trade Circular 16T of 2007 dated 20th February 2007 and Trade Circular 5T of 2009 dated 29th January 2009 are hereby withdrawn. F forms are mandatory for all transactions of inter state transfers (not by way of sale) including job work and goods return. Declarations in Form F will be issued to the dealers to comply with this view.

5. This Circular cannot be made use of for legal interpretation of the provisions of law, as it is clarificatory in nature. If any member of the trade has any doubt, he may refer the matter to this office for further clarification.

6. You are requested to bring the contents of this circular to the notice of all the members of your Association.

Yours faithfully,

(Sanjay Bhatia)
Commissioner of Sales Tax,
Maharashtra State, Mumbai.”

36) A perusal of this Circular indicates that the requirement of furnishing the declaration in form 'F' is mandatory and that is not dispensed with.

37) Mr. Sridharan would urge that this Circular presupposes that declaration in form 'F' would be issued

necessarily by all States. It may be that the Maharashtra Government and the Commissioner of Sales Tax in Maharashtra would issue declarations in form 'F', but in the event another State does not follow this practice or does not issue declaration in that form, then, it would be necessarily held in the State of Maharashtra that the movement of goods is occasioned by sale. In that event, the burden on the dealer in terms of section 6A of the CST Act can never be taken to be discharged. That would be a travesty of justice. If it is not possible for the dealer to obtain the declaration in that form from another State for, that State may not follow this practice or refuses to do so for reasons beyond the control of the dealer, then, he would have to bear the liability. Mr. Sridharan would submit that all prior Circulars and which stand withdrawn by this latest Circular did not take this view.

38) He relies upon Circular 16T of 2007 dated 20th February, 2007 and Trade Circular 5T of 2009 dated 29th January, 2009. We would reproduce these Circulars as well. They read as under:-

“8th floor, Vikrikar Bhavan,
Mazgaon, Mumbai – 400 010

TRADE CIRCULAR

To
.....
.....

No. VAT/Clarification/1006/202/Adm-3

Trade Cir. 16T of 2007

Mumbai Dt: 20.02.07

Sub: Tax Treatment of Goods sent to other States.

Gentlemen/Sir/Madam,

Queries have been received by this office regarding the tax treatment of Goods sent to other States. A dealer may send his goods to another State for various reasons. The goods may be sent for minor job work, extensive job work or for conversion or for manufacture. Apart from this, a dealer may send the goods to another State for sale or for otherwise disposal in that State. Queries have been received regarding the tax treatment of such goods under the Central Tax Act, 1956 as also under the Maharashtra Value Added Tax Act, 2002. This circular explains the treatment required to be given to such goods under these two Acts. Nothing in this circular applies or is intended to apply to the tax treatment of such goods under the Bombay Sales Tax Act, 1959 or any of the other Acts repealed by the Maharashtra Value Added Tax Act, 2002.

2. The C. S. T. Act was amended in 1972 with effect from the 1st April 1973 by inserting a new section, namely, Section 6A. This section was further amended in 2002 by Finance Act, 2002. Section 6A of the CST Act deals with those contingencies where a dealer has sent any goods from one state to another, not by way of sale, to the places of his business or to his agent or to his principal.

3. (1) Section 6A of the Central Sales Tax Act, 1956 provides that where the dealer claims that he is not liable to pay tax in respect of the goods sent as aforesaid to another State to his own place of business or to his agent or to his principal, on the ground that the movement of goods was not by reason of sale, then the burden of proving that the movement of goods was so occasioned, is on the dealer. It may be noted that this section applies only in those cases where the movement of good is to the place of business of the dealer in another State or to his agent or principal in another State. The section has no applicability where the goods are sent to another State for purposes other than those enumerated in that section. The word 'Agent' as used in this section means the Agent as defined in Section 182 of the Indian Contract Act. That Section reads as follows:

182. “Agent” and “principal” defined: “An

Agent is a person employed to do any act for another or to represent another in dealing with third persons. The person for whom such work is done or who is so represented is called the "principal".

