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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 513 OF 2019

M/s. Brijda Roadlines Pvt. Ltd. ..Petitioner
Vs.
The Union Territory of Daman
and Diu & ors. ..Respondents

WITH
WRIT PETITION NO. 514 OF 2019

M/s. Brijda Roadlines Pvt. Ltd. ..Petitioner
Vs.
The Union Territory of Daman
and Diu & ors. ..Respondents

WITH
WRIT PETITION NO. 515 OF 2019

M/s. Brijda Roadlines Pvt. Ltd. ..Petitioner
Vs.
The Union Territory of Daman
and Diu & ors. ..Respondents

WITH
WRIT PETITION NO. 516 OF 2019

M/s. Brijda Roadlines Pvt. Ltd. ..Petitioner
Vs.
The Union Territory of Daman
and Diu & ors. ..Respondents

………..

Mr. V. Sridharan, Senior Counsel a/w. Rahul Thakar I/b. Chandrakant Bhaishankar Thakar for petitioner.
Shrishailya Sadashiv Deshmukh for respondents.

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CORAM : S.C. DHARMADHIKARI & M.S. KARNIK, JJ.

RESERVED ON : 1st FEBRUARY, 2019
PRONOUNCED ON : 13th FEBRUARY, 2019

JUDGMENT (PER M.S.KARNIK, J.):-

Rule. The respondents waive service. By consent, Rule made returnable forthwith.

2. These four Petitions involve common questions. The decision in Writ Petition No. 513 of 2019 would cover the controversy in the connected Petitions. For convenience we deal with the facts in Writ Petition No. 513 of 2019.

3. By this Petition filed under Article 226 of the Constitution of India, the petitioner has challenged the impugned order dated 9/11/2018 passed by the respondent No. 2- Commissioner of VAT, Daman, dismissing the Second Appeal filed by the petitioner thereby upholding the validity of the assessment order and imposition of penalty under Section 10(d)

read with Section 10-A of the Central Sales Tax Act, 1956 (hereinafter referred to as “the CST Act” for short).

4. The facts of the case briefly stated are as under :-

The petitioner is engaged in Transport business and is granted dealership by Bharat Petroleum Corporation Limited ('BPCL' for short) in the territory of Daman and Diu. The petitioner has obtained registration under the “The Daman and Diu Value Added Tax Regulation, 2005” (hereinafter referred to as 'the Regulation of 2005' for short) in Form ST 1.

5. The third respondent – Assistant VAT Officer (AVO) VAT department issued notices dated 30/6/2017 in Form – VI for initiating assessment for 2013-14 to 2016-17 under CST Act. The respondent No.3 passed an assessment order dated 13/9/2017 imposing maximum permissible penalty under Section 10(d) read with 10-A of the CST Act for misuse of Form C. Against the said assessment order dated 13/9/2017 the petitioner preferred First Appeal before respondent No.4 – Deputy Commissioner, VAT Department, Daman, on

20/11/2017. The First Appeal was dismissed by respondent No.4 on 26/3/2018 and recovery proceedings are initiated against the petitioner. Against the order dated 26/3/2018 passed by the First Appellate Authority – respondent No.4, the petitioner preferred Second Appeal before the Appellate Tribunal on 15/5/2018. This Appeal was entertained and heard by the respondent No.2 – the Commissioner of VAT, Daman. The respondent No.2 dismissed the Second Appeal filed by the petitioner vide order dated 9/11/2018.

6. The issue that arises for consideration in this Petition is whether respondent No.2 – the Commissioner of VAT had jurisdiction to entertain the Appeal (termed as 'Second Appeal') filed by the petitioner against the order passed by the First Appellate Authority – respondent No.4 under the provisions of Section 74(1) of the Daman and Diu Value Added Tax Regulation, 2005 ('Regulation of 2005' for short)

7. The Second Appeal filed by the petitioner against the order of First Appellate Authority reveals that the same is in

Form DVAT 38. The same is styled as an Appeal addressed to the Appellate Tribunal, Daman. The said Appeal is entertained by the respondent No.2 in purported exercise of powers under clause (b) Section 74(1) of the Regulation of 2005.

