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

SALES TAX APPLICATION NO. 3 OF 2016
WITH
SALES TAX APPLICATION NO. 4 OF 2016
AND
SALES TAX APPLICATION NO. 5 OF 2016

Raskamal Food and Fruit	}	
Pvt. Ltd.	}	**Applicant**
versus		
State of Maharashtra,	}	
Commissioner of Sales Tax	}	**Respondents**

Ms. Jyoti K. Vyas – applicant in-person-absent.

Mr. V. A. Sonpal – Special Counsel for the respondent.

CORAM :- S. C. DHARMADHIKARI &
A. A. SAYED, JJ.

DATED :- MARCH 15, 2016

P.C. :-

1) The applicant appeared in person, in the sense that he authorised his wife Ms. Jyoti K. Vyas, who has identified herself, to remain present and argue the matters. She has argued the applications on the earlier occasion. She has also tendered written arguments. In her presence, we stated that the orders will be dictated in open court today. She requested the registry to inform her about the outcome of the proceedings and sought leave of absence.

2) These three applications seek reference of certain questions and stated to be questions of law. In Sales Tax Application No. 3 of 2016, these questions are set out at para 11, pages 5 to 7 of the paper book, which read as under:-

> "(i) There is perversity in finding of fact and misconduct in the collection and evaluation of evidence.
>
> (ii) The finding of fact is vitiated by total non consideration of evidence sought to be produced by appellant and total exclusion of contentions under written arguments and other documents filed and appellant even though Tribunal itself directed appellant to file written arguments.
>
> (iii) Tribunal adopted para nos. 20, 21 and 22 from judgment of Tribunal under S. A. 950-952/97 without taking into account the fact that the said judgment was rectified on two points by order of rectification dated 12th July, 2002.
>
> (iv) Tribunal itself has passed conflicting orders regarding intention of appellant, regarding sincerity and appellant in prosecuting this appeal under S. A. No. 2007/98, 2089/98 and 2304/98 decided on 29th April, 2000 and under Miscellaneous Application No. 32-34 of 2003, passed by 4th Bench itself S. A. No. 1091-12093 of 2001 on 20th March, 2010.
>
> (v) Transaction becomes inter-State by operation of law as defined under Sec. 3(a) 3(b) of Central Sales Tax Act, 1956. There cannot be estoppal against law and provisions of Section 12A of Bombay Sales Tax Act, 1959 do not override provisions of Central Sales Tax Act. So

parameters applied under Para No. 20 are against principles of law finding is vitiated by application of wrong tests.

(vi) Tribunal was under duty to examine entire evidence which is under custody of Sales Tax Officer as per his letter of 1/2/2001 which was produced by appellant before Tribunal and there as even admission by respondent in writing two times that they are ready to examine transactions undertaken directly by the company tribunal has even gone beyond such admission which is against Dictates of Order 23 of C. P. Code.

(vii) Decision rendered in case of agent firm associated Marketing service under S. A. No. 950-952 cannot operate as res-judicata in these appeals in respect of transactions undertaken by company directly."

3) In para 14 of this application, the applicant has stated that against the order of the Tribunal refusing to refer the questions and passed on 11th July, 2012, the applicant company and the directors had filed writ petition being Writ Petition No.537 of 2013.

4) Annexures to the present applications include the copy of the order passed in Writ Petition No. 537 of 2013 on 12th July, 2013.

5) This court, not only found that the rectification applications were rightly dismissed, but insofar as reference

applications and their dismissal is concerned, this court in para 5 of the order passed in the writ petition, referred to the questions and concluded that none of them can be said to be of law. The Division Bench opined that assuming that the order passed by the Tribunal is correct, still, the remedy was not to file a writ petition under Article 226 of the Constitution of India but to invoke section 61(1) of the Bombay Sales Tax Act, 1959.

6) A review petition was also filed seeking review of this order and in that, the argument was that the remedy to approach this court under section 61 is time barred. On that review application, the following order came to be passed:-

> *" Writ Petition No. 537 of 2012 was dismissed on 12 July 2013 and the order was uploaded on 23 July 2013. It was dismissed on the ground that petitioners have an alternative remedy available against the order of Tribunal.*
>
> *2. It is contended by the review petitioner that the alternate remedy has become time barred.*
>
> *3. We have heard learned counsel for the respondents. In response to a suggestion given by the Court, the learned AGP states that if the petitioner avails of the alternative remedy, no objection on the ground of limitation will be raised.*
>
> *4. We accordingly direct that if the petitioners avail of alternate remedy in accordance of law, the same shall be entertained by the appropriate forum without*

raising the objection of limitation. The review petition is accordingly disposed of."

