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

CHAMBER SUMMONS NO.143 OF 2011
IN
WRIT PETITION NO. 1640 OF 2010

Inox Air Products Ltd. … Petitioners
V/s.
The Union of India & Ors …Respondents
1. The State of Maharashtra … Proposed Respondent
2. The Commissioner of Value Added Tax … Proposed Respondent

Mr. Gajendra Jain with Ms. Rivyasha Mathur I/b PDS Legal for the Applicant / Original Petitioner.
Mr. Pradeep Jetly, for the Respondent Nos. 1 to 3.

CORAM: M.S.SANKLECHA & RIYAZ I. CHAGLA, JJ.
DATE: 28TH SEPTEMBER, 2018.

PC:-

1. On 24th August, 2018, we passed the following order :-

1. This Motion has been taken out for fixing the date of hearing of the Petition.
2. This Petition was admitted on 17th August, 2010 in respect of the Petitioner's challenge to the constitutional validity of Section 65(105) (zzzz) of the Finance Act, 1994.
3. Thereafter, this very issue was a subject matter of consideration by this Court in the Retailer Association of India Vs. Union of India. Thereafter, the issue according to us, stands concluded in favour of the Applicant-Revenue and against the Respondent-Assessee.
4. Shri Shah, the learned counsel appearing for the Respondent seeks to dispute the position. Shri Shah further states that the Petitioners have taken

out the Chamber Summons bearing No. 143 of 2011 in this Petition so as to make the State Government and the Commissioner of Service Tax as parties to these proceedings. The Chamber Summons No. 143 of 2011 would be consider on its own merits, when it is taken up for consideration in its own turn.
5. In the above view, at the request of the parties, the Petition is kept for final disposal on 8th October, 2018 at 3.00 p.m.
6. Motion disposed of in above terms.

2. This Chamber Summons has been taken out in a Petition which is already admitted. It is the case of the Petitioner that they have already paid value added tax under the Maharashtra Value Added Tax Act, 2005 (MVAT Act). Therefore in case the Petitioner's challenge to Finance Act, 1994 is negatived and it is also held that service tax has been paid by the Petitioner correctly, then they claim that they would be entitled to refund of value added tax paid under the MVAT Act. The allowing of the present claims would avoid multiplicity of proceedings.

3. No Affidavit is filed by the proposed Respondents to oppose this Chamber summons although it was adjourned on two earlier occasions.

4. In the above view, the Chamber Summons is allowed in terms of prayer clause (a). Amendment to be carried out before 4 October 2018. Amended copy of the Petition to be served upon all the Respondents including newly added Respondent. Needless to

state as the Petitioner is incharge of proceedings, it would ensure that copies of the all papers and proceedings are supplied to the newly added Respondents. It is made clear that these amendments would be effective from the date these are carried out and not relate back to the date of filing of this Petition. The newly added Respondents are at liberty to file an Affidavit in Reply on the amended copy of the Petition being served upon them. All contentions are left open to be urged by the newly added Respondents, including the issue of maintainability, laches etc. to be considered at the final hearing of this Petition.

5. In the above view, the Chamber Summons is allowed in terms of prayer clause (a).

(RIYAZ I. CHAGLA J.) **(M.S.SANKLECHA, J.)**