8. Learned Senior Counsel appearing on behalf of the petitioner contended that the respondent No.2 had no jurisdiction or authority to entertain the Second Appeal. In his submission, it is only the Administrative Tribunal which would have jurisdiction to entertain the Appeal. In the submission of the learned Senior Counsel, the Appeal has been entertained by the respondent No.2 on a misreading of the provisions of Section 74(1) of the Regulation of 2005. In his submission, the proviso to Section 74(1) clearly mandates that only one appeal shall be made by the person against any assessment, decision or order. According to him, the petitioner having preferred the First Appeal before the respondent No.4 against the assessment order, in view of the express language of the proviso to Section 74(1) of the Regulation of 2005, a further appeal (second

appeal) was not maintainable. In his submission, it is only the Competent Administrative Tribunal established which had jurisdiction to hear appeal against the order passed by the First Appellate Authority.

9. Learned Senior Counsel invited our attention to the relevant provisions of the Central Sales Tax Act, 1956 (hereinafter referred to as 'CST Act' for short), Citizen's Charter in respect of the office of Administrative Tribunal, Panaji-Goa and the Daman and Diu Value Added Tax (Amendment) Regulation, 2017 as well as Notification dated 17th July, 1970 issued by the Administrator of Goa, Daman and Diu.

10. Learned Senior Counsel submitted that Section 73(1) of the Regulation of 2005 provided for constitution of an Appellate Tribunal. The same is not yet constituted under the Regulation. In his submission, therefore, in view of Section 24 of the General Clauses Act, 1897, the Administrative Tribunal functioning under the Goa, Daman and Diu Administrative Tribunal Act, 1965 (hereinafter referred to as 'Administrative

Tribunal Act, 1965') would continue to function till such time a Tribunal is constituted under Section 73(1) of the Regulation of 2005. It is, therefore, the contention of learned Senior Counsel that the Second Appeal ought to be entertained and heard by the Administrative Tribunal functioning under the Administrative Tribunal Act, 1965.

11. Per contra, it is the submission of learned counsel appearing on behalf of the respondents, that it is the respondent No.2 which is authorised to hear the Appeal in view of the provisions of Section 74(1) of the Regulation of 2005. In his submission, a reading of Section 74(1), Clauses (a) and (b) of Section 74(1), would clearly reveal that after an Appeal is decided by the authorities having jurisdiction under Section 74(1)(a), the concerned person has a remedy to file an Appeal to the Commissioner. In his submission, language of Section 74(1)(b) makes it clear that the person may file an appeal to the Commissioner, when such decision has been made or order has been passed or assessment has been made by the Assistant

Commissioner or Deputy Commissioner or Joint Commissioner. According to him, against an order passed by the Deputy Commissioner under Section 74(1)(a), a Second Appeal is maintainable under Section 74(1)(b) and it is the Commissioner under clause (b) of Section 74 (1) who has jurisdiction to hear the appeal. In his submission, therefore, Second Appeal is maintainable before respondent No.2.

12. Learned counsel for the respondents would further submit that in any case under Section 73(1), it is prerogative of the Government to constitute an Appellate Tribunal. He invites our attention to the proviso to Section 73(1) which mentions that the Government may, until the Appellate Tribunal is constituted under this Regulation, notify any other Appellate Tribunal constituted or established, under any State law for the time being in force, with the consent of the concerned State Government. In his submission, the Appellate Tribunal has not been constituted under Section 73(1) of the Regulation of 2005. Even the Government has not notified any other Appellate

Authority constituted or established to hear and dispose of the appeals under the Regulation of 2005. He would therefore contend that the question of the Second Appeal being heard by any other Tribunal does not arise, for neither the Government has constituted a Tribunal under the Regulation of 2005 nor is any other Appellate Tribunal notified to hear the appeals. He would therefore urge that the Administrative Tribunal, which was notified to hear the appeals in respect of those matters which the Tribunal under the Goa, Daman and Diu Sales Tax Act, 1964 (hereinafter referred to as 'the Sales Tax Act, 1964) is empowered to decide, would cease to have jurisdiction after the Regulation of 2005 came into force.