7) Thus, on 11th September, 2015, these applications have been filed.

8) Mr. V. A. Sonpal learned special counsel appearing for the Revenue/Department would submit that these applications cannot be entertained after the period of limitation specified in the legal provision, but in the light of the order passed on the review petition and reproduced above, Mr. Sonpal leaves the matter to the Court.

9) We have also heard the applicant in-person on this point and we find that an order of the court cannot override the legal provision and which is specific in nature. The court cannot, by recording any concession and of the present nature, waive the period of limitation statutorily prescribed. That binds all, including the Revenue. This court cannot, in its inherent jurisdiction, give a go by to such a statutory prescription and we do not think any judgment needs to be referred to, for, the law is clear. A statutory prescription and under an enactment, which has been enacted by the competent legislature, can only be interpreted by this court. The court cannot prescribe any period of limitation contrary thereto nor can it re-frame or re-word the

statutory provision itself. Statute of limitation or a statutory provision prescribing a period of limitation and incapable of two interpretations ought to be construed by its terms. It the language is plain, unambiguous and clear, there is no scope for interpretation. We cannot whittle down or dilute the effect or rigor of the clear provision on some specious, general and vague plea or assumption of hardship and inconvenience to an individual. There is no power in this court to entertain a time barred application as the general power under section 5 of the Limitation Act, 1963 is restricted in its application to proceedings under section 61(1) of the Bombay Sales Tax Act, 1959. We find, therefore, that the review order is of no assistance to the applicant.

10) Even otherwise, we find that the Tribunal has rightly concluded that none of the questions, which are now pressed before us can be said to be questions of law. The order passed by the Tribunal takes note of all the arguments and which have been canvassed. This is not a case where a mixed question and of the above nature can be said to be question of law. Though it is urged that there is a perversity and the finding of fact is vitiated by total non consideration of evidence, what we find is that all these are mixed questions of fact and law. The attempt is to seek re-

appreciation and re-appraisal of the factual findings. There is no perversity which could be said to be demonstrated.

11) Firstly, in the second appeals, which were filed before the Tribunal, a detailed order was passed on 30th November, 2009. That was sought to be rectified. Thereafter, the reference applications have been made. After pointing out the outcome of the rectification applications, the Tribunal, in para 3, noted that a common judgment and order was passed by the Tribunal in 2009. There are reasons assigned in support of the findings. The Tribunal dismissed all the appeals. The judgment and order of the Tribunal was not questioned in any further appeal. Further, the Tribunal has found that there are no debatable legal issues involved. The Tribunal has decided the matter by applying the correct legal principles. The Tribunal has found that the entire motive appears to be to delay the recovery of legitimate dues determined by the assessing authority. There are concurrent findings of fact and two appeals against such findings have been dismissed.

12) The Tribunal, in the order passed on 30th November, 2009, found that the whole attempt appears to be to revisit the same transactions and the same factual findings. The Tribunal found that all the transactions and which have been noted, either

undertaken directly by the applicant or through their agents, were falling in the tax net. There was no proof of any inter-State sale. There was nothing on facts which could determine or enable the Tribunal to conclude that the assessment order and the first appellate authority's order are vitiated on law and facts. The Tribunal found that the applicant, for the period in question, namely, 1990-91, 1991-92, 1992-93, filed second appeals before the Tribunal. These second appeals were dismissed on 30th November, 2009. The Tribunal found that all the issues, which could have been raised, have been already raised and dealt with. Now, in the garb of seeking a reference of certain legal questions to this court for its answer and opinion, the recoveries cannot be delayed.

13) We have found from the detailed written submissions tendered before us that none of the above questions can be said to be questions of law requiring answer and opinion of this court. The Tribunal is right in concluding that this is one more attempt to delay the recoveries. In these circumstances and when the recovery of public revenue is in jeopardy and by methods and means impermissible in law, then, we do not see any reason to entertain these applications. Each of them are dismissed.

14) The registry to communicate this order to the applicant by Registered Post Acknowledgment Due.

(A.A.SAYED, J.) **(S.C.DHARMADHIKARI, J.)**