

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2795 OF 2018

Reliance Industries Ltd. and anr. .. Petitioners
Vs.
The State of Maharashtra and ors. .. Respondents

Mr.N.Venkatraman, Senior Advocate a/w Mrs.Nikita Badheka
I/b A.S.Dayal & Associates, for the Petitioner.
Mr.V.A.Sonpal, Special Counsel a/w Ms.Jyoti Chavan, AGP for
Respondents No. 1 to 3.

ALONG WITH

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10239 OF 2018

Bharat Petroleum Corporation Limited .. Petitioner
Vs.
The State of Maharashtra and ors. .. Respondents

Mr.Rafiq Dada, Senior Advocate a/w Mr.Mihir Deshmukh, for
the Petitioner.
Mr.V.A.Sonpal, Special Counsel a/w Mrs.S.D.Vyas, 'B' Panel
Counsel for State - Respondents No. 1 and 2.

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

**RESERVED ON : 28th FEBRUARY, 2019
PRONOUNCED ON : 18th APRIL, 2019**

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

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

2. Since common questions of law and facts arise in these Petitions, the same can conveniently be disposed of by a common judgment. For the purpose of appreciating the controversy raised between the parties, facts from Writ Petition No. 2795 of 2018 are taken into consideration.

3. Invoking the jurisdiction of this Court under Article 226 of the Constitution of India, the petitioners pray for the following reliefs:

(a) A Writ of Certiorari or a Writ in nature of Certiorari or any other appropriate Writ declaring that the grant of prospective effect would operate in terms of section 52(2) of the BST Act, for all the periods/transactions up to the date of passing of the order by the Tribunal on 20/01/2015 and the decision of the Hon'ble High Court on merit would be applicable only to the periods/transactions after 20/01/2015.

(b) Writ of Certiorari or a Writ in nature of Certiorari or any other appropriate Writ for quashing and setting aside the totally illegal and arbitrary Assessment Orders passed for the period 2013-14 as illegal, unreasonable, untenable and vindictive and without jurisdiction to the extent it is passed contrary to the directions of this Court in Writ Petition No. 2217 of 2015 dated 22nd March 2018 and to grant prospective effect to its judgment and protect the Petitioner for all the periods up to 20th January 2015.

(c) A Writ of Certiorari or a Writ in nature of Certiorari or any other appropriate Writ for quashing and setting aside, the Assessment Order for the period 2011-12 to the extent it is passed contrary to the order and the judgment passed by this Hon'ble Court in Writ Petition No. 2217 of 2015 dated 22nd March 2018 and to grant benefit of prospective effect.

(d) In the alternative, to direct the Assessing Officer pass appropriate Orders of rectification for the period 2011-12 & 2013-2014 to give the effect of prospective effect in both the years in terms of the judgment and Order of this Hon'ble Court dated 22.03.2018.

(e) Pending the notice, admission and final hearing of this Petition this Hon'ble Court, restrain the Respondents from raising any demand for any years up to 20-01-2015, by disallowing goods return claim as also treating the process as Manufacture and permanently thereafter.

(f) Pending the notice, admission and final hearing of this Petition this Hon'ble Court may be pleased to stay the recovery of demand raised by the impugned Assessment Orders passed for the periods 2013-14 and 2011-12.

(g) No coercive measures of recovery be taken against the Petitioner by the Respondents based on the assessments under challenge for the period 2011-12 and 2013-14.

(h) Hearing of this Petition may please be expedited.

(i) Ex-parte Ad-interim relief in terms of prayer (e), (f) and (g) herein above.

(j) Any such orders that the Court may deem fit.

The facts of the case in brief are as under :

4. The petitioner No.1 is a public limited company inter alia engaged in the business of manufacturing petrochemicals. Second respondent is Commissioner of Sales Tax, Maharashtra State and authority empowered under the Maharashtra Value Added Tax 2002 (for short 'MVAT Act') responsible for implementation and administration of MVAT Act. Respondent

No.3 is in-charge of Large Tax Payer Units and is Nodal officer as well as assessing officer under MVAT Act of the petitioner company.

