IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SALES TAX REFERENCE NO.19 OF 2009

IN

REFERENCE APPLICATION NO.122 OF 2005

The Commissioner of Sales Tax .... Applicant
thru' the State of Maharashtra

Vs.

M/s Mukund Limited .... Respondent

Ms. Jyoti Chavan, AGP for the Applicant-State.

Mr. Prakash Shah a/w Mr. Jas Sanghavi i/by PDS Legal for the Respondent.

CORAM : S.V. GANGAPURWALA AND G.S. KULKARNI, JJ.

DATE : 6 JUNE, 2017

PER COURT :

The Tribunal has referred the following question for decision :

"Whether the tender of an import licenses called REP licenses/Exim Scrips by the holder thereof after discontinuance of Import Export Policy

> since 1.3.1992 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?"

2 There is consensus arrived at between the learned counsel for the Appellant and the Respondent that the issue involved in the present reference is no longer res-integra. The same stands concluded by the judgment of the Apex Court in the case of Commercial Tax Officer and Others vs. State Bank of India and Another, reported in (2016) 10 Supreme Court Cases, 10th Volume, 595. The issue involved before the Apex Court in the said case is as under :

> "The seminal question that emerges for consideration in this appeal is whether State Bank of India (SBI) and its branches, which are

registered dealers under the Bengal Finance (Sales Tax) Act, 1941 (for brevity "the Act") would be liable to levy of purchase tax under Section 5 (6a) of the Act for accepting the Exim scripts (Export-Import Licence on payment of premium of 20 per cent of the face value of the scrips in compliance with the direction contained in the letter of Reserve Bank of India (RBI) dated 18-3-1992. The authorities of the Revenue as well as the Taxation Tribunal (for short “the Tribunal”) had held against SBI but the Division Bench of the High Court of Calcutta in a writ petition has dislodged the said conclusion holding, inter alia that the purchase of Exim scrips by the Bank did not attract the provisions of Section 4(6) (iii) of the Act and resultantly quashed the orders of the fora below and issued consequential directions”.

3 The Apex Court has held as under :

“Thus analysed, the replenishment licences or Exim scrips would, therefore be “goods” and when they are transferred or assigned by the holder/ owner to a third person for consideration, they would attract sales tax. However, the position would be different when replenishment licences or Exim scrips are returned to the grantor or sovereign authority for cancellation or extinction. In this process, as and when the goods are presented, the replenishment licence or Exim scrip is cancelled and ceases to be a marketable instrument. It becomes a scrap of paper without any innate market value. SBI, when it took the said instruments as an agent of RBI did not hold or purchase any goods. It was merely acting as per the directions of RBI, as its agent and as a participant in the process of cancellation, to ensure that the replenishment licences or Exim scrips were no longer transferred. The intent and purpose was not to purchase goods in the form of replenishment licences or Exim scrips, but to nullify them. The said purpose and objective is the admitted position. The object was to mop up and remove the replenishment licences or Exim scrips from the market.

> 39 Be it noted that the initial issue or grant of scrips is not treated as transfer of title or ownership in the goods. Therefore, as a natural corollary, it must follow when RBI acquires and seeks the return of replenishment licences or Exim scrips with the intention to cancel and destroy them, the replenishment licences or Exim scrips would not be treated as marketable commodity purchased by the grantor. Further, SBI is an agent of RBI, the principal. The Exim scrips or replenishment licences were not "goods" which were purchased by them. The intent and purpose was not to purchase the replenishment licences because the scheme was to extinguish the right granted by issue of replenishment licences. The "ownership" in the goods was never transferred or assigned to SBI."

4 As the issue involved is no longer res-integra, the Reference stands disposed of in view of the judgment of the Apex Court in case of Commercial Tax Officer and Others vs. State Bank of India and Another, reported in (2016) 10 Supreme Court Cases, 10th Volume, 595.

(G.S. KULKARNI, J.) **(S.V. GANGAPURWALA, J.)**