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

SALES TAX APPEAL NO. 13 OF 2013
IN
VAT APPEAL NO. 98 OF 2011

Wings Travels ....Appellant
V/s.
State of Maharashtra ....Respondent

* * * * *

Mr. Prakash Shah a/w. Mr. Nitin Shah a/w. Mr. Viraj Bhate i/by. PDS Legal, Advocate for the appellant.

Ms. Jyoti Chavan, AGP for the respondent.

CORAM :- M.S. SANKLECHA, &

SANDEEP K. SHINDE, JJ.

DATE :- 24TH APRIL, 2018.

P.C. :-

1. This Appeal under Section 27 of the Maharashtra Value Added Tax Act, 2002 (the Act) challenges the order dated 1st July, 2012 passed by the Maharashtra Sales Tax Tribunal (the Tribunal). By the impugned order, the Tribunal dismissed the appellant's appeal holding that the amendment made to the Act by

Maharashtra Act-No. XIV of 2005 deleting Clause-(vii) to Explanation-b of Section 2(24) of the Act would not delete the words “shall be deemed to be a sale”.

2. The appellant has proposed the following question of law for our consideration :

> *“Whether the amendment carried out in Section 2(24) Explanation (b) of the Act by the Maharashtra Act No. XIV of 2005 resulted in deletion of the words “shall be deemed to be a sale”, being part of paragraph No.(vii) of the said Explanation to the Clause 24 of Section 2 of the Act ?”*

3. The impugned order of the Tribunal proceeded to pass the impugned order on the basis of the Gazetted copy of the Maharashtra Act No. XIV of 2005 published in English. The Counsel for the appellant invites our attention to a copy of the above Gazetted Maharashtra Act No. XIV which deletes Clause (vii) of Explanation (b)

to Section 2(24) of the Maharashtra Act No. XIV of 2005. The Maharashtra Act No. IX of 2005 as originally Gazetted which is relied upon by the appellant to contend that the words "shall be deemed to be a sale" is a part of Clause (vii), which also stands deleted. The Maharashtra Act No. IX as originally published defines 'sale' under Section 2(24) thereof as under :

> "*(24) "sale" means a sale of goods made within the State for cash or deferred payment or other valuable consideration but does not include a mortgage, hypothecation, charge or pledge: and the words "sell", "buy" and "purchase", with all their grammatical variations and cognate expressions, shall be construed accordingly :*
>
> *Explanation – For the purposes of this clause-*
>
> *(a)....*
>
> *(b).....*
>
> *(i) to (vi).....*
>
> *(vii)every disposal of goods referred to in the Explanation to Clause (8) for cash, deferred payment or other valuable consideration, shall be deemed to be a sale."*

Thus according to the appellant, the words 'shall be deemed to be a sale' also stands deleted.

4. As against the above, the Learned AGP has invited our attention to the Gazetted Maharashtra Act No. IX of 2005 published in Marathi language and the words “shall be deemed to be a sale” would qualify the entire Explanation-(b) to Section 24 of the Act. The rough Marathi translation of Act IX of 2005 as published in the Gazette in Marathi language defines sales price under Section 2(24) of the Act as under :-

> “*(24) Sale means a sale of goods made within the State for cash or deferred payment or other valuable consideration but does not include a mortgage, hypothecation, charge or pledge: and the words “sell”, “buy” and “purchase”, with all their grammatical variations and cognate expressions, shall be construed accordingly :*
>
> *Explanation- For the purpose of this Clause*
>
> *(a)*
> *(b)*
> *(i)to(vi)*
> *(vii)every disposal of goods referred to in the Explanation to Clause (8) for cash, deferred payment or other valuable consideration shall*

be deemed to be a sale."

Therefore, the Revenue seeks to support the impugned order of the Tribunal on the basis of the Gazette published in Marathi hereinabove. This Marathi publication of the Act, as originally notified produced before us was not produced before the Tribunal.

5. In the above view, it is an agreed position between the parties that the question raised herein be restored to the Tribunal for fresh consideration after taking into account the Gazette published in Marathi and English of Act IX of 2005 to determine whether or not there is any conflict between the English and Marathi Gazette publication. In case, it is found to be so, then decide on the correct interpretation after deciding which of the two translation's correctly represent the will of the Legislature.

6. In the above view, at this stage, without

answering the question as proposed for our consideration, at the request of the parties, the impugned order of the Tribunal is set aside. The issue is restored to the Tribunal for fresh disposal in terms of the directions hereinabove.

7. The Appeal is disposed of in above terms. No order as to costs.

(SANDEEP K. SHINDE, J) **(M.S. SANKLECHA, J)**