5. The Bharat Petroleum Corporation Limited [for short 'BPCL'] (petitioner in connected Petition – Writ Petition No. 10239 of 2018) filed DDQ application in the year 1992. In exercise of his jurisdiction under section 52 of Bombay Sales Tax Act (for short 'BST Act'), the second respondent - Commissioner of Sales Tax passed order dated 11/09/2006 determining the disputed question. The question under dispute was 'whether return stream i.e. return of kerosene by Reliance Industries Ltd (for short 'RIL') to BPCL would be legally allowable as “goods returned” or whether that return will amount to purchase of kerosene by BPCL from RIL. The application for DDQ was filed by BPCL. In terms of agreement dated 24/08/1992 entered into by and between BPCL and RIL, it was agreed that BPCL shall provide to RIL, through a dedicated pipeline, kerosene to enable RIL to remove/extract N-Paraffin/Special cut kerosene for

manufacture of Linear Alkyl Benzene (for short 'LAB'). RIL, in turn, under the agreement was obliged to return the same kerosene conforming to BIS standard to the supplier BPCL.

6. Thus, BPCL by filing the determination application on 21/04/1992, requested the Commissioner- respondent No.2 to determine the following three questions :

(a) Whether sale of KO (LABFS) by BPCL to RIL (vide sale invoice no. 000900 dated 25th April 1992 is liable to tax.

(b) Whether the return stream i.e. return of Kerosene by the RIL to BPCL (vide sales return credit note no. 147857 dated 1st May 1992) would be legally allowable as sales return or whether that return will amount to purchase of Kerosene by BPCL from RIL.

(c) Whether subsequent sale of kerosene effected by BPCL (vide sale invoice no. 357494 dated 21st May 1992) out of return stream is liable to tax.

7. The Commissioner decided, in answer to first question, that the sale of kerosene by BPCL to RIL was exempt as during the relevant period kerosene was an exempt commodity. Similarly, question (c) was answered by stating that sale of kerosene (without N-Paraffin) returned by RIL to BPCL is also kerosene, exempt from tax under entry 160 of notification issued under section 41 of BST Act.

8. The Second question was also answered in favour of RIL and BPCL holding that transaction of return of kerosene by RIL to BPCL amounts to 'return of goods' by RIL to BPCL in terms of rule 4 of the BST rules and not sale.

9. Several rounds of litigation thereafter ensued. Suffice it to observe that it was for the first and last time in the history of Bombay Sales Tax Act, DDQ by Commissioner was challenged by the State before the Maharashtra Sales Tax Tribunal ('MSTT' for short). The MSTT by order dated 20th January 2015 overruled the order of the Commissioner and held that the return stream of kerosene was not a 'return of goods'

and hence liable to be taxed as a sale. The MSTT also in its order rejected the plea of the BPCL and RIL to grant prospective effect to its order under section 52(2) of the BST Act. The order of DDQ passed in 2006 was reversed by the MSTT on 20/01/2015.

10. The order of the MSTT dated 20/01/2015 came to be challenged by RIL as well as BPCL by filing separate Writ Petitions and Reference Application before this Court on merits, including denial of prospective effect. The proceedings filed by RIL came to be numbered as Writ Petition No. 2217 of 2015, Sales Tax Application (L) No. 27 of 2015, Sales Tax Reference No. 5 of 2016. The proceedings filed by BPCL were numbered as Writ Petition No. 2247 of 2015 with Sales Tax Reference (L) No. 95 of 2015.

11. The Division Bench of this Court to which one of us 'S.C.Dharmadhikari, J.' was a party, by judgment and order dated 22/03/2018 decided against the petitioners on merits. This Court held that the return stream of kerosene by RIL to

BPCL does not amount to “return of goods”. The claim of RIL and BPCL in this regard was rejected.

The plea of petitioners for grant of prospective effect under section 52(2) of BST Act was, however, held in favour of the petitioners.

12. The petitioner (RIL) filed SLP before the Hon'ble Supreme Court challenging the order passed by this Court. SLP filed by the petitioner (RIL) was dismissed by the Hon'ble Supreme Court vide order dated 17/08/2018. Even Review Petition filed by the petitioner -RIL came to be dismissed by the Hon'ble Supreme Court on 15/11/2018.

