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

SALES TAX REFERENCE NO.56 OF 2009
IN
REFERENCE APPLICATION NO.211 OF 2007

The Commissioner of Sales Tax,
Maharashtra State, Mumbai .... Applicant
Vs.
M/s. Standard Industries Ltd. .... Respondent

Mr. Dushyant Kumar, AGP, for the Applicant-State.
Ms Nikita Badheka for the Respondent.

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

DATE : MARCH 21, 2017

P.C:

1. The Tribunal has referred the following question of law for answer and opinion of this Court:-

> "Whether on the facts and circumstances of the case, and on a true and correct interpretation of the definition of the term “sale” in Section 2(28) of the Bombay Sales Tax Act, 1959, the impugned surrender of Exim Scrips to the Joint Chief Controller of Imports and Exports (JCCIE) or as the case may be Director General of Foreign Trade

> (DGFT) against certain amount of premium proportionate to the balance C.I.F. value, constitute a sale liable to tax under the Bombay Sales Tax Act, 1959?"

2. This question arose out of the Tribunal's order which was passed in an appeal. That appeal was directed against the order of the First Appellate Authority. The Tribunal has referred that question arising out of its order dated 7-6-2007.

3. 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 & Ors. Vs. State Bank of India & Anr.**), decided on 8-11-2016. The question of law has been answered. It has been answered in favour of the dealer, namely, the respondent before us. It has been answered against the Revenue. In these circumstances, this reference is also answered accordingly, and is disposed of.

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