

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2424 OF 2018

Deepak Fertilisers and Petrochemicals
Corporation Ltd.
a Company registered under the
Companies Act, 1956 having its office at
Sai Hira, Survey No.93,
Mundhwa, Pune-411 036.

...Petitioner

V/s.

1. The State of Maharashtra
through the Government Pleader,
High Court, Mumbai
2. The Commissioner of Sales Tax
having his office at 8th Floor
Vikrikar Bhavan, Maxgaon
Mumbai – 400 010.
3. The Joint Commissioner of Sales Tax
(LTU-1) having his office at GST
Bhavan, 4th Floor, Airport Road,
Yerwada, Pune-411 006
4. The Deputy Commissioner of Sales Tax
(PUN-VAT-E-612-LTU-1) having his
office at GST Bhavan, 4th Floor,
Airport Road, Yerwada, Pune-411006
5. GAIL (India) Ltd
a Company registered under the
Companies Act, 1956 having its
office at Plot No.73, Sector-15,
CBD Belapur, Navi Mumbai

...Respondents

WITH

WRIT PETITION NO.2430 OF 2018

Smartchem Technologies Ltd.
a Company registered under the
Companies Act, 1956 having its office at
Sai Hira, Survey No.93,
Mundhwa, Pune-411 036.

...Petitioner

V/s.

1. The State of Maharashtra
through the Government Pleader,
High Court, Mumbai.
2. The Commissioner of Sales Tax
having his office at 8th Floor,
Vikrikar Bhavan, Mazgaon
Mumbai – 400 010.
3. The Joint Commissioner of Sales Tax
(Pune-4) having his office at GST
Bhavan, 4th Floor, Airport Road,
Yerwada, Pune-411 006.
4. The Sales Tax Officer (C-708)
having his office at GST Bhavan,
4th Floor, Airport Road, Yerwada,
Pune – 411 006.

...Respondents

**WITH
WRIT PETITION NO.3406 OF 2018**

Empire Industries Limited
a Company registered under the
Companies Act, 1956 having its office at
Empire Complex, 414, Senapati Bapat Marg,
Lower Parel, Mumbai.400 013

...Petitioner

V/s.

1. The State of Maharashtra
through the Government Pleader,
High Court, Mumbai

2. The Commissioner of Sales Tax
having his office at 8th Floor
Vikrikar Bhavan, Mazgaon
Mumbai-400 010.
3. Deputy Commissioner of Sales Tax,
LTU (E-639), 4th Floor, D-Wing,
Vikrikar Bhavan, Mazgaon,
Mumbai- 400 010.
4. Joint Commissioner of Sales Tax (F-604)
Large Tax Payers Unit-04, 4/D/2 Old
Building, Vikrikar Bhavan, Mazgaon
Mumbai – 400 010.
5. Mahanagar Gas Limited
a Company registered under the
Companies Act, 1956 having its
Registered Office at MGL House,
Block G-33, Bandra Kurla Complex,
Bandra (East), Mumbai – 400 051. ...Respondents

**WITH
WRIT PETITION NO.2007 OF 2018**

JSW Steel Ltd, Dolvi Works
a company incorporated under the
Companies Act, 1956 and having its
office at 1st Floor, New Administrative
Building, Geetapuram, Dolvi,
Taluka Pen, Dist-Raigad-402 107. ...Petitioner
V/s.

1. The State of Maharashtra
Through the Government Pleader
PWD Building, High Court, Mumbai
2. The Commissioner of Sales Tax,
Room No.611, 6th Floor,
Raigad Division, Kokan Bhavan,
Belapur, Navi Mumbai.

3. GAIL India Ltd.,
GAIL Bhawan, Sec No.-15,
Plot No.73, CBD Belapur,
Navi Mumbai – 400 614. ...Respondents

**WITH
WRIT PETITION NO.2008 OF 2018**

JSW Steel (Salav) Ltd.
A company incorporated under the
Companies Act, 1956 and having its
office at VII, Salav, PO-Revdanda,
Dist-Raigad, Maharashtra-402202.
V/s.

1. The State of Maharashtra
Through the Government Pleader
PWD Building, High Court, Mumbai.
2. The Commissioner of Sales Tax,
Room No.611, 6th Floor,
Raigad Division, Kokan Bhavan,
Belapur, Navi Mumbai.
3. GAIL India Ltd.,
GAIL Bhawan, Sec No.-15,
Plot No.73, CBD Belapur,
Navi Mumbai – 400 614. ...Respondents

**WITH
WRIT PETITION NO. 2009 OF 2018**

JSW Steel Coated Products Ltd.
A company incorporated under the
Companies Act, 1956 and having its
manufacturing units at Village: VASIND,
Tal: Sahapur, Dist: Thane-421 604.
and B-6, Tarapur MIDC Industrial Area,
Boisar, Tal & Dist Palghar-401 506 ...Petitioner

V/s.

1. The State of Maharashtra

Through the Government Pleader
PWD Building, High Court, Mumbai.

2. The Commissioner of Sales Tax,
Vikrikar Bhavan, Mazgaon, Mumbai.

3. GAIL India Ltd.,
GAIL Bhawan, Sec No.-15,
Plot No.73, CBD Belapur,
Navi Mumbai – 400 614.

...Respondents

**WITH
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.819 OF 2018

Maharashtra Seamless Ltd
Having its Western Region Office at
402, Sarjan Plaza,
100, Dr. Annie Besant Road,
Opp. Telco Showroom, Worli,
Mumbai-400 018, through its
Authorized Signatory,
Shri Meghraj Saraf (Manager)

...Petitioner

V/s.

1. State of Maharashtra
Having its office at Mantralaya
Mumbai – 400 020.

2. Commissioner of Sales Tax
Maharashtra State, Having
his office at GST Bhavan, Mazgaon,
Mumbai – 400 010.

3. JT. Commissioner of Sales Tax
(Adm), Raigad Division, having
his office at Room No.611,
Kokan Bhavan, Belapur,
Navi Mumbai, Maharashtra.

...Respondents

Mr.Prakash Shah i/b M/s.PDS Legal for the Petitioner in WP No.2424 of 2018 and wp No.2430 of 2018.

Mr.B.V. Samant AGP for Respondent-State in all matters.

Mr.Rafiq Dada Senior Advocate with Mr.Jitendra Motwani, Mr.Harsh Shah and Mr.Rinkey Jassuja i/b M/s. Economic Law Practice for the Petitioner in WP No.2007, 2009 and 2018.