13. Learned counsel for the respondents would submit that Section 74(1) has provided a mechanism to the aggrieved person to redress his grievance by providing for two appeals. Relying on Section 66 (1) which provides for appointment of a person to be Commissioner of Value Added Tax, he submits that it is the Commissioner who is overall in-charge of the

administration of this Regulation and therefore, it would always be within his jurisdiction to entertain an appeal against the orders passed by the authorities appointed to assist him. This in his submission would be a proper reading of powers of Commissioner conferred on him in terms of Section 66 (1), 66(2), 66(3) and 66(4) which reads as under :-

> 66. (1) For carrying out the purposes of this Regulation, the Government shall appoint a person to be the Commissioner of Value Added Tax.
> (2) The Government may, to assist Commissioner in the administration of this Regulation, appoint as many Joint Commissioners of Value Added Tax, Deputy Commissioners of Value Added Tax, Assistant Commissioners of Value Added Tax, Value Added Tax Officers and such other persons with such designations as the Government thinks necessary (hereinafter in this Chapter referred to as the "Value Added Tax Authority").
> (3) The Commissioner may, with the previous sanction of the Government, engage other persons to assist him in discharge of his duties.
> (4) The Commissioner and the Value Added Tax Authorities shall exercise such powers as may be conferred upon them, and perform such duties as may be required, by or under this Regulation."

14. Heard learned counsel for the parties at length. Perused the Petition and the relevant exhibits. We have also gone through the compilation of the relevant statutory provisions tendered by learned counsel which we shall refer to in the later part of this order.

15. The questions that arise for consideration is firstly, whether the respondent No.2 – the Commissioner of VAT has jurisdiction under Section 74(1) (b) to entertain and hear a Second Appeal against an order passed by the first appellate authorities under Section 74(1)(a);

16. Secondly, whether the Administrative Tribunal constituted under the Administrative Tribunal Act, 1965 empowered to exercise powers of the Tribunal under the Sales Tax Act, 1964 can entertain and hear Appeals under the Regulation of 2005 till such time a Tribunal is constituted or notified in accordance with Section 73(1) of the Regulation of 2005.

17. To appreciate the controversy, it would be material to firstly, refer to the relevant provisions of the Regulation of 2005. The Regulation of 2005 is a Regulation to consolidate and amend the law relating to levy of tax on sales or purchases of goods in the Union territory of Daman and Diu and to provide

for matters connected therewith or incidental thereto.

18. In exercise of the powers conferred by Article 240 of the Constitution of India, the President promulgated the Regulations called “The Daman and Diu Value Added Tax Regulation, 2005”

19. Section 2(b) defines “Administrator” to mean the Administrator of the Union territory of Daman and Diu appointed by the President under article 239 of the Constitution ; Section 2(c) defines “Appellate Tribunal” as the Appellate Tribunal constituted under section 73. Section 66 provides for “Value Added Tax Authorities”. The same reads thus :-

> “66.(1) For carrying out the purposes of this Regulation, the Government shall appoint a person to be the Commissioner of Value Added Tax.”

Section 73 provides for “Appellate Tribunal”. The relevant portion of which reads thus :

> “73.(1) The Government shall, as soon as may be after the commencement of this Regulation, constitute an Appellate

> Tribunal consisting of one or more members, as it thinks fit, to exercise the powers and discharge the functions conferred on the Appellate Tribunal by or under this Regulation.
>
> Provided that where the Appellate Tribunal consists of one member, that member shall be a person who has held a civil judicial post for at least ten years or who has been a member of the Indian Legal Service not below Grade III for at least three years or who has been in practice as an advocate for at least ten years, and where the Appellate Tribunal consists of more than one member, one such member shall be a person qualified as aforesaid:
>
> Provided further that the Government may, until the Appellate Tribunal is constituted under this Regulation, notify any other Appellate Tribunal constituted or established, under any State law for the time being in force, with the consent of the concerned State Government and such other Appellate Tribunal shall hear and dispose of the appeal in accordance with the provisions of this Regulation till such time the Appellate Tribunal is constituted under this Regulation.
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20. Chapter XII provides for Appeals, Disputes and Questions. Section 74 is a provisions relating to appeals. The relevant portion of which reads thus :-

