

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SALES TAX APPLICATION NO.14 OF 2016
IN
REFERENCE APPLICATION NO.21 OF 2015
IN
SECOND APPEAL NO.4 OF 2010

Indian Oil Corporation Limited,
Bandra (East), Mumbai. Applicant

V/s.

The Commissioner of Sales Tax,
Maharashtra State, Mazgaon, Mumbai. Respondent

Mr. Prakash V. Surte, a/w. Mr. Subhash Surte, for the Applicant.

Mr. V.A. Sonpal, Special Counsel, for the Respondent-State.

CORAM : S.C. DHARMADHIKARI &
DR. SHALINI PHANSALKAR-JOSHI, J.J.

DATE : 26TH JULY, 2016.

P.C. :

1. After having heard both sides and perusing the order passed by the Tribunal, we are of the opinion that the present application raises substantial questions of law. It is admitted on the following substantial questions of law :-

- (i) Whether the Tribunal, on the facts and circumstances and in law, was justified in rectifying its earlier order, when the appellant before us, who had sought reference of questions of law to this Court for opinion and answer of this Court, did not seek any rectification or correction of the substantive order.

- (ii) In other words, whether the Tribunal was justified in exercise of suo-motu powers for rectification of its earlier substantive order, even though there was no prayer or request in that behalf?
- (iii) Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that set off under Rule 42H should be granted after getting identification of purchases and sales as per directions given herein?
- (iv) Whether Rule 42H provides that the claim should be granted, subject to identification of purchases and sales?

2. Mr. Sonpal, Special Counsel, waives service of notice on behalf of the Respondent-State.

3. We admit this application and with the consent of both sides dispose it of finally with a direction to the Tribunal to forward the above four questions of law for opinion and answer by this Court. The Tribunal to act on this order and direction and do the needful within a period of eight weeks from the date of receipt of a copy of this order; meaning thereby, the case for opinion and all related papers be forwarded to this Court.

4. The application is disposed of.

[DR. SHALINI PHANSALKAR-JOSHI, J.] [S.C. DHARMADHIKARI, J.]