Mr.Vikram Nankani with Mr.Jitendra Motwani, Mr.Harsh Shah and Rinkey Jassuja i/b M/s.Economic Law for the Petitioner in WP No.2008 of 2018.

Mr.Jitendra Motwani a/w Mr.Harsh Shah and Rinkey Jussuja i/b M/s.Economic Law for the Petitioner in WP No.2009 of 2018.

Mr.V.A. Sonpal, Special Counsel a/w Mr.B.V.Samant AGP for Respondent Nos.2 and 3-State.

Mr.A.R. Bamane i/b Mr.A.R. Bamane and Co. for Respondent No.5.

Smt.Nikita Badheka a/w Ms.Neha Chaudhary and Mr.Parth Badheka for the Petitioner in Writ Petition No.819 of 2018.

Ms.Jyoti Chavan, AGP for the Respondents in Writ Petition No.819 of 2018.

**CORAM : S.C. DHARMADHIKARI &
PRAKASH D. NAIK, JJ.**

RESERVED ON : 10th APRIL 2018

PRONOUNCED ON : 26th JULY 2018

COMMON JUDGMENT : (Per S.C. Dharmadhikari,J)

1. Since the above petitions involve common questions of fact and law and identical arguments were canvassed by both the sides, we proceed to dispose them of by this common judgment.

2. Rule in each of the petitions is issued. Respondents have waived service. With the consent of both the sides, the Writ Petitions are disposed of by this common judgment.

3. The challenge in these petitions is to a Trade Circular No.3T of 2018 dated 16th January 2018.

4. The prayer is that notification No.VAT-1517/C.R.136(A)/Taxation-1 dated 13th October 2017 should be given effect to and operated from 24th August 2017. The argument is that the Trade Circular No.3T of 2018 dated 16th October 2018 and the Addenda 30th January 2018 enabled recovery of Value Added Tax in excess of 3%.

5. Since, the petitioner-Deepak Fertilisers and Petrochemicals Corporation Ltd., in WP No.2424 of 2018 more or less represented the common case of parties, we take the facts from its case.

6. That company is engaged in the manufacture of fertilizers at its factory, details of which are mentioned in the cause title. These fertilizers are thereafter subsequently sold. The first

respondent is the State of Maharashtra, whereas the respondent Nos.2,3 and 4 are the Officers and the Authorities exercising powers under the Maharashtra Value Added Tax Act, 2002 (for short 'MVAT'). The respondent No.5 is Gas Authority of India Limited, a company registered under the Companies Act, 1956 and has been impleaded as a respondent simply because the petitioner says that for the purposes of manufacture of fertilizers, the petitioner purchases natural gas from respondent No.5. This is an intra-state purchase. The purchase is under various gas purchase agreements. The purchase in natural gas is either utilized as fuel or as an input in the manufacture/processing of fertilizers/chemicals.

7. With effect from 01.07.2017, the GST regime has been implemented in India. As a matter of policy, the Central and the various State Governments chose to leave petroleum crude, high speed diesel, motor spirit, natural gas, aviation turbine fuel and alcoholic liquor for human consumption outside GST regime and continue to levy VAT/Central Sales Tax on the said commodities.

8. Various amendments were made to the MVAT Act vide Maharashtra Act No.XLII of 2017 to make the MVAT compatible with the GST regime. In and amongst the said amendments, was

the insertion of Section 16(6A) into the MVAT Act which provided that any person who was not involved in the sale of the six commodities mentioned in Para 5 above would no longer have a valid registration under the MVAT Act. However, the proviso to Section 16(6A) provided that any person who was affected by Section 16(6A), but wished to continue to do business in the aforementioned six commodities would have to apply to the Respondents in the prescribed manner to have the cancellation of his registration revoked.

9. Prior to 01.07.2017, the sale of natural gas was governed by the residuary Entry of the MVAT Act, namely, Schedule-E and hence the applicable rate of tax on 30.06.2017 was 13.5%. Furthermore, the petitioner was eligible to claim set-off of the input MVAT paid by it subject to a reduction of 3% on account of the provisions of Rule 53(1) and Rule 53(1A) of the MVAT Rules. In other words, the net effective rate of MVAT on natural gas was only 3% prior to 01.07.2017 if the natural gas was consumed domestically as fuel or as an input for manufacture.

10. With effect from 01.07.2017, when any person purchased natural gas domestically, the seller would charge and

collect full tax from him at the rate of 13.5%. However, since the person was no longer a dealer under the MVAT Act due to Section 16(6A), he could not claim set-off or refund of the input MVAT collected from him. Furthermore, he would be liable to pay GST on his outputs at the full rate since the GST Act only provided for adjustment of GST paid and not of VAT paid. Hence, such a person would be taxed at the full rate on his outputs without adjustment of the input tax paid by him. Whilst the effective rate of taxation on natural product prior to 01.07.2017 was 3%, the effective rate after 01.07.2017 rose to 13.5%.

11. Realizing the above, the Respondents sought to provide relief to the taxpayers. As stated earlier, the net effective rate of tax on natural gas prior to 30.06.2017 was 3%. Hence, vide Notification No.VAT-1517/CR-136(A)/Taxation-1 dated 24.08.2017, w.e.f. 24.08.2017, Entry-16 was inserted into Schedule-B of the MVAT Act which made provisions for a concessional rate of 3% on the sale of natural gas. In other words, the Notification dated 24.08.2017 sought to maintain *quo ante*.

12. The Notification dated 24.08.2017 also provided that for a seller to be eligible to avail the 3% concessional rate, the

purchasing dealer must be certified by the Respondents in Proforma-A. The petitioners duly applied and received from the Respondents Proforma w.e.f. 24.08.2017 (Exhibit-F of WP No.2424 of 2018 and Exhibit-F of W.P. No.2430 of 2018).

13. However, unfortunately, it is submitted that there existed anomaly in the Notification dated 24.08.2017. While sub-clause(i) of Entry 16 used the phrase 'dealer', the main body of the entry uses the phrase 'registered dealer'. The word 'dealer' continued to be defined under the MVAT Act as a person who is involved in buying or selling goods. Hence, a person who was involved in purchase of natural gas, but not in the sale of natural gas would still be considered as a dealer. However, such a person would not be a 'registered dealer' on account of the provisions of Section 16(6A). It is submitted that it was never the intention of the respondents at the time of the enactment of the Notification dated 24.08.2017 to restrict the benefits to only registered dealers. That is clear from the fact that no goods as defined in the Maharashtra Goods and Services Tax Act, (for short 'MGST Act') can be manufactured from natural gas as well as the usage of the phrase 'of any other goods whatsoever.'