(2) Normally, persons acting as brokers, factors, auctioneers, commission agents, del credere agents etc. are the agents contemplated under this Section. It may be added that the contract of agency may be in writing, may be oral or may be inferred from the conduct of the parties and the circumstances. An agent differs from a servant or an independent operator. In an agency, the principal has a right to direct what work the agent has to do. In case of a servant, the principal has a further right to direct how the work is to be done. An independent operator is different from an agent or a servant. An agent, in the matter of agency, is bound to act subject to the direction and control of the principal. But an independent operator merely undertakes to perform certain specified work or produce a certain specified result. The manner and means of performance and production are at the discretion of the operator except in so far as they are specified by the contract.

4. Therefore, when a dealer sends any goods to another person located in a different State for job work or for manufacturing etc., the transaction will normally be on a 'principal to principal' basis with an independent operator and not on a 'principal to agent' basis. Section 6A of the CST Act will have no applicability as regards the transaction where the goods are sent on a 'principal to principal' basis. It follows that in such instances where the contract is on a 'principal to principal' basis, it will not be required for the dealer to obtain a declaration in Form 'F' from the person to whom the goods have been dispatched. Similarly, the amendment to Section 6A in 2002, which provides that where the dealer fails to produce the declaration in Form 'F', the movement of goods shall be deemed to have been occasioned as a result of sale is not applicable to 'principal to principal' transaction.

5. Section 6A, as of course its amendment in 2002, will apply, as stated above, only when the goods are sent by a dealer to another State to the dealer's own place of business or to his agent or where the dealer is an agent, to the place of his principal. In particular, nothing in this section will apply when the goods are sent to another

State, not by way of sale, to an independent operator. The tax treatment of goods under the CST Act, 1956 sent to another State, to another principal, not by way of sale, is to be worked out accordingly.

6. Rule 53 of the Maharashtra Value Added Tax Rules, 2005 deals with reduction in set-off. Sub-rule (3) of this rule deals with the case where the claimant dealer dispatches any taxable goods outside the State, not by reason of sale, to his own place of business or of his agent or where the claimant dealer is an agent, to the place of business of his principal. If the goods are so dispatched, then in the contingencies described in the said sub-rule, the set-off available to the dealer is to be reduced as provided therein.

7. It may be noted that phraseology used in sub-rule (3) of Rule 53 is the same as the phraseology used in Section 6A of the CST Act. In other words, the rule regarding reduction of set-off operates in only those contingencies which are covered by Section 6A of the CST Act. The rule will not apply in instances where Section 6A of the CST Act has no applicability. It is, therefore, clear that the reduction in set-off contemplated under the said sub-rule does not apply where the goods are sent to another State for job work or for manufacturing etc. on a 'principal to principal' basis. Subject to the other provisions of that sub-rule, the reduction in set-off will apply only when the goods are sent to another State, not by reason of sale, to the dealer's own place of business, or to his agent or where the dealer is an agent, to the place of his principal.

8. There would be contingencies where a dealer located in Maharashtra receives goods, not by way of purchase, from another State. The clarifications given in this circular would apply, *mutatis mutandis*, to such inward movement of goods from another State.

9. This circular cannot be made use of for legal interpretation of provisions of law, as it is clarificatory in nature. If any member of the trade has any doubt, he may refer the matter to this office for further clarification.

10. You are requested to bring the contents of this circular to the notice of all the members of your association.

Yours faithfully,

(B. C. KHATUA.)

Commissioner of Sales Tax,
Maharashtra State, Mumbai.”

===== O X X O =====

“829, 8th Floor, Vikrikar Bhavan,
Mazgaon, Mumbai - 400 010

TRADE CIRCULAR

To

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.....

No. VAT/MMB/1008/15/ADM-6

Trade Cir. 5T of 2009

Mumbai Dt: 29.01.2009

Sub: Tax Treatment of Goods sent to other States.

Ref: 1. Trade Circular 16T of 2007 dated 20th
February 2007.