> 74. (1) Any person who is aggrieved by an assessment under this Regulation or any other order or decision made under this Regulation (including an assessment of penalty under section 33 or penalty imposed under this regulations) may,- (a) file an appeal to the Joint Commissioner or Deputy Commissioner or Assistant Commissioner, having jurisdiction, when such

> decision has been made or order has been passed or assessment has been made by any Value Added Tax Officer or Assistant Value Added Tax Officer;
> (b) file an appeal to the Commissioner, when such decision has been made or order has been passed or assessment has been made by the Assistant Commissioner or Deputy Commissioner or Joint Commissioner:
>
> Provided that no appeal against an assessment shall be entertained unless the amount of tax, interest or penalty assessed that is not in dispute has been paid:
>
> Provided further that only one appeal shall be made by the person against any assessment, decision or order:
>
> Provided also that in the case where an assessment or order or decision has been revised, the appeal may be made in respect of such revision or amendment from which a person is aggrieved.
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> (emphasis supplied by us)
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> (4)............
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21. A reading of relevant provisions of Regulation of 2005 thus reveals that under Section 66(1), the Government shall appoint a person to be the Commissioner of Value Added Tax for carrying out the purposes of the Regulation. The Government may, to assist the Commissioner in the administration of the Regulation, appoint as many Joint Commissioners of Value Added Tax, Deputy Commissioners of

Value Added Tax, Assistant Commissioners of Value Added Tax, Value Added Tax Officers and other officers to be called as "Value Added Tax Authority". Section 66 (4) provides that the Commissioner and the Value Added Tax Authorities shall exercise such powers as may be conferred upon them and perform such duties as may be required, by or under this Regulation.

22. Chapter XII of the Regulation provides for hearing of Appeals, Disputes and Questions. Section 74(1) provides for a remedy to challenge an assessment or order or decision made under this Regulation. Section 74(1)(a) provides for an Appeal to the Joint Commissioner or Deputy Commissioner or Assistant Commissioner having jurisdiction, when such decision has been made or order has been made and assessment has been made by any Value Added Tax Officer or Assistant Value Added Tax Officer. Section 74(b) provides for an appeal against an assessment made under the Regulation or any other order made under the Regulation to the Commissioner, when such decision

has been made or order has been made or assessment has been made by the Assistant Commissioner, Deputy Commissioner or Joint Commissioner.

23. As indicated earlier, learned counsel for the respondents would persuade us to read clause (a) and (b) of Section 74(1) to mean that after an order has been passed under Section 74(1) (a) by the Appellate authority, the aggrieved person would have a remedy to file a second appeal to the Commissioner. He would submit that remedy of appeal under Section 74(1)(b) would include challenge to an appellate order passed under clause (a) of Section 74(1). The argument of learned counsel for the respondents definitely appears attractive at the first blush. However, the proviso to Section 74(1) clearly restricts filing of a second Appeal to the Commissioner under clause (b). The language of the proviso to Section 74(1) is clear and unambiguous. The proviso in clear terms mentions that only one appeal shall be made by the person against an assessment, decision or order. In view of the clear mandate in the proviso to

Section 74(1), only one appeal is contemplated against any assessment, decision or order and therefore, the question of entertaining the second appeal by the Commissioner under clause (b) does not arise. In clearest terms and by employing the words “Such decision has been made or order has been passed or assessment has been made by the VAT Officer” the Legislature did not provide for a Second Appeal to the Commissioner nor designate him as the Second Appellate Authority. The proviso makes this position clear if at all there was any ambiguity.