13. The State of Maharashtra, being aggrieved by that part of the judgment and order of this Court dated 22/03/2018, whereby this Court has given prospective effect to the order of the MSTT under section 52(2) of the BST Act, filed Special Leave Petition (Civil) Diary No.34461 of 2018. The Special Leave Petition, however, came to be dismissed.

14. It is the case of the petitioners that as prospective effect is allowed by this Court to the order of the MSTT, the petitioners applied for rectification under section 24 of the MVAT Act. By a communication dated 25/05/2018, the petitioners had received order dated 23/10/2017 being assessment order for the financial year 2011-12 raising exorbitant demand by disallowing the goods return claim and treating the same as taxable. The assessment is topped with levy of interest and penalty. The petitioner was served with yet another assessment order dated 17/04/2018 for the period 2013-14. This period is also prior to the date of MSTT's order dated 20/01/2015.

15. Simply put, it is the petitioner's case that once this Court vide judgment and order dated 22/03/2018 exhaustively dealt with the contention as regards prospective effect and having specifically held that the MSTT was unjustified in not granting the prospective effect to its judgment and order dated 20/01/2015, also having further observed “we feel that

this was a fit case where the MSTT ought to have exercised its discretion and granted prospective effect to its judgment and order....”, the impugned assessment orders, therefore, are unsustainable in the teeth of the order passed by this Court.

16. Learned Senior Counsel - Shri R.A.Dada appearing on behalf of BPCL invited our attention to the order passed by this Court in Writ Petition No. 2217 of 2015. Learned counsel submitted that under section 52(2) of BST Act, the Commissioner has power to give prospective effect to DDQ order passed by the Commissioner under section 52(2) of the said Act. It was urged that the DDQ order of the Commissioner dated 11/09/2006 was in favour of RIL and BPCL. Learned Senior Counsel invited our attention to judgment and order of this Court dated 22/03/2018, wherein it is observed, “this is the only case in the history of of Sales Tax law in the State where the State filed an Appeal against DDQ order passed by the Commissioner under section 52”. Learned Senior Counsel submitted that since the DDQ order was in favour of the

petitioners, there was no question of them requesting the Commissioner to grant prospective effect to the order passed by him. It is only when the MSTT reversed the order of the MSTT by the order dated 20/01/2015, that the question of granting prospective effect under section 52(2) arose.

17. Learned Senior Counsel would further invite our attention as to how contention (v) was dealt with by this Court which reads thus:

“without prejudice to the aforesaid argument, it is contended that in any event the MSTT grossly erred in not considering to give prospective effect to its order dated January, 20, 2015 as contemplated under section 52(2) of the BST Act.” Learned Senior Counsel would therefore urge that this Court categorically answered in favour of the petitioners after exhaustive reasoning that if prospective effect is not given to the order of the MSTT, it would effectively lead to a situation where all past assessments will have to be reopened and it will be highly unfair and prejudicial not only to RIL but also to BPCL.

18. Learned Senior Counsel also submitted that this Court while holding that the MSTT was unjustified in not granting prospective effect to its judgment and order dated 20th January 2015, also said that “however, considering that there has been a long and checkered history between the parties, we think that it would be in the fitness of things, if the same was decided by us in the present proceedings especially when both parties have addressed us extensively on this issue.”

19. Learned Senior Counsel would further submit that ultimately, this Court went on to hold that this was a fit case where the MSTT ought to have exercised its discretion and granted prospective effect to its judgment and order. Learned Senior Counsel urged that having answered thus on the issue of prospectivity and as even the challenge by State of Maharashtra to the judgment and order of this Court having failed before the Apex Court, the order passed by this Court dated 22nd March 2018 has thus attained finality and has a binding effect. Therefore in the submission of the learned Senior Counsel, the

decision of this Court is binding on respondent No.3. Learned Senior Counsel would submit that it would not be open in the teeth of the order passed by this Court, now to construe section 52(2) of BST Act differently. Learned Counsel would submit that once this Court holds that the order of the MSTT has to be given prospective effect in terms of section 52(2) of the BST Act, respondent No.3 is obliged to act in accordance with the directions of this Court. Learned Senior Counsel relied upon the decision of the Apex Court in the case of **Kone Elevator India Pvt. Ltd. Vs. State of Tamil Nadu and ors. (2014) 71 VST 1 (SC)**.