Gentlemen/Sir/Madam,

This office had issued a Trade Circular dated the 20th February, 2007. A view had been taken in that Trade Circular that Section 6A of the C. S. T. Act, 1956 deals only with transactions between agents and principals and does not deal with transactions which are on a principal to principal basis.

2. The Alahabad High Court has delivered a judgment dated the 17th August, 2007 in the case of M/s Ambica Steels Ltd. vs. The State of Uttar Pradesh. The Petitioner in that case had sent iron and steel ingot to various Companies situated outside the State of Uttar Pradesh for the purpose of converting them into iron and steel rounds, bars and flats. The converted material was to be sent back to the petitioner in Uttar Pradesh. The Petitioner Company also received iron scrap from various firms outside the State of Uttar Pradesh for the purpose of converting the same into iron and steel billets and ingots with a direction to return the converted goods to those firms. The issue before the Court was whether the petitioner is required to submit the declaration in Form F in respect of the transactions of job

work performed by it or got done by others. The High Court has taken a view that it would be necessary to furnish declarations in Form F in such instances. It also appears that the question whether Section 6A of the CST Act deals only with transactions between agent and principal or whether it deals with transactions which are on a principal to principal basis was not raised before the High Court.

3. In the Trade Circular dated 20th February 2007, a view has been taken that when goods are sent to another State for job work or for manufacturing etc., the transaction will normally be on a principal to principal basis with an independent operator and not on a principal to agent basis. It is, further stated in the circular that Section 6A will have no applicability as regards the transactions where the goods are sent on a principal to principal basis. It is possible that in view of the judgment of the Uttar Pradesh High Court, dealers situated in other States may require a declaration in Form F from Maharashtra dealers if any goods are sent from these States to Maharashtra for job work etc. Similarly, if a Maharashtra based dealer sends any goods to another State for job work, then the job worker in that State may require the Maharashtra dealer to issue a declaration in Form F while returning the goods to Maharashtra. It is, therefore, decided that in such cases, declaration in Form F will be issued as per normal procedure to dealers in Maharashtra. There is, however, no change in the views of the Sales Tax Department as expressed in the said trade circular. The Trade Circular will continue to apply for the contingencies laid down in the circular except for the change indicated above.

4. This circular cannot be made use of for legal interpretation of provisions of law, as it is clarificatory in nature. If any member of the trade has any doubt, he may refer the matter to this office for further clarification.

5. You are requested to bring the contents of this circular to the notice of all the members of your association.

Yours faithfully,

(Sanjay Bhatia)

Commissioner of Sales Tax,
Maharashtra State, Mumbai."

39) A perusal of these would indicate as to how several queries received regarding the tax treatment of the goods sent by the dealer from Maharashtra inter-State for minor job work, extensive job work or for conversion or for manufacture would be treated for tax under the CST Act as also Maharashtra Value Added Tax Act, 2002. Upon careful perusal of these Circulars, we do not find any support therein for the arguments canvassed by Mr.Sridharan. He would read some paras of the earlier Circular to mean that when a dealer sends any goods to another for manufacturing etc., the transaction will normally be on a principal to principal basis with an independent operator and not on a principal to agent basis. Section 6A will have no applicability as regards a transaction when goods are sent to principal to principal basis. In that event, there is no requirement of obtaining form 'F' from a person to whom goods have been despatched. Even post amendment in 2002, according to Mr.Sridharan, this is the legal position. However, firstly a Circular by itself cannot displace a legal provision. Secondly, interpretation of a legal provision is the duty of the Court. Thirdly, the Court cannot abdicate its function and duty by relying on some circulars issued by the Executive or its language. Fourthly and lastly, as in this case, read as a whole, we do not find that the prior circulars lay down any absolute principles and as

