

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

**SALES TAX APPLICATION NO. 18 OF 2016
IN
REFERENCE APPLICATION NO. 42 OF 2014**

M/s. Three D Micro Systems Pvt. Ltd. .. Applicant

v/s.

The State of Maharashtra & Anr. .. Respondents

Mr. Vinayak Pathak a/w Mr. Ishaan Patkar for the applicant
Mr. V.A. Sonpal, Special Counsel a/w Mr. Amar Mishra, AGP for the respondents

**CORAM : S.V. GANGAPURWALA &
A.M. BADAR, J.J.**

DATED : 27th JUNE, 2017

P.C.

1. The learned Counsel for the applicant submits that the applicant had requested to refer seven questions. However, only question nos. 1 and 2 are referred. The other questions are also relevant. Though the Tribunal has referred to the decision of this Court, so far as question no.5 is concerned, in case of *Pure Helium India Ltd.* However, the Gujarat High Court has taken a different view. The same is also required to be considered. According to the learned Counsel, the question nos. 3 and 4 as sought, also would

arise in the present matter as they are questions of law, which will have to be decided by the Court.

2. The learned Counsel for the Revenue submits that so far as question nos. 3 and 4 are concerned, they are implicit in question nos. 1 and 2 and that is what the Tribunal has also said in the order seeking reference. The learned Counsel submits that so far as question no.5 is concerned, the judgment of the jurisdictional High Court would prevail.

3. We have considered the submissions. The applicant had sought reference on the following questions :-

(1) Whether under the facts and circumstances of the case and on interpretation of the contract, the Tribunal was correct in law in holding that the contract of the applicant is divisible contract i.e. one for supply of goods for the cost of Rs.24 lakhs and other for installation and commissioning which is provided by the applicant free of cost?

(2) Whether under the facts and circumstances of the case, the Tribunal was correct in law in holding that the transfer of property took place at Nhava Gate of ascertained goods?

(3) Whether the Tribunal was correct in law in ignoring the

principles laid down by the Hon'ble Bombay High Court in the case of the Commissioner of Sales Tax Vs. Steel Plant Pvt. Ltd. reported in 99 STC 532?

(4) Whether on the facts and in the circumstances of the case, the Tribunal was correct in law in ignoring the explanation to the definition of 'sale' enacted in Section (2)(I) of the Maharashtra Sales Tax on the Transfer of property in Goods involved in the Execution of Works Contracts (Re-enacted) Act, 1989?

(5) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the 'sale' which has taken place under the contract under consideration is not in the course of export as contemplated under Article 286 of the Constitution of India?

(6) Whether on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the 'sale' which has taken place under the contract under consideration is not outside the State of Maharashtra?

(7) Whether the Tribunal was correct in law in maintaining the interest levied u/s 36(3)(b)?

4. The Tribunal has referred question nos. 1 and 2 for the opinion of this Court. So far as question no.3 is concerned, the Tribunal has observed that the same is incidental to question nos. 1 and 2. The same is the observation with regard to question no.4.

The Tribunal has said that directly or indirectly the provision of law will have to be considered while deciding the question nos. 1 and 2. So far as question no.5 is concerned, the Tribunal was right in relying on the judgment of this Court. The Tribunal is bound by the judgment of the jurisdictional High Court.

5. Considering the fact that so far question nos. 3 and 4 are concerned, they are implicit in question nos. 1 and 2 and will be considered while deciding question nos. 1 and 2. No further orders are necessary.

6. In view of above, the application is disposed of.

(A.M. BADAR, J.)

(S.V. GANGAPURWALA, J.)