14. The above is further supported by the issuance of Notification No.VAT-1517/CR-136(a)/Taxation-1 dated 13.10.2017 by the respondents. This Notification dated 13.10.2017 sought to cure the anomaly in the Notification dated 24.08.2017 and amended Entry 16 of Schedule B to do so. Explanations (b) and (c) as inserted by the Notification dated 13.10.2017 expands the scope of terms 'goods' and 'registered dealers' to include goods covered by the MGST Act and persons registered under the MGST Act respectively. This effectively cured the anomaly in the Notification dated 24.08.2017.

15. The petitioner then contended that it submitted Proforma-B as required by the Entry No.60 to the respondents and had been issued a Proforma-A dated 15.09.2017 w.e.f. 15.09.2017. At the request of the respondent No.5, the petitioner applied for a revision of Proforma-A and was duly issued a new Proforma-A dated 1st November 2017 w.e.f. 24.08.2017 itself. Exhibit-F to the petitions are copies of the original Proforma-A and the revised Proforma-A. It is claimed that the respondent No.5 charged rate of Rs.13.5% upon the petitioner from the period of 24-08-2017 to 13.10.2017, but after the issuance of the amended Proforma-A, this fifth respondent issued credit notes reducing the tax charges from

13.5% to 3%. Copies of the various invoices raised by respondent No.5 and credit notes issued are annexed as Exh-G to the petition.

16. However, the second respondent issued a subsequent Trade Circular No.3T of 2018 dated 16.01.2018 declaring that the earlier clarification issued by Trade Circular 39T of 2017 had been discussed by the Ministry of Finance, Maharashtra. The said Circular No.3T of 2018 further provided that the Ministry disagreed with the previous clarification and therefore the earlier clarification was in effect rescinded. Thus, the Trade Circular No.3T of 2018 provided that the concessional rate of 3% would only be applicable to persons who are registered dealers under the MVAT Act and not to the persons who are taxable persons under the Maharashtra Goods and Services Tax Act. The third respondent *suo-moto* amended the petitioner's Proforma-A vide addenda dated 30.01.2018 as is clear from Exhibit-H. Acting upon the Trade Circular No.3T of 2018, the fifth respondent raised a debit note dated 30.01.2018 for the differential tax of 10.5% upon the petitioner (Exhibit-I to the petition).

17. It is in these circumstances that being aggrieved and dissatisfied by the Trade Circular No.3T of 2018 dated 16.01.2018

that the Writ Petition is filed challenging it on various grounds.

18. In this Writ Petition, on notice being issued, Mr.Sonpal was engaged by the respondent Nos.1 to 4 and argued it. We granted him time to file an affidavit. Till 20.03.2018, the reply affidavit was not filed. However, on 27.03.2018 the reply affidavit was filed by the State and the Officials/Authorities under the MVAT Act. In this affidavit, it is claimed that after the Constitutional amendments were made by Constitution (101 Amendment) Act, 2016 to enable the Government to replace the levy of Sales Tax and Service Tax separately by State and Central Government independently, the same was replaced now by common levy of tax on goods and services. After the constitutional amendments, both State and Central Government were empowered to levy tax on supply of goods and supply of services. Petroleum goods, high speed diesel, motor speed (commonly known as petrol), natural gas, aviation turbine fuel, alcohol and liquor for human consumption remained with the State for levy of Sales Tax.

19. The affidavit states that prior to 01.07.2017 natural gas was taxed at 13.5% as covered by Schedule-E appended to the MVAT Act (residual entry). Those who purchased natural gas from

a supplier or manufacturer used to pay 13.5% to supplier and they were entitled to full input tax credit subject to production of 3% under Rule 53(1) and 53(1)-A of the value of purchase if it is used as fuel or raw material in manufacturing goods. Hence, net effective burden on dealers who use natural gas as fuel or raw material was 3%. However, if natural gas was not used as fuel or raw material, then, no retention of 3% was required. However, if the taxable person under the MGST Act does not continue to be registered under the MVAT Act, he is not entitled to input tax credit or refund of tax paid on purchases of goods covered by the MVAT Act, since under MGST Act any tax paid under MVAT Act is not available to be claimed as input credit. In order to extend the benefit to the taxable persons under the MGST Act and in order to ensure that impact of tax on dealers registered under the MVAT Act and MGST Act is same, the Government issued notification (Exhibit-E) to the Writ Petition No.2424/2018 w.e.f. 14.10.2017. Earlier similar notification was issued on 24.08.2017 for benefit of MVAT Act registered dealers only and sales to MGST dealers were excluded.

20. The petitioners', cannot challenge any effective date because none of the fundamental rights are violated. Circular No.39T dated 08.09.2017 mentions that the purchaser of natural

gas is required to be a registered dealer under MVAT Act or MGST Act, though requirement of being registered under the MGST Act was not included in the notification under consideration. In absence of such reference to requirement of registered dealer under the MGST Act in notification dated 24.08.2017, circular mentioning it as such, is irrelevant. Notification dated 24.08.2017 must be read in the context and therefore reference to registration under the MGST Act 2017 is irrelevant in its circular dated 08.09.2017 and not binding on the Government. It is therefore, claimed that rate of tax was reduced to 3% under notification of 24.08.2017 provided the purchaser is registered dealer under Section 2(21) of MVAT Act, the purchaser uses gas in manufacture of goods as enumerated in paragraph 7 of the affidavit, or any other goods, which meant that he should use the natural gas in manufacture of any goods or use it as fuel. A bare reading of this notification clearly excludes taxable persons under the MGST Act. Thus, the reduced rate of tax was not applicable to the sales made to taxable persons registered under the MGST Act. In paragraphs 15 and 16 of this affidavit in reply, the State Government clarifies the position as under:-

“15. I say by Notification dated 24.08.2017 at Exhibit-C at page No.49 of the Writ Petition, rate of tax was reduced to 3% provided the purchaser is registered dealer

under section 2(21) of MVAT Act; purchaser uses gas in manufacture of goods as enumerated in para 7 above or any other goods, which meant he should use the natural gas in manufacture of any goods or use it as fuel. Bare reading of the Notification on 24.08.2017 conspicuously, noticeably and clearly excludes taxable person under the MGST Act. Thus the reduced rate of tax was not applicable to sales made to taxable person registered under the MGST Act.