pressed into service by Mr. Sridharan. These circulars and all clauses and paras thereof would have to be read together and harmoniously. They would indicate that the trade has to be guided. True it is that in the circular of 29th January, 2009 in para 2, the judgment of the Allahabad High Court has been referred. Despite that judgment, the Department is reiterating the position as emerging from Trade Circular dated 20th February, 2007. The further circular only states that in the light of the judgment of the Allahabad High Court, dealers situated in other State may require a declaration form from Maharashtra dealers, if the goods are sent from these States to Maharashtra for job work etc. Similarly, if a Maharashtra based dealer sends any goods to another State for job work, then, the job worker in that State may require the Maharashtra dealer to issue a declaration in form 'F' while returning the goods to Maharashtra. The Revenue, namely, the Departments in Maharashtra, therefore, decided to issue a declaration in form 'F' as per normal procedure to dealers in Maharashtra.

40) We do not see how a later circular of 2010 runs counter to the two circulars issued earlier or that their withdrawal by the ultimate circular of 2010 would adversely affect every dealer in Maharashtra. Mr. Sridharan is also not

right in urging that the judgment of the Allahabad High Court has been interfered with by the Hon'ble Supreme Court of India. His argument is that the judgment of the Allahabad High Court has not been upheld by the Hon'ble Supreme Court of India.

41) For considering this argument, we must refer to the judgment of Allahabad High Court. That judgment, as would be apparent, was rendered by a Division Bench in the case of *Ambika Steels Limited vs. State of U. P. and Ors.* reported in **(2008) 12 VST 216 (All)**.

42) The Petitioners therein challenged the circular dated 28th November, 2005 issued by the Commissioner of Trade Tax, Uttar Pradesh, Lucknow, wherein it has been mentioned that under section 6A of the CST Act, form 'F' is required to be filed in respect of all transfer of goods which are otherwise than by way of sale and also applies to all goods sent or received for job work or goods returned.

43) The Petitioner therein was engaged in the business of manufacture and sale of iron billets and ingots. It was also engaged in the activity of sale of iron and steel rounds, bars, flats, etc. It was registered dealer under the provisions of the U. P. Trade Tax Act, 1948 and also under the CST Act. During the relevant time, it sent iron and steel ingots to various firms situate outside the State of Uttar Pradesh for the purpose of converting

them to iron and steel rounds, bars and flats. The firms were directed to return the converted goods. Similarly, the dealer received iron scrap from various firms situate outside Uttar Pradesh for the purpose of converting them to iron and steel billets and ingots with a direction to return the converted goods to these firms. We are not concerned here with the credit and particularly the Cenvat Credit under the Cenvat Credit Rules, 2002 and under the Central Excise Act, 1944. In the case before the Allahabad High Court, however, the dealer, while claiming that he had not sent the goods as and by way of sale, but by way of job work, filed a monthly return under both, the Trade Tax Act and the CST Act. However, he did not submit or obtain any form 'F' in respect of the transaction of job work as it did not involve any sale. The Assessing Officer called upon the dealer to produce the declaration in form 'F', but it submitted a reply that no form 'F' is required for such transaction. The explanation was rejected. However, the time to furnish form 'F' was extended, but even that was not adhered to. Later on, for such failure, tax was demanded from the dealer by relying upon this circular referred above. It is in this context that the challenge was raised and the Allahabad High Court considered it. After referring to the rival contentions, the Division Bench presided over by Hon'le Mr. Justice R. K. Agrawal (as his Lordship then was) held as under:-

“ We have given our anxious consideration to the various pleas raised by the learned Counsel for the parties. We find that, under Sub-clause (ii) of Clause (g) of section 2 of the Central Act, a transfer of property in goods whether as goods or in some other form, involved in execution of a work contract, is included in the definition of the word "sale". Section 6 is the charging section and creates liability to tax on inter-State sales. Section 6A puts the burden of proof on the person claiming transfer of goods otherwise than by way of sale and not liable to pay tax under the Central Act. The burden is to be discharged only by furnishing of declaration Form F.