20. On the other hand, learned counsel Shri Sonpal appearing on behalf of respondents argued in support of the impugned order of assessment. He invited our attention to the provisions of section 52(2) of BST Act. He would submit that the MSTT having interfered with the order passed by the Commissioner, the liability relates back to the date of the order passed by the Commissioner and not from the MSTT's order. In

his submission, the order passed by the MSTT has merged with the order passed by the Commissioner. Relying on the plain language of section 52(2) of BST Act, Shri Sonpal would submit that when legislature specifically empowers the Commissioner to direct that the determination shall not affect the liability of any person under this Act, as respects any sale or purchase effected prior to the determination, then, the prospectivity in terms of section 52(2) can only be from the date of the order of the Commissioner and not from the date of the order of the MSTT. He was at pains to persuade us to accept his plea on doctrine of merger, for he would contend that even section 52 imposes liability from the date of commissioner's order, for according to him, irrespective of the date on which the MSTT passes its order, it will still be effective from the date of Commissioner's order, for this would be the proper construction of Section 52(2) applying the doctrine of merger. He would therefore contend that there is no infirmity in the order of the assessment made by the respondent No.3 so as to warrant any interference in exercise of the writ jurisdiction of this Court.

21. We have heard learned Senior Counsel Shri Venkatraman appearing on behalf of RIL and learned Senior Counsel Shri Dada appearing on behalf of the BPCL. We also heard Shri Sonpal on behalf of the respondents. We have gone through the Petition as well as the annextures thereto.

22. The issue that arises for consideration is whether the impugned order denying prospective effect to the assessment from the date of MSTT order dated 20/01/2015 is unjustified. Admittedly, order of DDQ was passed by the Commissioner in 2006 holding that return stream of kerosene was not a 'return of goods' hence, not liable to be taxed. It was held that the transaction of return of kerosene by RIL to BPCL amounts to 'return of goods' by RIL to BPCL in terms of rule 4 of the BST rules and not sale. It is only on 20/01/2015, the MSTT overruled the order of the Commissioner and held that return of kerosene was not return of goods and hence, liable to be taxed for sale.

23. In this petition, filed by the Reliance Industries Ltd., a dealer engaged in the business of manufacture and trading of petroleum products, an order of assessment passed by the Deputy Commissioner of Sales Tax, Mazgaon, Mumbai is challenged. This is an assessment order. Although it is an appealable order within the framework of the Maharashtra Value Added Tax Act, 2005, still, the learned senior counsel appearing for the petitioners would submit that forcing the petitioners to pursue an Appeal would be inequitable and unjust given the fact that the core issue on merits is answered against the Department/Revenue and in favour of the petitioners.

24. Pertinently, the period covered by this assessment order is 1st April, 2013 to 31st March, 2014. There, a show cause notice in Form 301, a reminder for the above period was issued and the parties appeared before the Deputy Commissioner of Sales Tax. M/s.Reliance Industries Limited argued that it has entered into an agreement with M/s.Bharat Petroleum Corporation Ltd. (BPCL) for supply of Superior Kerosene Oil

through pipeline from the refinery of M/s. BPCL located at Mahul and Ms/Reliance Industries Limited, after extraction of N-Paraffin from the Kerosene Oil, returned the goods through pipeline. In the case of previous transactions, arising out of this agreement, the Commissioner had passed an order on 11th September, 2006. Aggrieved by this order of the Commissioner, the Government of Maharashtra preferred an appeal before the Maharashtra Sales Tax Tribunal and that appeal was dismissed on the ground of maintainability. Later on, that order came to be set aside by this court in a writ petition of the Government of Maharashtra and the matter was sent back to the Tribunal. The tribunal condoned the delay in filing of the State's appeal, admitted it and then made a final order on 20th January, 2015. By the final order, the tribunal set aside the order dated 11th September, 2006 of the Commissioner.

