IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SALES TAX APPLICATION NO.20 OF 2016

MAHARASHTRA DISTILLERIES LTD.)
(Presently known as United Spirits Ltd.))...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Ms.Nikita Badheka, Advocate for the Applicant.

Mr.V.A.Sonpal, Special Counsel, a/w. Mr.Amar Mishra, Advocate for the Respondent.

CORAM : S.V.GANGAPURWALA &
A. M. BADAR, JJ.

DATE : 4th JULY, 2017

<u>P.C.</u> :

1 Ms.Nikita Badheka, the learned counsel for the applicant, submits that under the rectification application the Tribunal has infact set aside the order passed in favour of the present applicant, thereby materially affecting the tax liability.

According to the learned counsel, reference has been made to this court on two grounds. There are other grounds also which are relevant and material for effective adjudication of the dispute between the parties. The same are also required to be referred. According to the learned counsel, the Tribunal has withdrawn the relief granted in the first appeal in respect of sale of packing material merely on the basis of the decision of the Tribunal for the earlier year of the assessee against the assessee. However, has failed to consider the fresh agreement for the current year. The learned counsel further submits that there is no evidence to the contrary which would enable the department to claim levy of purchase tax on the alleged sale of packing material. The learned counsel submits that the miscellaneous application filed by the department for rectification has been subsequently dismissed. In view of that, the rectification order itself is bad in law.

2 Mr.Sonpal, the learned counsel, submits that as against the order passed on rectification application, the application under Section 61 is not maintainable before this court. The said issue is

already settled by this court under order dated 22nd September 2011 in Sales Tax Application No. 3 of 2011. According to the learned counsel, the issues which are already referred, would cover the entire gamut of dispute between the parties.

3 We have considered the submissions and also the order dated 22nd September 2011 in Sales Tax Application No.3 of 2011. It has been observed by the court that an order on an application for rectification would not fulfill the description of an order which affects the liability of any person to pay tax, penalty or interest. In the circumstances, the application for reference under Section 61 is not tenable.

4 In the present case, the order passed on a rectification application reads as under :

> "**ORDER**
>
> 1. Rectification Application No.18 of 2009 is allowed.
> 2. The judgment and order passed in Second Appeal No.851 of 1999 is hereby modified and it is

> directed that the Sales Tax levied by the assessing authority on sale of packing material worth Rs.1,58,91,300/- is hereby confirmed and restored and to that extent the order passed by the First Appellate Authority is modified.
>
> 3. The First Appellate Authority is directed to rework out the tax liability on the sale of packing material in addition to consequential additional tax, turnover tax and interest under Section 36(3)(b).
>
> 4. Accordingly, present Rectification Application in Second Appeal stand disposed of. No order as to costs."

5 Perusal of the said order, it is manifest that the relief which was granted to the assessee by the First Appellate Authority has been set aside under an order passed on rectification application. The sales tax levied by the Assessing Officer on sale of packing material worth Rs.1,58,91,300/- is confirmed and restored and to that effect the order passed by the First Appellate Authority is modified. It is explicitly clear that under the order passed on rectification application, the major tax liability has been imposed upon the assessee.

6 Thereafter, the miscellaneous application filed by the department has been dismissed as infructuous. Infact, the phraseology used by the Tribunal was incorrect. The miscellaneous application did not survive after the rectification application was allowed. Infact, the miscellaneous application is deemed to have been allowed on an order being passed in rectification application in favour of the department.

6 As two questions are already referred by the Tribunal, we have examined the question as sought to be referred by the assessee. We find that along with the two questions referred by the Tribunal, Question No.3, as framed by the assessee, would be relevant, which is as under :

> “Question No.3 :-
> Whether on facts and circumstances and evidence on record, the Tribunal was justified in withdrawing the relief granted in the First Appeal on a debatable question of sale of packing material merely on the basis of the decision made by the Tribunal in the earlier year against the

assessee, overlooking the fresh agreement passed in the year under consideration."

7 In the light of the above, we pass the following order :

ORDER

i) The Tribunal shall incorporate the following question and refer it to this court as a part of the earlier reference :-

Question No.3 :-

Whether on facts and circumstances and evidence on record, the Tribunal was justified in withdrawing the relief granted in the First Appeal on a debatable question of sale of packing material merely on the basis of the decision made by the Tribunal in the earlier year against the assessee, overlooking the fresh agreement passed in the year under consideration."

ii) Reference application is accordingly partly allowed.

iii) No costs.

(A. M. BADAR, J.) **(S.V.GANGAPURWALA), J.)**