The provisions of Section 6 and 6A of the Central Act came up for consideration in the case of *Ashok Leyland Ltd. v. State of Tamil Nadu* (2004) 134 STC 473 (SC); (2004) 23 PHT 81 (SC). Dealing with sections 6 and 6A of the Central Act, the apex court, in paragraph 33 of the Report, had held as follows:

"..... Section 6 of the Act provides for liability to tax on inter-State sales in terms whereof every dealer is liable to pay tax thereunder on sales effected by him in the course of inter-State trade or commerce subject to the exception contained in the proviso appended thereto. Such tax would be leviable notwithstanding the fact that no tax is leviable either on seller or the purchaser under the State tax laws of the appropriate State if that sale had taken place inside the State”.

In paragraph 34 of the Report, the apex court has further held as under:

“34. The liability to tax on inter-State sale as contained in section 6 is expressly made subject to the other provisions contained in the Act. Sub-section (2) of section 9, on the other hand, which is a procedural provision starts with the words 'subject to the other provisions of this Act and the Rules made thereunder'. Section 6-A provides for exception as regard the burden of proof in the event a claim is made that transfer of goods had taken place otherwise than by way of sale. Indisputably, the burden would be on the dealer to show that the movement of goods was occasioned not by reason of any transaction involving sale of goods but by reason of transfer of such goods to any other place of his business or to his agent or principal, as the case may be. For the purpose of discharge of such burden of proof, the dealer is required to furnish to the assessing authority within the prescribed time a declaration duly filled and signed by the principal officer of the other place of business or his agent or principal. Such declaration would contain the prescribed particulars in the

prescribed form obtained from the prescribed authority. Along with such declaration, the dealer is required to furnish the evidence of such dispatch of goods by reason of Act 20 of 2002. In the event, if it fails to furnish such declaration, by reason of legal fiction, such movement of goods would be deemed for all purposes of the said Act to have been occasioned as a result of sale. Such declaration indisputably is to be filed in form F. The said form is to be filled in triplicate. The prescribed authority of the transferee State supplies the said form. The original of the said form is to be filed within the transferor State and the duplicate thereof is to be filed before the authorities of the transferee State whereas the counter-foil is to be preserved by the person where the agent or principal of the place of business of the company is situated.”

In paragraph 37 of the Report, it has further held as under:

“By reason of sub-section (2) of section 6A, a legal fiction has been created for the purpose of the said Act to the effect that transaction was occasioned otherwise than as a result of sale”

The apex court has, therefore, clearly laid down that, under section 6A of the Central Act, the burden would be on the dealer to show that movement of the goods had been occasioned not by reason of any transaction involving sale of goods but by reason of transfer of such goods to any other place of business or to the agent or principal, as the case may be, for which the dealer is required to furnish prescribed declaration form in the absence of which the transfer would be treated as sale.

Admittedly, what the petitioners send or receive either for job work or as a return of goods from outside U. P. are goods within the Central Act. They are claiming that the goods have been transferred/received from ex-U.P. Which are not sale and not liable to tax under section 6 of the Central Act.

The submission that the transactions where the goods are sent for job work or received for doing job work, do not amount to sale would depend upon the contract entered into between the parties and would be the subject-matter of examination by the assessing authority. Even otherwise, under section 2(g)(ii) of the Central Act, transfer of goods used in execution of works contract is treated to be a sale: if the petitioner claims that it is not liable to tax on the transfer of goods from U. P. to ex-U. P., then it would have to discharge the burden placed upon it under section 6A by filing declaration form F: It would be

immaterial whether the person to whom the goods are sent for or received after job work is a bailee. As held by the apex court, under the statutory provision, the requirement is that if any person claims that he is not liable to pay tax on transfer of the goods from one State to another, he has to furnish declaration form F. This would be applicable in a case of goods returned also. The Statement of Objects and Reasons, referred to by Sri S. D. Singh, does not advance his case any further.

Before parting with the case, we may, however, observe that as the petitioners have claimed that they are not liable to furnish declaration form F in respect of the transaction in question and we have come to the conclusion that they are, in fact, liable. We direct the respective assessing authorities to accept the declaration form F of each of the petitioners if they file it within a period of three months from today and to grant exemption in accordance with law.”