16. I say if registered dealer manufactures goods enumerated at para 7 above INPUT TAX CREDIT would be permissible on 13.5% except reduction of 3% of the purchase price when goods are used as fuel. But if he manufactures any other goods which State is not entitled to tax under Item 54 List II after Constitution (One Hundred and First Amendment) Act, 2016, there is no provision in the MGST Act 2017 to get INPUT TAX CREDIT on the goods which are not covered under the MGST Act. That means the purchases of Natural Gas made by the taxable person shall not get INPUT TAX CREDIT under MGST Act 2002 on the tax paid for purchase of natural gas under MVAT Act and will consequently bear a burden of tax at 13.5 %. In order to remove the brunt of 13.5% and make it comparable with the dealers who are manufacturers of any of the goods as mentioned in para 7 of this reply, the rate of VAT on the purchases made by taxable persons under MGST Act

2017 of Natural Gas when used in manufacture of any other goods or as fuel for manufacture of any other goods was reduced from 13.5% to 3%. Therefore the Notification dated 13.10.2017 with effect from 14.10.2017 was issued.”

21. In paragraph 17, it is urged that the petitioner is not challenging the notification, copy of which is at Exhibit-C to the petition, and the notification, copy of which is at Exhibit-E to the petition which amends the rate of tax on natural gas as prescribed in Schedule-B of the MVAT Act. Thus, the circulars merely explain the ambit and scope of the notification and seek to interpret the same. They are explanatory and, therefore, so long as the law is clear, the circular does not either modify or amend it. The language of the notifications referred to above is clear. Even without the circulars being referred their ambit and scope is plain and clear. Therefore, the prayer to quash the circular cannot be granted particularly when the notifications are not amended or modified by the Government in exercise of its power under law. It is in these circumstances that in the further paragraphs it is clarified that there is no tax liability on the seller under the MVAT Act. The dealer like respondent No.5 gets concessional rate of tax and it is the one who is really aggrieved, if at all, if there is any withdrawal of that concession.

The petitioner has no *locus standi* to file the present petition, for what the petitioner is paying by way of price and a component thereof is a tax. Once the restrictions imposed by the notifications and the notifications themselves are clear, then, the Writ Petition has no merit and must be dismissed.

22. It is on this material, that we have to consider the challenge raised in these Writ Petitions. The lead argument was canvased by Mr. Shridharan, learned Senior Counsel and he would urge that the interpretation of the respondents of notification dated 24.08.2017 renders that notification inapplicable to no one. It is an accepted position that natural gas is not and cannot be used to manufacture other than five items that are covered by the MVAT Act. The primary condition of notification dated 24.08.2017 was that the purchase of natural gas must be for use in manufacture of goods as defined under the Act or any other goods whatsoever, or a dealer, who uses it as fuel. Even the natural gas cannot be used to manufacture any goods as defined in MVAT Act, hence, the term “or any other goods, whatsoever” have great meaning. If the contention of the respondents is accepted and particularly that this notification of 24.08.2017 is held to be applicable only to dealers registered under MVAT Act, then, the notification will be applicable to no one,

as it is impossible to manufacture the other five items mentioned in MVAT Act from natural gas. Hence, it is submitted that the concessional rate cannot be said to be only applicable on sales made to dealers registered under the MVAT Act.

23. It is submitted that in any case, the proviso to Section 16(6A) states that a person continuing business in the aforementioned six commodities may apply in the prescribed manner to have his cancellation of registration revoked. However, the manner has not been prescribed as yet. The word 'business' includes trade or commerce and the word "dealer" is understood as including a person who buys and sells goods. It is submitted that the petitioner's applications and the subsequent issuances of proforma by the respondents w.e.f. 24.08.2017 itself should be considered as registration under the MVAT Act. Thus, the petitioner should be considered as a registered dealer.

24. In any case, the second notification dated 13.10.2017 is merely curative and declaratory in nature and hence, the amendments made by it would be applicable from 24.08.2017 itself. It is argued that curative/clarificatory amendments would have retrospective effect. The Circulars adverse to the assessee can only

operate prospectively. Hence, the Trade Circular No.3T of 2018 dated 16.01.2018 would operate prospectively and would not affect the earlier period, namely, 24.07.2017 to 13.10.2017. The Department cannot argue that the circulars issued by them are contrary to law. Similarly, the Department cannot challenge the Trade Circular No.3T of 2018. Hence, it is only open to the purchaser to challenge the circular as the burden of taxation in indirect taxes falls on the purchaser. In any event, this aspect need not be gone into in this matter wherein the rate of tax depends on to the purchaser and such certification issued to the petitioners is also under challenge.

25. In the other petitions Mr.Rafique Dada, learned Senior Advocate has also argued on identical lines and invited our attention to the statutory provisions in MVAT Act. He has also invited our attention to the Maharashtra Value Added Tax Rules, 2005 and the MGST Act.

26. Mr.Shridharan has relied upon the following decisions in support of his contentions:-

“1. Birla Jute and Industries Ltd.V/s. Asstt. Collr. Of C.E.(1992) 57 ELT 674 (Cal.).

2. *CST V/s. Indra Industries (2000) 9 SCC 66*
3. *Suchitra Components Ltd. Vs. CCE (2007 (208) ELT 321 (SC).*
4. *Zile Singh Vs. State of Haryana (2004) 8 SCC 1*
5. *W.P.I.L. Ltd V/s. CCE (2005-181-ELT 359 (SC))”.*

27. We must also note the argument of Mr.Rafique Dada and Mrs.Badheka that the petitioners paid the tax and were granted the set off. In that regard Mr.Rafique Dada relied upon page 42 of the paper book in the case of *JSW Steel Ltd.* Mr.Rafique Dada submitted that the object is to prevent a cascading effect. Hence, the certificate at page 42 is valid and holds the field. The wording of the notification dated 13.10.2017 itself would denote that it is prospective and not retrospective. In that regard, he relied upon the expression “with effect from the 14.10.2017” appearing in the notification dated 13.10.2017. Hence, the argument of Mr.Rafique Dada is that the benefit of lower rate of duty from 24.08.2017 to 14.10.2018 can be availed of the by petitioner. It cannot be worse off.

28. Mr.Rafique Dada has also relied upon the extract of the communication from the Finance Minister of India Shri.Arun Jaitley to the State Chief Minsters to reduce the burden of the Value Added

Tax on petroleum products used as inputs in the making of goods, after the introduction of the Goods and Service Tax Act.

