

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

**MAHARASHTRA VALUE ADDED
TAX APPEAL NO.24 OF 2018
WITH
MAHARASHTRA VALUE ADDED
TAX APPEAL NO.30 OF 2018**

GlaxoSmithKline Asia Private Limited ... Appellant

V/s.

Deputy Commissioner of Sales Tax ... Respondent

Mr.Naresh Thacker with Mr.Anany Banhatti i/by M/s Economic
Laws Practice for the Appellant.

Ms.Jyoti Chavan, AGP for the Respondent.

**CORAM : AKIL KURESHI AND
M.S.SANKLECHA, JJ.
DATE : NOVEMBER 28, 2018.**

P.C.:-

1. Maharashtra Value Added Tax No. 30 of 2018 was not on board before us today. Learned counsel for the Appellant however submitted that these two appeals involve identical issues. Appeal No.30 of 2018 was therefore taken up on board today. Issues being identical, we may notice facts from Appeal No.24 of

2018.

2. The tax appeal is filed by the assessee challenging the judgment of the Maharashtra Sales Tax Tribunal dated 31st January, 2018.

3. Following questions have been presented for our consideration:-

“i. Whether in facts and circumstances of the case, where there was an inextricable link between the sale by the Appellant and ultimate use of the goods by WHO, and, where WHO had issued necessary statutory declaration under relevant provision of the Act evidencing supply of such goods by the Appellant to WHO, whether the Tribunal erred in disallowing the benefit of non-levy of Central Sales tax to the Appellant in terms of Section 6(3) of the Act?

ii. Whether the Tribunal ought to have appreciated that the object and purpose of Section 6(3) of the Act was not to burden the transaction with levy of Central Sales tax where the goods are meant for the purpose of United Nations and other such organisations (including WHO), where it is established that goods were supplied by the Appellants to WHO?

iii. Whether denying the benefit of non-levy of Central Sales tax in respect of subject transaction under Section 6(3) of the Act is inconsistent with India's commitment under the United Nations (Privileges and Immunities) Act, 1947, (the UN

Act') and, Agreement dated 9th November, 1949 between WHO and the Government of India, and, therefore, in the facts and circumstances of the present case, no Central Sales tax ought to have been levied?"

4. Though three separate questions have been framed by the assessee, issue is one namely of the liability of the assessee to pay sales tax on its sale of a drug called "Albendazole" which the assessee claims, should be treated to have been sold to the World Health Organization (WHO for short).

5. The facts which are not seriously in dispute are that during the financial years 2009-10 to 2011-12 the assessee, a manufacturer of pharmaceutical products had sold batches of the said drug to one GSK Exports, U.K.. Under the directions of said GSK, U.K., the drugs were supplied and delivered to WHO in India in course interstate trade. The billing was also done by the assessee in the name of GSK, U.K.. The assessee claims that the GSK, U.K. had a contract with WHO for supply of such drugs. WHO required such drugs in India and therefore, the assessee had the same manufactured through a sister concern which had

such manufacturing facilities and the drugs were supplied to WHO in India.

6. On such transactions, the assessee claims exemption for payment of sales tax. The Revenue authorities and the Tribunal did not accept such claim. In a detailed judgment the Tribunal came to the conclusion that the sale was made to WHO and therefore, the assessee's claim of exemption under sub-section 3 of Section 6 of the Central Sales Tax Act, 1956 (CST for short) was not available. The learned counsel for the assessee had also argued before the Tribunal that if the sales are considered to be those made to GSK, U.K., the same would be exempt by virtue of provisions to sub-section 1 of Section 6 of the CST Act. This argument, the Tribunal rejected observing that to be an export sale, the goods must leave the country for export which in the present case had not happened.

7. Assailing the judgment of the Tribunal, learned counsel for the appellant strenuously urged that a true and purposive interpretation of Section 6 of the CST Act was required to be

adopted by the Tribunal. In the present case, it is not in dispute that the drugs were ultimately received by WHO in India. It was only because it was the GSK, U.K. which had a contract with WHO for supply of such drugs, that the billing had to be done by the assessee in the name of GSK, U.K.. He submitted that WHO has issued necessary certificate in form "J" which would establish that the drugs were received by WHO. He, therefore, argued that in terms of sub-section 3 of Section 6 of the CST Act, the sale in question did not involve any sales tax liability. In the alternative, the learned counsel submitted that if the sale is seen as one made by the assessee to GSK, U.K., the same would become export sale and therefore, in any case would be exempt from sales tax. Learned counsel submitted that as held by the Constitution Bench of the Supreme Court in case of **M/s Dilipkumar and company vs. Consular of Customs 2018(9) SCC 529** that whenever there is an ambiguity in a taxing statute, benefit must flow in favour of the assessee.