24. We may also examine clause (a) and (b) of Section 74(1) in the context of clause (4) of Section 66. Clause (4) of Section 66 provides that the Commissioner and the Value Added Tax Authorities shall exercise such powers as may be conferred upon them, and perform such duties as may be required, by or under this Regulation. In this view of the matter, though under Section 66, the Government has power to appoint a Commissioner of Value Added Tax for administration of this Regulation, the right of the Commissioner to hear the appeal is

however regulated by clause (b) of Section 74(1). The proviso clearly reveals that an aggrieved person can file only one appeal against the assessment, decision or order. It is well settled principle of law that right of an appeal is a creature of a statute. A right of appeal inheres in no one and therefore, an Appeal, for its maintainability must have clear authority of law. A useful reference in this regard can be made to the decisions of the Apex Court in the case of (1) **The Anant Mills Co. Ltd. vs. State of Gujarat (AIR 1975 SC 1234)** and (2) **Smt. Ganga Bai vs. Vijay Kumar & ors (AIR 1974 SC 1126.** Therefore, in our opinion, if proviso to Section 74 restricts the number of appeals, no further appeal against an order passed in appeal can lie to the Commissioner under clause (b) of Section 74(1) as a second appeal is not expressly provided in the Regulation. On the contrary, Section 74 has restricted the right of appeal to only one. In this view of the matter, the respondent No.2 – Commissioner, though in-charge of the administration exercising control over the officers mentioned in clause (a) of Section 74(1), cannot confer authority on himself to hear an appeal against orders passed by his sub-ordinate authorities in exercise of their appellate powers.

25. In this view of the matter, when the language of Section 74(1), especially the proviso is so clear and unambiguous, we have no hesitation in holding that the Commissioner has no jurisdiction to hear and decide the second appeal. The impugned order passed by the respondent No.2 dated 9/11/2018, therefore, will have to be set aside for lack of jurisdiction.

26. Let us now examine the question whether the Administrative Tribunal constituted under the Administrative Tribunal Act, 1965 can exercise the powers of the Appellate Tribunal under Section 73 (1) of the Regulation of 2005. In 1964, the Goa, Daman and Diu Sales Tax Act, 1964 was enacted (hereinafter referred to as the 'Sales Tax Act, 1964' for short). There exists a provision for constituting a Tribunal under the Sales Tax Act, 1964.

27. In 1965, the Goa, Daman and Diu Administrative Act, 1965 was enacted. An Administrative Tribunal was constituted under the Administrative Tribunal Act, 1965. It appears that though there exists a power to constitute and establish a Tribunal under the Sales Tax Act, 1964, no such Tribunal was established under the said Act.

28. By a Notification dated 17th July 1970, the Government conferred on the Administrative Tribunal functioning under the Act of 1965 the powers conferred on a Tribunal by or under the Sales Tax Act, 1964. The said Notification reads thus :

> "In exercise of the powers conferred by sub-section (10) of section 3A of the Goa, Daman and Diu Sales Tax Act, 1964 (4 of 1964) the Government is pleased to confer on the Administrative Tribunal functioning under the Goa, Daman and Diu Administrative Tribunal Act, 1965 (6 of 1965) the powers conferred on a Tribunal by or under the Goa, Daman and Diu Sales Tax Act, 1964.
>
> By order and in the name of Administrator of Goa, Daman and Diu.
> Puran Singh, Finance Secretary.
> Panaji, 17th July, 1970."

29. It is thus not in dispute that the Administrative Tribunal constituted under the Act of 1965 was conferred with

the powers which a Tribunal under the Sales Tax Act, 1964 has.

30. Our attention is invited to the Citizen's Charter in respect of the office of Administrative Tribunal, Panaji-Goa. In the said Charter, it is mentioned that the Administrative Tribunal established by Decree No.4627 dated 1/7/1918 and reconstituted under the Goa, Daman and Diu Tribunal Act, 1965, has very important role to play in the field of judicial services having jurisdiction of whole State of Goa. To the said Charter is annexed a statement showing jurisdiction of Administrative Tribunal under various Acts. There exists a provision under the Sales Tax Act, 1964 for filing a second appeal against the order of the Appellate Authorities, to the Tribunal. Our attention is also invited to the Official Gazette of Government of Goa, Daman and Diu dated 13th April, 1972. The Gazette Notification reads thus :

> "In exercise of the powers conferred by sub-section (9) of section 3A of the Goa, Daman and Diu Sales Tax Act, 1964 (4 of 1964) read with the Government Notification No. Fin(Rev)/2-36/Part/1310/70 dated 17-7-1970, the Tribunal hereby makes the following regulations, namely :-
>
> 1. **Short title and commencement.** - (a) These Regulations may be called the Goa, Daman and Diu Sales Tax

Tribunal Regulations, 1972.
(b) They shall come into force at once.