25. The tribunal's order was challenged by the Reliance Industries Limited before this court by way of Writ Petition No.2217 of 2015, which has been disposed of by a detailed

judgment and order. One of the issues that was determined and decided by this court is whether the tribunal's order should be given prospective effect or not? That was answered in favour of the Reliance Industries Limited and BPCL.

26. In the subject assessment and covered by the impugned order, M/s.Reliance Industries Limited relied upon this court's judgment and submitted that it has succeeded in persuading this court to give prospective effect to the tribunal's order.

27. M/s.Reliance Industries Limited had in fact conceded before the assessing officer that the prospective effect given to the tribunal's order dated 20th January, 2015 means every assessment subsequent to that order and for the period not covered under the tribunal's or this court's order would be governed by the tribunal's order of 20th January, 2015. In other words, the tribunal's and this court's order applies to all transactions and assessment orders subsequent to that order of

20th January, 2015. If the Department is seeking to reopen any of the transactions concluded by the assessment orders under consideration of the tribunal when it delivered and pronounced its order dated 20th January, 2015, then, those matters and assessments cannot be reopened. They stood concluded by this court's clarification that the tribunal's order shall be given prospective effect. It is restricted and confined to those matters and transactions. Admittedly, the financial year under consideration and the transaction performed therein is 2013-14.

28. A careful perusal of the tribunal's order leaves us in no manner of doubt that what the petitioners are seeking to do is to firstly impugn an assessment order and secondly to urge that the additions made to the sales turnover to the tune of Rs.2692,80,63,558/- and consequential levy of tax and penalty be deleted. The assessing officer refused to do so simply because the petitioner has itself stated that by the order of 20th January, 2015, the tribunal ought to have allowed the prospective effect to its order and protect the liability of both,

Reliance Industries Limited and BPCL for all the periods up to the period ending 20th January, 2015. The determination of the disputed question by the Commissioner dated 11th September, 2006 was binding it until the tribunal intervened and set it aside.

29. If we take the period of assessment, it is evident that the same is 1st April, 2013 to 31st March, 2014. In this writ petition, the petitioner, in para 20 says that it received the assessment order for the financial year 2011-12 on 23rd October, 2017 and that raised exorbitant demand by disallowing the goods return claim and treating the same as taxable. The tax levied on the goods return is to the tune of Rs.336,60,07,947/-. The assessment is topped with levy of interest and penalty. As the petitioner was protected by the stay granted by this court, it filed a formal appeal and requested the appellate authority to await for this court's order.

Paras 21 to 23 and 28 of this petition read as under:

“21. After receipt of the High Court order dated 22nd March 2018, the Petitioner applied for Rectification

under Section 24 of the MVAT Act by letter dated 25th May 2018. Hereto annexed and marked **Exhibit-G** is the copy of the said application. The Rectification was made to the Assessing Authority inter alia pointing out the prospective effect granted by the Hon'ble High Court. The Petitioner requested the Assessing Authority to allow the purchase return claim so as to grant the prospective effect as directed by the High Court. Needless to say, no order is passed on the said application by the assessing Authority till date. The Assessing Authority has orally requested to get clarification from the High Court.

22. The Joint Commissioner Appeals before whom the appeal is pending for the period 2011-12 issued a show cause letter dated 20th December 2017 and 7th April 2018 directing the Petitioner to deposit the part payment in terms of Section 26(6A) of the MVAT Act. Hereto annexed and marked **Exhibit "H"** is a copy of the said Show Cause Notice dated 20th December 2017. Hereto annexed and marked **Exhibit "I"** is the copy of the said request letter dated 7th April 2018. Hereto annexed and marked **Exhibit "J"** is the Application for Appeal. Hereto annexed and marked **Exhibit "K"** is the Stay Application. The Petitioner replied to this notice by letter dated 15th May 2018 and pointed out that a Rectification Application is already pending and the Appellate Authority may please await the outcome of the Rectification Application. The matter is pending before the Joint Commissioner (Appeal).