44) This judgment was challenged by the dealer Ambica Steels Limited before the Hon'ble Supreme Court of India and the Hon'ble Supreme Court of India judgment is reported in **(2009) 24 VST 356**. In that short order, the Hon'ble Supreme Court of India held as under:-

“Shri Sorabjee, learned senior counsel appearing on behalf of the assessee, on instructions, states that the appellant-assessee will submit itself to the reassessment proceedings initiated vide show-cause notice (see annexure P2). He further states that the assessee will file form F with the authority concerned within ten weeks from today.

On expiry of the period of ten weeks the assessing officer will take up reassessment proceedings which will be completed within a period of three months, thereafter.

At this stage, it may be mentioned that on the scope and applicability of section 6A of the Central Sales Tax Act, 1956, there exists difference of opinion between the various sales tax collectors in the country and therefore since the appellant is now ready to file form F, we are directing the assessing officer not to impose penalty/interest, in the reassessment proceedings as a one-time waiver. Needless to add that waiver of penalty and interest shall be admissible only on form F being furnished by the assessee within the prescribed period.

The appellant has deposited a sum of Rs.1,00,00,000/- (one

crore) on December 27, 2008, under protest vide letter of even date. It is made clear that the said amount shall be refunded to the assessee herein within a period of two weeks after the completion of reassessment proceedings, subject to adjustment, if any, in the duty assessed.

We are informed that certain State(s) within whose jurisdiction the transferee is located is/are not issuing F forms. In such an eventuality it would be open to the assessing officer to complete reassessment proceedings on its own merits after examining the transaction between the parties, keeping in mind the circumstance that the assessee is not in a position to obtain the F form, for no fault of his.

Accordingly, this civil appeal is disposed of with no order as to costs."

45) Mr. Sonpal, therefore, is right in contending that the Hon'ble Supreme Court of India in this brief order did not lay down any legal principle. That order must be read as a whole. The Hon'ble Supreme Court of India does not overturn or reverse the judgment of the Allahabad High Court. Rather, M/s. Ambica Steels Limited accepted that judgment and sought time to furnish a declaration in form 'F'. The time, in addition to the one granted by the Allahabad High Court came to be thus granted, as is clear from the first paragraph of the order of the Hon'ble Supreme Court of India. The re-assessment proceedings were deferred for a period of 10 weeks so as to enable the dealer to furnish the declaration in form 'F'. All that the Hon'ble Supreme Court of India recorded was divergence of views between several states insofar as issuance of form 'F'. The Hon'ble Supreme Court of India noted that some states do not follow a practice of the

declaration being issued in form 'F'. However, the Hon'ble Supreme Court did not go into the same any further. Rather, it directed furnishing of such form by the dealer before it. However, noting such practice of non issuance of 'F' form, the Hon'ble Supreme Court of India clarified that the Assessing Officer can complete re-assessment proceedings on its own merits and after examining the transactions between the parties and keeping in mind the circumstance that the Assessee is not in a position to obtain form 'F' for no fault of his.

46) We do not think that there is any ambiguity in the legal position. Further, we do not see anything ambiguous or vague in the circular issued by the State of Maharashtra after this judgment in the case of *Ambica Steels Limited* (supra) by both, the Allahabad High Court and the Hon'ble Supreme Court of India. We are of the firm view that furnishing and scrutiny/verification of the declaration in that form is a requirement in law and if that is fulfilled, the burden on the dealer is taken to be discharged. If that declaration is not furnished, then, the consequences follow. The goods might have been despatched for job work and not as and by way of sale, but that is the plea or case of the dealer. If that is the case and the burden is on him to prove it, then, he has to obtain the declaration. If the declaration is not being issued by some States