29. Mrs.Badheka has also argued on identical lines. She argued Writ Petition No.819 of 2018 and invited our attention to page 40 of the paper book in that petition. She also relied upon the wording in the Proforma-A to urge that the certificate is issued with effect from 24th August 2017. She has also invited our attention to Section 16(6A) of MVAT Act. She submits that on 18th July 2017 itself the petitioners had pointed out to the Deputy Commissioner of Sales Tax, Large Tax Payer Unit, Alibag Division, Belapur Navi Mumbai that the amendment should be made to the registration certificate for the goods dealt by the petitioner under MVAT Act and Central Sales Tax (CST) Act and to allow the petitioner to continue to hold the registration certificate under the existing Act. She submits that there has been no reply to this communication. The petitioner has been following this certificate, copy of which is at page 35 and the benefit thereof cannot be taken away. She therefore, submits that the first interpretation by the notification dated 24.08.2017 is the correct one and that should be maintained.

30. On the other hand, Mr.Sonpal, learned Special Counsel

appearing for the respondents argued that the Writ Petitions deserve to be dismissed. He pointed out that there is no substance in any of these petitions. Mr.Sonpal, has invited our attention to the affidavit in reply, which is filed in these petitions.

31. Mr.Sonpal while answering the contentions of Mr.Rafique Dada, learned Senior Counsel appearing for the petitioners that the triggering point is the initiation of the Maharashtra Goods and Service Tax Act contended that the petitioners, are not paying any taxes under the State law. There is no registration obtained by these petitioners under the MVAT Act. The matter is entirely between the Gas Authority of India Ltd. and the State Government. The GAIL has rightly understood the legal position. It is only for the GAIL to approach this Court and petitioners have no locus to approach this Court. Further, from 01.07.2017 to 14.10.2017 the dealers paid 13.5% tax to GAIL and the GAIL has deposited this amount in Government Treasury. For these reasons, Mr.Sonpal would submit that these Writ Petitions deserve to be dismissed. Mr.Sonpal has relied upon the following decisions in support of his contentions:-

“1. Accountant General V/s. S.Doraiswamy (1981) 4 SCC 93.

2. *Glaxo Smithkline Pharmaceuticals Ltd V/s. Union of India (2014) 2 SCC 753.*

3. *Director General of Foreign Trade V/s.Kanak Exports and Another (2016) 2 SCC 226.”*

32. Thus, the issue raised in all these petitions is whether the petitioners can seek the Writ of mandamus and the direction claimed by them.

33. For this purpose, we would have to refer to the Trade Circular and the Notification. The Trade Circular dated 16.01.2018 says that the Maharashtra Goods and Services Tax Act was introduced with effect from 1.07.2017. Accordingly, the Maharashtra Value Added Tax Act, 2002 was amended from 01.07.2017. After the amendment to the MVAT Act, the definition of the term 'goods' cover only six goods, petroleum crude, high speed diesel, motor spirit, natural gas, aviation turbine fuel and alcoholic liquor for human consumption. This Circular also invites the attention of all concerned to Section 16(6A) in the MVAT Act. According to this Circular, sub-section (6A) is inserted in Section 16 of MVAT Act to provide for the deemed cancellation of the registration, with effect from 01.07.2017, of the dealers who have not effected any sales of the aforesaid six goods during the period

2016-2017. Therefore, only those dealers who are effecting the sales of these goods remain registered dealers under the MVAT Act.

34. The Government of Maharashtra in exercise of its powers conferred under Section 9(1) of the MVAT Act had issued a notification dated 24.08.2017. A new entry 16 was added to the Schedule “B” of the MVAT Act, by the said notification, effective from 24.08.2017. The entry B-16 provides that the sale of natural gas to a registered dealer, subject to the condition mentioned in the said notification, is entitled for a lower rate of VAT at 3%. To avail the benefit of reduced rate, namely, 3%, the purchasing dealer was required to be certified (as per Proforma-A) by the concerned Joint Commissioner.

35. After issuance of the aforesaid notification dated 24th August 2017, certain queries were received from the trade as also from the Departmental Authorities and that query was whether the benefits given under the Notification dated 24th August 2017 are also available to the Tax payer registered under the Maharashtra Goods and Services Tax Act 2017. To clarify this aspect, a Trade Circular No.39T was issued on 08.09.2017 and it was clarified that the benefits of notification dated 24th August 2017 would also be

available to the taxable persons registered under the MGST.

36. Subsequently, by Notification No..VAT-1517/CR-136(a)/Taxation-1 dated 13th October 2017, the Schedule Entry B-16 was amended with effect from 14th October 2017. In addition to certain other amendments, an explanation is inserted to the effect that the benefit of the Entry 16 in Schedule 'B' shall not be available to a registered taxable person if it is a hotelier or restaurant and has opted to pay tax under Section 10 of the MGST Act.'

37. After, the above notifications were issued, the matter was discussed within the Finance Department. There was a view expressed that the reduced rates of tax in respect of sales of natural gas to the registered dealer for use in manufacture *vis-a-vis* clarification given by the Trade Circular No.39T of 2017 is not available to the dealer registered under the MGST Act. During this discussion, the Finance Department was of the opinion that since the earlier notification issued on 24.08.2017 refers to sale of natural gas to a registered dealer which should mean the dealer registered under the MGST Act, therefore, benefit of lower rate of tax 3% (VAT) as provided by the Notification dated 24.08.2017 shall not be available to the taxable person registered under the MGST Act for

the period 24.08.2017 to 13.10.2017.

38. Hence, the clarification was issued that the manufacturer buyers (petitioners in all these cases) who are not holding registration certificate under the MVAT Act on or after 01.07.2017 either due to cancellation of said registration certificate or because of the deeming provision relating to cancellation of the registration certificate under Section 16(6-A) of MVAT Act, they shall not be entitled for the benefits of reduced rate of tax in respect of use of natural gas. Hence, certain guidelines were prescribed and issued, which read as under:-

“(a) For the period 24th August 2017 to 13th October 2017 the sales of Natural Gas, to manufactures, who were not holding the registration certificate under the MVAT Act during the said period, shall be liable for VAT @ 13.5% under Schedule entry B-15.

(b) For the period starting on or after 14th October 2017 the sales of Natural Gas, to manufactueres, whether registered under the MVAT Act or under the MGST Act, subject to the conditions given in the notification against a certificate in “Proforma A” would be entitled to avail the benefits of reduced rate of VAT @ 3%.

