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

SALES TAX REFERENCE NO.30 OF 2009
IN
REFERENCE APPLICATION NO.67 OF 2005

The Commissioner of Sales Tax,
Maharashtra State, Mumbai .... Applicant
Vs.
M/s. Shri Datta Shetkari Sahakari
Sakhar Karkhana Limited .... Respondent

Ms Jyoti Chavan, AGP, for the Applicant-State.
None for the Respondent.

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

DATE : MARCH 21, 2017

P.C:

1. By this reference at the instance to the Revenue, the following substantial question of law has been referred for opinion and answer by this Court:-

> "Whether on the facts and circumstances of the case, and *on a true and correct interpretation of the provisions contained in rule 41D of the Bombay Rules, was the Tribunal justified in holding that the*

> *paints used for painting of machinery are the accessories of the machinery, and therefore full set off was admissible on the purchases of such paints, without any apportionment as per the second proviso to the said Rule 41D?*"

That question of law arises out of the Judgment and Order, dated 5-4-2005, passed in Second Appeal No.1163 of 2003.

2. When this reference was called out, it was fairly stated by Ms Chavan, learned AGP appearing for the Revenue, that the Revenue does not seek any opinion or answer of this Court on the above question of law. The reason, according to her, is that with the advent of time it may be that the appellant may be carrying on the same business activities, in the same manner and using the same machineries, adopting the same process, but post introduction of the Maharashtra Value Added Tax Act, 2002, the Revenue seeks no answer or opinion. The question now is purely academic, according to the Revenue, after this MVAT regime.

3. We are really surprised that such statement is being

made across the Bar, without any affidavit of any responsible official and without disclosure of the material based on which such a stand is taken by the Revenue. It cannot be that merely because of some inconvenience to the Revenue officials and its Advocates that this statement is loosely and casually made across the Bar. Then, the impression that is given to this Court is that the Revenue selects dealers for favourable treatment. If the MVAT regime is known to this official, then, in several references arising out of the Bombay Sales Tax Act, 1959 (Old Law) why such a stand or approach is not taken has never been clarified to us. It gives an impression to the common public that a co-operative sugar factory and being controlled by a political outfit in power or a particular entity therein, that from the tax regime it should be released or some concession or relaxation be given to it. Such an impression is given simply because co-operative sugar factories are more or less in the co-operative sector and predominantly. The co-operative societies having on their managing committees and their Board, the representatives of the people either elected as Members of Legislative Assembly or Members of the Legislative Council, together they make policies which are friendly for such outfits and then strict regime such as the tax law is implemented in tune with the adopted policy on pick and choose basis. The statements that are made today give even the Court this impression and strengthens the view of the general public. Whether this sub-serves larger public interest or not is for the Revenue and its officials to decide.

4. We accept the statement of Ms Chavan and made on instructions as far as this reference is concerned and return it unanswered.

(B.P. COLABAWALLA, J.) (S.C. DHARMADHIKARI, J.)