

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

NOTICE OF MOTION NO. 588 OF 2015
IN
SALES TAX REFERENCE (L) NO. 108 OF 2007
IN
REFERENCE APPLICATION NO. 79 OF 2007

AND
SALES TAX REFERENCE (L) NO. 108 OF 2007

The Commissioner of Sales Tax	}	Applicant
versus		
M/s. Ratilal Becharlal and Sons	}	Respondent

WITH
NOTICE OF MOTION NO. 620 OF 2015
IN
SALES TAX REFERENCE (L) NO. 48 OF 2007
IN
REFERENCE APPLICATION NO. 9 OF 2003

AND
SALES TAX REFERENCE (L) NO. 48 OF 2007

The Commissioner of Sales Tax	}	Applicant
versus		
M/s. Gaucia Exports Enterprises	}	Respondent

WITH
NOTICE OF MOTION NO. 842 OF 2015
IN
SALES TAX REFERENCE (L) NO. 45 OF 2007
IN
REFERENCE APPLICATION NO. 6 OF 2003

AND
SALES TAX REFERENCE (L) NO. 45 OF 2007

The Commissioner of Sales Tax	}	Applicant
versus		
M/s. Subodhchandra and Co.	}	Respondent

WITH
NOTICE OF MOTION NO. 1006 OF 2015
IN
SALES TAX REFERENCE (L) NO. 81 OF 2007
IN
REFERENCE APPLICATION NO. 132 OF 2004

AND
SALES TAX REFERENCE (L) NO. 81 OF 2007

The Commissioner of Sales Tax	)	Applicant
versus		
MISO Ingersoll Rand (India) Ltd.	)	Respondent

WITH
NOTICE OF MOTION NO. 1019 OF 2015
IN
SALES TAX REFERENCE (L) NO. 92 OF 2007
IN
REFERENCE APPLICATION NO. 94 OF 2002

AND
SALES TAX REFERENCE (L) NO. 92 OF 2007

The Commissioner of Sales Tax } Applicant
versus
M/s. Agra Engineering Company } Respondent

WITH
NOTICE OF MOTION NO. 1052 OF 2015
IN
SALES TAX REFERENCE (L) NO. 33 OF 2007
IN
REFERENCE APPLICATION NO. 57 OF 2005

AND
SALES TAX REFERENCE (L) NO. 33 OF 2007

The Commissioner of Sales Tax	)	Applicant
versus		
M/s. M. J. Exports	)	Respondent

**WITH
SALES TAX APPLICATION NO. 50 OF 2016
IN
REFERENCE APPLICATION NO. 92 OF 2005**

The Commissioner of Sales Tax	}	Appellant
versus		
M/s. ACHO Exports	}	Respondents

Ms. Jyoti Chavan Astt. Govt. Pleader for the applicant-State.

Mr. Chandrakant B. Thakar for the respondent in NMS Nos. 588/2015 and 620/2015.

Ms. N. R. Badheka for the respondent in NMS Nos. 842/2015, 1003/2015 and 1052/2015.

Mr. V. P. Patkar for the respondent in NMS/1002/2015.

**CORAM :- S. C. DHARMADHIKARI &
PRAKASH. D. NAIK, JJ.
DATED :- APRIL 4, 2017**

P.C. :-

1. Heard. For the reasons set out in the affidavit in support, all the notices of motion are made absolute in terms of prayer clauses (a), (b) and (c). There would be no order as to costs. The office objections, if any, shall be removed within a period of two weeks from today.

2. The tribunal has referred the following question of law for answer and opinion of this court:-

“Whether the tender of an import licences called REP licences/Exim Scrips by the holder thereof after discontinuance of Import Export Police since 1st March, 1992 to the branches of the State Bank of India designated for the purpose at the instance of Reserve Bank of India for forwarding to the offices of the Joint Chief Controller of Imports and Exports on certain amount of premium proportionate to balance of C. I. f. value constitute a sale of goods within the meaning and for the purpose of Bombay Sales Tax and whether the amount of premium is exigible to sales tax?”

3. This question arose out of the tribunal's order which was passed in the appeals. The appeals were directed against the order of the first appellate authority. The tribunal has referred that question arising out of its order in the appeals.

4. However, when the reference was called out, it is fairly conceded that similar issue was dealt with by the Hon'ble Supreme court of India in Civil Appeal No. 1798 of 2005 (**Commercial Tax Officer and Ors. vs. State Bank of India and Anr.**), decided on 8th November, 2016. The question of law has been answered. It has been answered in favour of the dealer, namely, the respondents before us. It has been answered against the Revenue. In these circumstances, these references are also answered accordingly and are disposed of.

(PRAKASH.D.NAIK, J.)

(S.C.DHARMADHIKARI, J.)