(c) In view of the aforesaid circumstances, it is also

necessary that the concerned Joint Commissioners, who had earlier issued certificate in “Proforma A” with effect from the 24th August 2017, issue an addenda and change the date of effect to the 14th October 2017.

(d) From the date of issuance of this Trade Circular, the certificate in Proforma 'A' shall be issued effective from the date of filing of the application for the said certificate.

(e) The dealers, who have sold natural gas during the period 24th August 2017 to 13th October 2017 to manufactures who were not holding registration certificate under the MVAT Act, applying lower rate of tax at 3% during the aforesaid period, are advised to arrange their affairs accordingly and take the necessary corrective steps at earliest.

8. In view of the above, the clarification issued vide Trade Circular No.39T of 2017 dated 8th September 2017 shall stand modified.”

39. We have also perused the Maharashtra Act No.XLII of 2017. That Amendment Act amends *inter alia* the Maharashtra Value Added Tax Act, 2002. Chapter-IX of the amendment Act contains the amendments to the MVAT Act 2002. In Section 54,55 and 56 of the amendment Act, the following amendments have been

made:-

“54. In the long title of the Maharashtra Value Added Tax Act, 2002 (hereinafter, in this Chapter, referred to as “the Value Added Tax Act”), the words “or purchase” shall be deleted.

55. In the preamble of the Value Added Tax Act, the words “or purchase” shall be deleted.

56. In section 2 of the Value Added Tax Act,-

(1) clauses (1),(2) and (3-a) shall be deleted;

(2) after clause (3-a) so deleted, the following clause shall be inserted, namely:-

“(3-b)”appointed date for the Maharashtra Goods and Services Tax Act” means the date on which the Maharashtra Goods and Services Tax Act, 2017 comes into force.”;

(3) in clause (4), in the Explanation, clause (i) shall be deleted;

(4) clause (7) shall be deleted;

(5) in clause (8), Exception I,II and III shall be deleted;

(6) clause (9) shall be deleted;

(7) for clause (12), the following clause shall be substituted, namely :-

“(12)” “goods” means petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption;”;

(8) after clause (14) the following clause shall be inserted, namely :-

“(14A) “Maharashtra Goods and Services Tax Act” means the Maharashtra Goods and Services Tax Act, 2017;”;

(9) clause (17A) shall be deleted;

(10) in clause (20), Explanation IA shall be deleted;

(11) in clause (24), in the Explanation, in clause (b), in sub-clause (vi), for the words and brackets “of goods”, being food or any other article for human consumption or any drink (whether or not intoxicating), the words “of alcoholic liquor for

- human consumption” shall be substituted;*
(12) *in clause (25), Explanation IA shall be deleted;*
(13) *clause (27) shall be deleted.*
(14) *in clause (29), the words “or purchase tax leviable
or as the case may be,” shall be deleted;*
(15) *in clause (32), Explanation I shall be deleted;*
(16) *in clause (33), Explanation I shall be deleted;”*

40. Then there are amendments made to Section 3 of the MVAT Act. Then Section 6, 6A, 6B and 7 were deleted. Then by Section 60 of the Amendment Act amendments have to be made of the Section 8 of the MVAT Act and by Section 61 of the amendment Act, amendments have been made to the Section 16 of the MVAT Act Sub-Section 6A has been inserted in Section 16 and its reads as under:-

“(6A) The registration of a dealer, who has not effected sale, during the year 2016-17, of any goods, specified in column (2) in SCHEDULE A or, as the case may be SCHEDULE B, as it exists on the appointed date for the Maharashtra Goods and Services Tax Act, shall be deemed to be cancelled with effect from the said appointed date:

Provided that, any such dealer, whose registration is deemed to be cancelled, may apply in the prescribed manner for the revocation of the cancellation of his registration, if he intends to carry on the business in these goods.”

41. A perusal of sub-section (6A) would reveal as to how the original Section 16 which dealt with the registration would now provide for, by this sub-section, a deemed cancellation of registration of a dealer, who has not affected sales during the year 2016-2017, of any goods specified in column-(II) in Schedule-A or, as the case may be in Schedule-B as it exists on the appointed date for the MGST Act with effect from the appointed date. However, by the proviso any dealer whose registration is deemed to be cancelled may apply in the prescribed manner for the revocation of the cancellation of his registration if he intends to carry on the business in these goods.

42. There are various other amendments made to MVAT Act by this Chapter-XI of the amendment Act, but they have not been relied upon.

43. The Notification dated 24.08.2017, copy of which is at page 51 of the paper book in Writ Petition No.2424 of 2018, reads as under :-

“ NOTIFICATION
Maharashtra Value Added Tax Act, 2002:
No.VAT-1517/CR-136(A)/Taxation-1-In exercise of the
powers conferred by sub-section (1) of Section 9 of the
Maharashtra Value Added Tax Act, 2002 (Mah.IX of

2005), the Government of Maharashtra, thereby effect from the 24th August 2017, amends the SCHEDULE 'B' appended to the said ACT, as follows namely :-

In the Maharashtra Value Added Tax Act, 2002, in Schedule 'B'

(1) in entry 25, in column (2) for the words 'Natural Gas' the words and figures "Natural Gas, other than the Natural Gas, specified in entry 16 shall be substituted;

(2) after entry 15, the following entry shall be added, namely:-

"16. Natural gas, sold to registered dealer, subject to the following conditions :

(i) A dealer, who uses the natural gas for use in manufacture of goods, as defined under the act or any other goods, whatsoever, or a dealer, who uses it as fuel.

(ii) The purchasing dealer, under this entry, should be certified by the Commissioner in the Proforma 'A'.

(iii) The purchasing dealer shall, by the end of the April, furnish to the Commissioner, a statement of account of purchases effected in the immediately preceding financial year, in the Proforma 'B'.

Explanation-for the purposes of this entry, conversion of 'natural gas' from one form to another shall not be deemed to be "manufacture".

PROFORMA-A

This is to certify that M/s.....holder of TIN.....w.e.f.....is a manufacturer of goods, as defined under the Act or any other goods, whatsoever.

This certificate is being issued on his application dated....., in which he has given an undertaking that the natural gas purchased by him shall not be resold by him.

(Commissioner of Sales Tax),
Maharashtra State, Mumbai.

