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

SALES TAX REFERENCE NO.63 OF 2009
IN
REFERENCE APPLICATION NO.79 OF 2007

The Commissioner of Sales Tax,
Maharashtra State, Mumbai .... Applicant
Vs.
M/s. Associated Cement Co. Ltd. .... Respondent

Ms Jyoti Chavan, AGP, for the Applicant-State.
Mr. P.C. Joshi with Mr. Piyush Shah for the Respondent.

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

DATE **:** MARCH 21, 2017

P.C:

1. The Tribunal's Judgment and Order, dated 25-1-2007, in Second Appeal No.421 of 2003 and Miscellaneous Application No.66 of 2006 gives rise to the following question of law:-

> *"Whether on the facts and the circumstances of the case, and on a true and correct interpretation of the provisions in Section 33 (4A) of the Bombay Sales Tax*

> *Act, 1959, the Tribunal was legally justified in holding the assessment as having become time barred under section 33(4A) and in directing to accept the returns under section 33(4A), when in fact the dealer had not filed returns in Form 18-B for the quarters ending on 30.06.1994, 30.09.1994, 31.12.1994 and 31.03.1995 as required by Rule 22(3)(b) of the Bombay Sales Tax Rules and instead, had filed returns in Form 18 for the said quarters in violation of the provisions in the said Rule 22(3)(b)?"*

It is referred by the Tribunal for our opinion by its order dated 20-7-2007, passed in Reference Application No.79 of 2007.

2. Mr. Joshi, learned Advocate appearing on behalf of the dealer in this reference, has brought to our notice a Division Bench Judgment of this Court rendered in Sales Tax Reference Nos.19 of 2003 and 10 of 2006 {***Commissioner of Sales Tax, Maharashtra State, Mumbai v. Lucas India Services Ltd., and Agarwal Chemicals v. Commissioner of Sales Tax, Maharashtra State, Mumbai***} decided on August 12, 2010.

3. He would submit that similar question is answered by the said Judgment. It is answered in favour of the assessee/dealers and against the Revenue.

4. On this Division Bench Judgment being brought to our notice by Mr. Joshi, we enquired from Ms Chavan, appearing for the Revenue, as to whether this concludes the issue and controversy. She fairly states that this position may obtain on a reading of the Division Bench Judgment. However, though the Division Bench Judgment in this case operates, a similar issue was considered by another Division Bench of this Court and against the Judgment of that Division Bench, the matter is carried by the Revenue to the Hon'ble Supreme Court of India. Though the operation of the Judgment is not stayed, the appeal is admitted by the Hon'ble Supreme Court and is pending.

5. We do not think that we can ignore a binding Division Bench Judgment of this Court on the specious plea that the issue is pending in the Hon'ble Supreme Court and from the other Judgment of this Court. That would not be fair, just and proper. It would be contrary to judicial discipline for we are bound by our Division Bench Judgments. They would bind us

until they are quashed and set aside by the highest Court. No such position emerges from the record of this reference.

6. In view of the above discussion, we answer the question forwarded for our answer and opinion by the Tribunal in terms of the Division Bench Judgment in **Lucas India Services Limited** (supra). The question is answered in favour of the dealer and against the Revenue.

7. The reference accordingly stands disposed of.

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