2. **Definitions.** - In these regulations "Act" means the Goa, Daman and Diu Sales Tax Act, 1964.

3. **Procedure to be followed by the Tribunal in appeals or revision.** - The Administrative Tribunal in deciding an appeal or a revision application under the provision of the Act shall have the same powers and shall follow the same procedure provided for in this behalf in the Goa, Daman and Diu Administrative Tribunal Act, 1965 (6 of 1965) as if the appeal or the revision application was filed under the said Act."

B.M. Masurkar
Chairman

Panaji, 13th April, 1972.

31. The Gazette Notification would reveal that as regards the procedure to be followed by the Tribunal in Appeals or revision under the provisions of the Act shall have the same powers and shall follow the same procedure provided for in this behalf in the Goa, Daman and Diu Administrative Tribunal Act, 1965 (6 of 1965) as if the appeal or the revision application was filed under the said Act. The said Regulations dated 13/4/1972 are made in exercise of the powers conferred by sub-section (9) of section 3A of the Sales Tax Act, 1964 r/w. Government Notification dated 17/7/1970. Prior to coming into force the Regulation of 2005, the Administrative Tribunal was exercising

appellate/revisionary powers as if it were a Tribunal constituted and/or established under the Sales Tax Act, 1964, but for the purpose of procedure the Administrative Tribunal had to follow the same procedure provided in the Administrative Tribunal Act, 1965.

32. No doubt, under Section 73(1) of the Regulation of 2005 the Government has not yet constituted an Appellate Tribunal to exercise the powers conferred on the Appellate Tribunal by or under this Regulation. Proviso to Section 73(1) also empowers the Government to notify any other Tribunal constituted or established, under any State law for the time being in force to hear and dispose of the Appeal in accordance with the provisions of the Regulation of 2005 until the Appellate Tribunal is constituted by the Government.

33. In our opinion, there is nothing in the language of Regulation of 2005 to indicate that upon coming into force of the Regulation of 2005, the existing Tribunal conferred powers as per the provisions of the Sales Tax Act, 1964 and the

Notifications dated 17/7/1970 and 13/4/1972, would cease to be an Appellate Tribunal within the meaning of Section 73(1). In our opinion, the Administrative Tribunal empowered by the Notification dated 17/7/1970 and 13/4/1972 would continue to exercise the powers and discharge the functions conferred on the Appellate Tribunal by or under the Regulation of 2005 till the time Government constitutes a Tribunal under Section 73(1) or notifies any other Tribunal to act accordingly. We note that even the Appeal filed by the petitioner is styled as an Appeal before 'the Tribunal'.

34. We may also note that by a Notification dated 8th July, 2003 issued in exercise of the powers conferred by Section 3 of the Goa, Daman and Diu Administrative Tribunal Act, 1965, the Administrator of Daman and Diu constituted an Administrative Tribunal for the Union territory of Daman and Diu to exercise the jurisdiction, perform the functions and discharge the duties entrusted to it by or under the Goa, Daman and Diu Administrative Tribunal Act, 1965 or any other law for

the time being in force. The District and Sessions Judge, Daman and Diu, is appointed as Chairman of the Daman and Diu Administrative Tribunal.