in the form prescribed, namely form 'F' and the dealer made all the efforts to obtain it but failure to produce it is not his fault, then, he may, as the Hon'ble Supreme Court of India clarifies, request the Assessing Officer to take that circumstance into consideration. If that request is made, the Assessing Officer can, depending upon the facts and circumstances of a particular case, pass such orders as are permissible in law. Therefore, we do not agree that the circular of 2010 misinterprets the order of the Hon'ble Supreme Court of India. It neither misreads or misinterprets the judgment of the Allahabad High Court. Throughout the understanding is that the burden is on the dealer and he has to discharge it in the manner prescribed in law. If the burden has to be discharged in the manner set out, then, no other mode or manner is permissible. Therefore, all that the Hon'ble Supreme Court clarifies is that if some States are not issuing 'F' form, then, that approach of a particular State should be brought to the notice of the Assessing Officer in the dealer's State. That the Assessing Officer should be convinced that the dealer made all efforts, but for no fault of his, he could not obtain the 'F' form. Thereupon and pursuant to the liberty given by the Hon'ble Supreme Court of India and the dealer raising the plea, the Assessing Officer, while taking note of it, would consider the peculiar facts and circumstances and may pass requisite orders.

Even that is not the rule but an exception. The requirement is not displaced necessarily and as urged. We do not, therefore, see any merit in the contentions of Mr. Sridharan and while challenging the circular of 2010.

47) Mr. Sridharan, as is complained by Mr. Sonpal, canvased very detailed submissions and often repeated them so as to bring home the point. We are conscious of the fact that the amendment was brought into the CST Act by insertion of section 6A. That is with a specific object and purpose. That is to emphasise that the Central Sales Tax is not leviable in respect of the transactions of transfer of goods from head office to branch or vice versa, as these transactions do not amount to sale, but the legislature was mindful of the fact that a blanket understanding of this type encourages evasion of taxes. Rather, that facilitates it. Therefore, by an amendment, it stepped in and placed burden on the dealers to prove transfer of goods in such cases is not by way of sale.

48) We are also mindful of the requirement and as enumerated by Mr. Sridharan. Our attention is also invited to Rule 12(5) of the Central Sales Tax (Registration and Turnover) Rules, 1957. Upon perusal of this Rule, it would be clear that the declaration referred to in sub-section (1) of section 6A of the CST Act shall be in form 'F' and the proviso thereto clarifies that a

single declaration of the nature mentioned in the proviso may suffice.

49) Therefore, we do not see as to how the section poses any difficulty or is in any way invalid or illegal. Advisedly, neither the provision is challenged nor the competence of the Parliament to bring in the section by way of amendment. Once the ambit and scope of the legal provision has been duly explained by the Hon'ble Supreme Court of India in the case of *Ashok Leyland Ltd. vs. State of Tamil Nadu* reported in **(2004) 134 STC 473 (SC)** and that judgment has been applied and followed by the Allahabad High Court in its verdict in the case of *Ambika Steels Ltd.* (supra), then, all the more we are unable to accept the arguments of Mr. Sridharan.

50) The other principles relied upon by Mr. Sridharan and with regard to the interpretation of a charging provision and a machinery section in the taxing statute need not be considered in further details. Those principles are applicable depending on each taxing statute. The position, as flowing from section 6A(2) and analysed by Mr. Sridharan and in his written submissions at page 11 para 26.1 onwards would support our conclusion for, despite furnishing of the declaration in that form, a clear satisfaction has to be recorded by the Assessing Officer. That satisfaction can be recorded on such inquiry, as he is empowered