44. A perusal thereof would reveal that by Section 9 of the MVAT Act, the State Government is empowered to amend the

Schedule from time to time by notification in the official gazette. The amendment of the Schedule may be by adding or modifying or deleting any entry therein, providing for reducing and enhancing rate of tax or for specifying, rates of tax where Nil rates are specified. The mode in which this has to be done, namely, by issuing and publishing a notification in the official gazette is the same and identical to the manner and mode of making rules.

45. That is why by this notification of 24.08.2017, after Entry 15 in Schedule-B for the words appearing in earlier Entry 15 (natural gas), the words and figures 'natural gas, other than the natural gas specified in Entry 16' were substituted. After Entry 15, the portion set out in the notification and reproduced above has been added but this addition is conditional. Therefore, it is only if the conditions are satisfied that the concessional rate of tax of 3% would be chargeable and leviable. The natural gas has to be sold to a registered dealer and that is also subject to the conditions reproduced herein above. Thereafter, Proforma-A also would read accordingly.

46. After that a Trade Circular was issued on 08.09.2017 and that refer to this amendment to the scheduled entry. It is stated

that for better implementation of this scheduled entry, the Trade Circular was issued, copy of which is at Exhibit-D to the petition.

47. Then, there is substantive notification dated 13th October 2017, a copy of which is at page 57 of the paper book which reads as under:-

“ NOTIFICATION

Maharashtra Value Added Tax Act, 2002

No.VAT.1517/C.R.136(a)/Taxation-1-In exercise of the powers conferred by sub-section (1) of section 9 of the Maharashtra Value Added Tax Act, 2002, (Mah.IX of 2005), the Government of Maharashtra hereby with effect from the 14th October 2017, amends Schedule 'B', appended to the said Act, namely :-

In the Maharashtra Value Added Tax Act, 2002, in Schedule 'B', in entry 16,-

(1) for clause 9i), the following clause shall be substituted, namely :-

“(i) A registered dealer who uses natural gas as a raw material or fuel in manufacture of goods”;

(2) the existing Explanation shall be numbered as '(a)' thereof ; and after the said Explanation as so numbered, the following clauses shall be added, namely :-

“(b) The “goods” referred to in this entry shall mean goods as defined under this Act and goods defined under the Maharashtra Goods and Services Tax Act; 2017 9Mah. XLIII of 2017) (hereinafter, in this entry referred to as “MGST Act”);

(c) 'Registered dealer' referred to in this entry, shall also include 'taxable person' registered under the MGST Act;

(d) Benefits of this entry shall not be available to a registered taxable person, if it is a hotelier or a restaurant and has opted to pay tax under section 10 of the MGST Act.”

(3) in Proforma 'A',

(i) After the abbreviated words and sign “TIN.....w.e.f.....” the sign and abbreviated words “/GSTIN.....w.e.f.....” shall be added;

(ii) for the words “as defined under the Act or any other goods whatsoever” the words and figures “as defined

under this Act or goods defined under the MGST Act, 2017” shall be substituted ;

(iii) after the words “being issued” the abbreviated words and sign “w.e.f.....” shall be added.

By order and in the name of Governor of Maharashtra

R.D. Bhagat,

Deputy Secretary to Government

48. A perusal of this notification reveals that the same is also issued in terms of the powers conferred by Section 9(1) of the MVAT Act. The Government of Maharashtra w.e.f. 14.10.2017 amended schedule-B appended to the Act and now in that schedule in Entry 16 for Clause (I) a substitution has been made, namely, a registered dealer who uses natural gas as a raw material or fuel in the manufacture of goods and then there is an addition. That addition is by inserting the portion in Clause-II of this notification. That is inserted/added below the existing explanation. That will now stand numbered as explanation (a). There, the goods referred to in the Entry shall mean goods as defined under the MVAT Act and goods defined under the MGST Act. 'Registered dealer' referred to in the Entry shall also include taxable person registered under the MGST Act and then, as reproduced above, there are subsequent amendments.

49. Hence, the only question that we have to consider is whether this concessional rate of duty could be availed of by the

petitioner from 24.08.2017 to 13.10.2017. The intervening period where the taxable person under MGST Act does not continue to be registered under the MVAT Act would result in denial of input tax credit or refund of tax paid on purchases of goods covered by MVAT Act. That is because under MGST Act any tax paid under MVAT Act is not available to be claimed as input tax credit. Hence, in order to benefit the person under the MGST Act and in order to ensure that the impact of tax on the dealers registered under both laws is same, the notification which we reproduced above, namely, Exhibit-E page 57 of the paper book, has been issued. In the earlier notification of 24.08.2017 the parity between both dealers was not brought out or recognized. Now it is recognized and w.e.f. 14.10.2017. We do not see how we can then rely upon any Trade Circulars and grant the benefit as claimed by the petitioners.

50. A perusal of the affidavit in reply filed, the paragraphs which we have reproduced above, would reveal that until the Government intervened to bring about the parity or equality, there could not have been any assumption or inference as is drawn by the petitioners before us. The petitioners are not challenging the notifications. The Circulars, at best, are for internal guidance or clarification of queries of the Trade and officials, but their language

cannot control the substantive notifications. The notifications amending the schedule would enjoy the same status as that of the rules under the Act. In the circumstances, we do not think that relying upon these circulars, the petitioners can claim the benefit in the intervening period, more so, when both dealers were not included under the earlier notification. In the circumstances, we feel that the petitioners are not right in their contentions based on which the reliefs have been claimed. The relief claimed is that we should quash the Trade Circular dated 16.01.2018. That Trade Circular No.3T of 2018 is but clarifying the position resulting from issuance of these two notifications, namely, of August and October 2017. We cannot see how we can hold that the State Government intended to grant the benefit by circular to a taxable person registered under the MGST Act when he was not within the purview of the substantive law, MVAT. In other words, a taxable person registered under the MGST Act by virtue of the amendment to the MVAT Act went out of the purview of the MVAT Act. That is how Section 16(6-A) reads and that provides for deemed cancellation of his registration. If any benefit has to accrue to such dealers, then, it is not disputed that issuance of the substantive notification or an exercise similar to the same will have to be carried out. That was carried out by amending Schedule-B. Thus, Section 9 empowers the

Government to carry out an amendment to the Schedule appended to the MVAT Act. In the earlier amendment by notification dated 24.08.2017 the registered dealers were not defined to include taxable persons registered under the MGST Act. Further, the word 'goods' referred to in the entry as defined under the Act did not take within their import the goods defined under the MGST Act. Hence, merely because the 24.08.2017 notification employs the words “or any other good's, whatsoever” for the purposes of availing of the concessional rate of duty that is not enough. By that we cannot infer that from 24.08.2017 itself both, the goods as defined the MGST Act and the taxable persons contemplated thereby, are included in the amendments to Schedule-B as the August-2017 notification at page 51 first time brings in a substitution in Entry-15 and after Entry-15, inserts the portion as reproduced from the notification of 24.08.2017. Thus, the conditional relaxation from the rate of duty from 13.5% to 3% was a benefit not extended to taxable persons under the MGST Act as also to the goods defined under the MGST Act.