35. Section 106(1) of the Regulation of 2005 provides that the Daman and Diu Sales Tax Act, 1964, as in force in Daman and Diu is hereby repealed. Clause (2) of Section 106 provides that notwithstanding anything contained in sub-section (1), such repeal shall not affect the previous operation of the repealed Act or any right, title, entitlement, obligation or liability already acquired, accrued and incurred thereunder. Clause (3) of Section 106 provides that :

> "(3) For the purposes of sub-section (2), anything done or any action taken including any appointment, <u>notification, notice, order, rule, form or certificate in the exercise of any powers conferred by or under the repealed Act shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Regulation, as if this Regulation were in force on the date on which such thing was done or action was taken</u>, and all arrears of tax and other amounts due at the commencement of this Regulation may be recovered as if they had accrued under this Regulation.
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> (emphasis supplied by us)

36. Sub-section (4) of Section 106 provides that save as

otherwise provided in sub-section (2) and (3), the mention of particular matters in sub-sections (2) and (3) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal.

37. A reading of Section 106 which provides for "Repeal and Savings" clearly indicates that notwithstanding anything contained in sub-section (1), such repeal shall not affect the previous operation of the repealed Act or any right, title entitlement, obligation or liability already acquired, accrued and incurred thereunder. Sub-section (3) of Section 106 expressly provides that for the purposes of sub-section (2), anything done or any action taken including any notification in the exercise of any powers conferred by or under the repealed Act shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Regulation, as if this Regulation were in force on the date on which such thing was done or action was taken.

38. We may also refer to Section 24 of the General Clauses Act, 1897 which provides that where any Central Act or Regulation, is, after the commencement of this Act, repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided, any appointment, notification, order, scheme, rule form or bye-law, made or issued under the repealed Act or Regulation, shall so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been made or issued under the provisions so re-enacted, unless and until it is superseded by any appointment, notification, order, scheme, rule, form or by-law made or issued under the provisions so re-enacted.

39. Pertinently, Mr. Deshmukh does not dispute that the Notifications to which our attention has been invited by the petitioners are still in force. There is nothing brought on record by the respondents which indicates that these Notifications and the appointments thereunder are superseded. This to our mind concludes the matter. Reading of the above provisions leave no

manner of doubt in our mind that the Notifications issued on 17th July, 1970 and on 13th April, 1972 are saved under the Regulation of 2005 and the repeal of the Sales Tax Act, 1964 has no effect on these Notifications. In fact, sub-section (3) of Section 106 itself provides that anything done or any action taken including any notification in the exercise of any powers conferred by or under the repealed Act shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Regulation, as if this Regulation were in force on the date on which such thing was done or action was taken. Section 73(1) read with Section 106 of the Regulation of 2005 along with Section 24 of the General Clauses Act would clearly demonstrate that the Administrative Tribunal empowered by the Sales Tax Act, 1964 (now repealed) would continue to exercise the powers of the Appellate Tribunal as per the Notifications till such time the Government constitutes or notifies a Tribunal under Section 73(1) of the Regulation of 2005 or till such time the earlier notifications are superseded. We do not find that such a course is inconsistent with provisions of the Regulation of

2005. It is well settled that a law does not create a vacuum nor does it leave anything to guesswork but always ensures that until a new regime is established, the earlier would continue to operate unless otherwise is provided by the new or reenacted law.

40. We, therefore, have no hesitation in observing that the Appeal filed by the petitioner on 15/5/2018 against the order dated 26/3/2018 passed by the respondent No.4 will have to be heard and disposed of by the Administrative Tribunal constituted by the Notification dated 8th July, 2003. The Petition, therefore will have to be allowed.

Hence, the following order.

O R D E R

(i) The impugned order passed by the respondent No.2 dated 09/11/2018 is quashed and set aside.

(ii) It is directed that the Appeal dated 15/5/2018 be made over to and shall be heard and disposed of by the

Administrative Tribunal constituted vide Notification dated 8th July, 2003 in accordance with law.

(iii) We clarify that barring the issue of jurisdiction, we have not decided anything much less on merits. The contentions of both sides in that behalf are expressly kept open.

41. These Writ Petitions are disposed of accordingly.

42. Rule made absolute accordingly with no order as to costs.

(M.S. KARNIK, J.) **(S.C. DHARMADHIKARI, J.)**