to make within the meaning of sub-section (2) of section 6A of the CST Act. Therefore, there would be an opportunity to the dealer and within the meaning of this provision to convince the Assessing Officer that he has discharged the burden and the transfer of goods is not by way of sale. In these circumstances, we do not think that there is any difficulty for the dealer to discharge the burden. While discharging the burden, it would be open for the dealer to rely upon the principles as to when an inter-State sale takes place or is deemed to have taken place. He can also rely upon other provisions, namely, section 18A and 22(1)(b) of the CST Act to support his argument. In these circumstances, all the paragraphs of the written submissions and supporting the oral arguments about the position prior to amendment by the Finance Act, 2002 and post such amendment of section 6A of the CST Act need not be dealt with seriatim, then, we need not go to other sections, particularly section 9(1) and equally section 9(2) of the CST Act. We also need not go to section 8 in further details. For, that deals with rates of tax on sales in the course of inter-State trade or commerce. However, sub-section (4) of section 8 once again reiterates the requirement of furnishing to the prescribed authority in prescribed manner a declaration duly filled and signed by the registered dealer to whom the goods are sold and only then sub-section (1) of section 8 would be applicable

and not otherwise.

51) Mr. Sridharan's attempt to take us through the MVAT Act and section 26 thereof also need not detain us. That would cover also the merits of the transaction of the Petitioner before us. The Petitioner has ample opportunity to demonstrate and prove that the view taken by the Assessing Officer is incorrect and not sustainable in law.

52) We are also, therefore, of the opinion that in the light of the view that we have taken, the judgments relied upon by Mr. Sridharan, particularly on the point that only complete sales are exigible to Sales Tax and no tax is leviable where machinery provision is absent and need to be considered in further details. These principles are well settled. There is no need, therefore, to refer to every judgment cited and particularly the one in the case of *Balabhagas Hulaschand vs. State of Orissa* reported in (1976) 2 SCC 44 or the judgment in the case of *C. I. T., Bangalore vs. B. C. Srinivasa Setty* reported in (1981) 2 SCC 460. The Petitioners can very well rely upon these principles in the course of their arguments in the Appeal.

53) The emphasis on the judgment in the case of *Commissioner of Central Excise and Customs, Kerarla vs. Larsen and Toubro Ltd.* reported in 2015(39) STR 913 (SC), particularly the reliance on paras 20 and 22 thereof need not be

considered for the simple reason that it dealt with the scheme of taxing statutes. If there is no machinery provision, then, in their absence, the law is held to be vague and it would be arbitrariness to assess tax. However, these principles and in absence of a machinery provision would apply from statute to statute. For that, facts have to be noted and peculiarities of the transaction involved. We do not see as to how any assistance can be derived from this judgment.

54) The judgment in the case of *the Additional Commissioner of Sales Tax vs. M/s. Kirloskar Copeland Ltd.* passed in **Sales Tax Application No. 10 of 2012** in Reference Application No. 56 of 2011, decided on 8th May, 2014 also need not detain us. That judgment, rendered by a Division Bench of this Court, of which, one of us (B. P. Colabawalla, J.) was a party, considered a case where a defective compressor outside the warranty period was forwarded by a customer to M/s. Kirloskar Copeland Ltd. for repairs. The facts are noted in para 4. The Assessing Officer treated the repairing charges as a sale of the old repaired compressor. It is in that context and in dealing with the argument that such a transaction would not amount to sale that the observations in para 11 have been made. We do not see as to how this judgment can have any application straight away. The Petitioner, for relying upon it, would have to establish

that the transaction in question does not amount to a sale, while discharging the burden under section 6A and proving its version, at best reliance can be placed by the Petitioner on the principles discussed in this judgment. Beyond that, we do not see how it is applicable to the Petitioner, straight away.

55) As a result of the above discussion and finding that there is no serious legal infirmity or error of law apparent on the face of the record, leave alone perversity in the impugned interim orders, we have no alternative but to dismiss the Writ Petition. It is accordingly dismissed. Rule is discharged. There would be no order as to costs.

56) At this stage, a request is made by Mr. Sridharan that because the issue is recurring, the first appellate authority, before whom the substantive Appeals are pending, be directed to dispose of both the Appeals within three months from today.

57) Mr. Sonpal submits that a longer time be granted as the records are voluminous.

58) Having heard both sides on this point, we direct that the Appeals be decided as expeditiously as possible and in any event by 30th May, 2016.

(B.P.COLABAWALLA, J.)

(S.C.DHARMADHIKARI, J.)