51. It is obvious from a reading of the subsequent notification dated 13th October 2017 that both the goods and taxable person under the MGST Act have been brought within the purview

of Schedule-B and Entry-16. In such circumstances by any interpretative process or by resorting to the exercise suggested by the petitioners, we cannot bring in the goods as defined under the MGST Act and the taxable person registered under the MGST Act in the Schedule-B as amended. As already held above, Schedule-B to the MVAT Act, 2002 has been amended and by resorting to the power to amend conferred by Section 9(1) of the MVAT Act. It is entirely for the Maharashtra Government therefore, to bring a notification to the Maharashtra Value Added Tax Act, 2002 to extend the concessional rate of duty or to enable availing of the concession by such persons who were earlier not eligible and entitled to it. It is in these circumstances that we are of the opinion that Mr.Sonpal is right in his submission that this Court cannot rely upon the language of the Trade Circular or the understanding of the Government as reflected from the Trade Circulars to grant any benefits to the petitioners from an earlier date or an earlier period. The benefit will have to be granted only from the date from which it is extended, namely, w.e.f. 14.10.2017. The explanation that is provided in paragraph 26 of the affidavit in reply filed in the Writ Petition of M/s.Deepak Fertilizers (Writ Petition No.2424 of 2018) is, therefore, correct.

52. As a result of the above discussion, the contentions raised by Mr.Shridharan as also the other Senior Counsel cannot be accepted. Even the brief written arguments as handed over are of no assistance in giving any other meaning to the notifications.

53. The reliance by Mr.Shridharan on several judgments of the Supreme Court and this Court is misplaced.

54. As far as the judgment relied upon by the petitioners are concerned, it is evident that the principle set out therein can have application provided the position on facts is identical. In *Deepak Fertilizers* Mr.Shridharan relied upon the judgment of the Hon'ble Supreme Court in the case of *I.D.L. Chemicals Ltd V/s. Union of India*¹. There, an exemption notification was issued by the Central Government exempting Ammonium Nitrate from the whole of excise duty leviable thereon if it was intended to be used in the manufacture, *inter alia*, of explosives, provided the procedure set out in Chapter X of the Central Excise Rules, 1944, was followed. The Appellant before the Supreme Court enjoyed benefit of the exemption notification. It was found that a show cause notice was issued to the appellant as to why ammonium nitrate should not be

¹ 1996 (86) E.L.T. 182 (S.C.)

reclassified under Tariff item No.68. One of the authorities came to the conclusion that there was no need to reclassify ammonium nitrate. Later on, there was some communication from the Central Board of Excise and Customs and the Ministry of Chemicals and Fertilizers. The reclassification would be necessary because ammonium nitrate is accepted as a fertilizer and hence it was not falling within the Tariff item 14HH. With the result the exemption notification could not have been availed of and the benefit thereof was sought to be denied. That is how there was a further show cause notice, adjudication and the demand. After this controversy reached the Supreme Court, the Hon'ble Supreme Court relied on observations, based on the contentions, noted from paras 9 to 12. The Supreme Court held that there was enough material to hold that the appellants suffered adverse consequences. Therefore, the Writ Petition filed by the appellant should have been entertained. The High Court should have dealt with the contention of the appellant that ammonium nitrate was exempt from excise duty by reason of exemption notification until 21st July 1979 after which it was removed from the preview thereof.

55. We must at once clarify that we have not rested our conclusion in this judgment on the locus of the petitioners. We have

dealt with the merits and, therefore, this judgment will have no application.

56. Even the judgment in the case of *Usha B. Agarwal (Supra)* there as well the issue is of locus. We have not restricted our judgment and order on the issue of petitioners' locus.

57. We do not see how any assistance can be derived from the judgment in the case of *M/s.Ghodawat Energy Pvt Ltd.* (Supra) as in that judgment the specific issue falling for consideration has been crystallized and the finding is that even after Pan Masala was brought within the purview of the Additional Duty of Excise, it was never declared by the Parliament to be one of the goods of special importance in inter State Trade and Commerce covered by Sections 14 and 15 of the Central Excise Act, 1956. The Pan Masala is continuing to be known to the commercial world as different from tobacco. We are not deciding any such controversy in the present case.

58. In *Ranadey Micronutrients (Supra)*, the issue was with regard to a circular being issued by the revenue and an argument contrary to the same had been canvased. A circular

issued by the Officer of the Revenue Department bind the Revenue and they cannot ignore or repudiate it.

59. This is not an issue before us at all. It is not the petitioners case that a latter circular was wrongly issued, but a prior circular remains as it is consistent with the legislature policy. The issue is when there are two different statutes and merely because under one statute of the State legislature there is a concessional rate of duty, but restricted to the dealers covered by that law, then, dealers under a distinct law, may be made by the very State legislature can claim the benefit of the reduced rate or not. The issues decided in *Ranadey* and by the present judgment are not identical. Hence, we do not see any reason to take assistance from paragraphs 13 to 16 of the judgment.

60. Even with regard to other judgments cited by Mr. Shridharan we have found that there is no question of the issue dealt with by those judgments arising before us. This is not curative/clarificatory amendment which could be given retrospective effect but this is a question of interpretation of the schedule entry and whether schedule entry under the MVAT Act prescribing concessional rate of duty could be relied on by dealers

not registered under the MVAT Act but termed as taxable persons under the MGST Act. Hence, the other judgments also are of no assistance.

61. In the view that we have taken, we do not think that we should refer to the judgments cited by Shri.Sonpal. We are not deciding any large controversy based on the principle set out in these judgments.

62. Hence, we hold that these petitions are liable to be dismissed. They are accordingly, dismissed. Rule is discharged in each of them. There shall be no order as to costs.

(PRAKASH D. NAIK, J.)

(S.C. DHARMADHIKARI, J.)

Nilam
Santosh
Kamble

Digitally signed
by Nilam
Santosh Kamble
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