8. As noted, relevant facts are not seriously in dispute. The agreement for procurement and supply of the specified drugs to

WHO was between GSK, U.K. and WHO. It appears that GSK, U.K. entrusted the task of manufacturing and supplying the said drugs to the assessee, its group company in India. To complete the arrangement, therefore, the assessee sold the drugs to GSK, U.K., which could be demonstrated as per the billing. Under the instructions of GSK, U.K., the assessee delivered the drugs to WHO in India. The question that arises is whether under such circumstances the assessee can claim exemption from tax under sub-section 3 of Section 6 of CST Act and failing which can fall back on the proviso to sub-section 1 of section 6.

9. Section 6 of the CST Act pertains to liability to tax on inter-state sales. Sub-sections 1 and 3 of Section 6 which are relevant for our purpose read as under:-

“Sub-section 1 of Section 6- Liability to tax on inter-State sales-Subject to the other provisions contained in this Act, every dealer shall, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, not being earlier than thirty days from the date of such notification, be liable to pay tax under this Act on all sales (of goods other than electrical energy) effected by him in the course of inter-State trade or commerce during any year on and from the date so notified:

(Provided that a dealer shall not be liable to pay tax under this Act on any sale of goods which, in accordance with the provisions of sub-section (3) of section 5 is a sale in the course of export of those goods out of the territory of India.)

(1(A) A dealer shall be liable to pay tax under this Act on a sale of any goods effected by him in the course of inter-State trade or commerce notwithstanding that no tax would have been leviable (whether on the seller or the purchaser) under the sales tax law of the appropriate State if that sale had taken place inside that State.)

Sub-section 3 of Section 6-Notwithstanding anything contained in this Act, no tax under this Act shall be payable by any dealer in respect of sale of any goods made by such dealer, in the course of inter-State trade or commerce, to any official, personnel, consular or diplomatic agent of -

(i) any foreign diplomatic mission or consulate in India; or

(ii) the United Nations or any other similar international body, entitled to privileges under any convention or agreement to which India is a party or under any law for the time being in force, if such official, personnel, consular or diplomatic agent, as the case may be, has purchased such goods for himself or for the purposes of such mission, consulate, United Nations or other body.”

10. Sub-section 1 of Section 6 as can be seen is a charging provision. Proviso to sub-section 1 provides that a dealer shall not be liable to pay tax under the said Act on any sale of goods which in accordance with the provisions of sub-section 3 of Section 5 is a sale in course of export of goods out of the territory

of India. Sub-section 3 of Section 6 starts with non-obstantive clause and provides that notwithstanding anything contained in the Act, no tax under the Act shall be payable by any dealer in respect of the sale of any goods made by such dealer in the course of inter-State trade or commerce to any official, personnel, consular or diplomatic agent, the United Nations or any other similar International body entitled to privileges under any convocation or agreement to which India is a party or under any law for the time being in force. For the purpose of this appeal, we are prepared to accept the assessee's contention that if the sales had been made to WHO, the exemption from payment of tax in terms of sub-section 3 of Section 6 would have been available. In the present case, as a matter of fact concurrently and if we may add correctly the Revenue Authorities and the Tribunal have come to the conclusion that the sale was not made by the assessee to WHO. Sub-section 3 of Section 6 of the CST Act, therefore, would not apply.

11. Reference to the proviso to sub-section 1 of Section 6 also would not help the assessee. As per the said proviso, irrespective

of the provisions contained in sub-section 1 a dealer would not be liable to pay tax on any sale of goods on sale in course of export of the goods out of the territory of India. In order to claim this benefit, therefore, the sale had to be export sale of goods travelling out of territory of India. The Tribunal, therefore, correctly did not accept this contention.

12. Learned counsel for the assessee may be correct in contending that the inter-play of the provisions of the sub-section 3 and sub-section 1 of Section 6, in the present case would lead to some what harsh consequences. However, when the provisions of law are clear, the consequences cannot be avoided. Contrary to what was canvassed before us, this is not a case of any ambiguity in the the statutory provision giving rise to the concept of the benefits flowing to the assessee in such a situation. In the result, tax appeals are dismissed.

(M.S.SANKLECHA,J.)

(AKIL KURESHI,J.)

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