23. On 17th April 2018, the Petitioner was served with yet another Assessment order i.e. for the period 2013-14. This period of assessment is also covered by the Prospective effect i.e. prior to the date of the Tribunal Order 20-01-2015. Despite specific detailed submissions to grant prospective effect as available up to 20th January 2015, the Assessing Authority has misinterpreted the Hon'ble High Court's order and directions and passed the order holding the Petitioner liable to full rate of tax on the Purchase return stream to BPCL by treating the same as taxable sale by Petitioner. As in the earlier year, the

second Assessment order also raises an exorbitant demand. The turnover of sales of the Petitioner was enhanced and subjected to full rate of tax. The demand raised is to the tune of Rs.166,51,76,429/- along with interest of Rs.133,21,41,184 and penalty Rs.65,99,888/- (Exhibit A herein).

28. With the introduction of Section 26(6A) under the MVAT Act. There is mandatory part payment as a condition precedent for admission of appeal and grant of stay. As per this amendment 10% of disputed tax with a maximum limit of 15 crores is fixed as mandatory Pre deposit. Therefore in the present case Petitioner would be called upon to pay 10% of the disputed tax under the MVAT and CST Act (subject to maximum 15 crores in an appeal). The Petitioner submit that exorbitant liability is created as a deliberate mischief, ignoring the clear directions of the High Court Judgment. The Order is therefore without jurisdiction, illegal, vindictive and vexatious, raising the following demand:

(Figures in rupees)

Act	Tax	Interest	Penalty	Total
MVAT	166,51,76,429	1,33,21,41,183	65,99,888	300,39,17,500
CST	73,57,29,658	58,85,83,741	NIL	132,43,13,400

Out of the total demand as created herein above, the demand on account of not allowing the goods return claim under the MVAT and CST Act is as follows:

Act	Total Disputed Tax of Goods Return	Tax levied thereon	10% as per S-26(6A)
MVAT	31345254587	3918156823	391815682
CST	Nil	Nil	Nil

The liability under the Central Sales Tax Act is mainly on account of disallowance of Refund carried forward under MVAT Act to CST Act by the Appellant in the Returns and Audit Report. The Appellant has claimed in the Return and Audit Report the adjustment of the refund under the MVAT Act to the tune of Rs.122,49,89,630/-, against the CST liability. On account of non-grant of prospective effect, the liability under the Central Sales Tax Act has increased manifold. On the goods return claim being allowed under MVAT Act, there will be no liability, under the CST Act.”

30. Insofar as the grounds of the petition in paragraphs (b) and (c) are concerned, the same are reproduced hereinbelow:-

“b) The Petitioner submits that the Respondent has passed the Assessment Order for the period 2013-14 in total violation and disregard to the clear directions given by this Hon’ble Court to grant prospective effect up to 20th January 2015. The Assessment Order for the 2011-12 was passed when the litigation was pending before the Hon’ble High Court and the liability was covered by Valid Stay order. The assessment proceedings for the period 2013-14 were also pending when the final hearing was being taken up by the Hon’ble High Court in Writ Petition No.2217 of 2015 dated 22nd March 2018.

c) The Petitioner submits that this Hon’ble Court has directed that the prospective effect be given to the order of the Tribunal up to 20th January 2015. The directions essentially mean that the decision on merit will not apply to any transactions/ periods prior to 20-01-2015. It would also mean that the effect of the DDQ by Commissioner would continue upto 20-01-2015, (till it is reversed by Tribunal). The Order of Determination is binding on all the authorities for all the acts administered by the State of Maharashtra. Therefore, for all the transactions prior to this date, similar to the

transactions in dispute, the Petitioner should be allowed goods return claim so that the Petitioner is not adversely affected on account of the Hon'ble High Court's decision on merits. The Petitioner submits that the Hon'ble High Court has considered all the aspects and facts of the case minutely, considered the arguments made on both the sides and exercised the discretion for grant of relief of prospective effect.

Assessing Officer misinterpreted the Judgment of the Supreme Court in Kone Elevators (71 VST 1 (SC)).”

31. In the backdrop of the above, if the impugned assessment order is perused, it is apparent that the assessing officer went by the effect given to the tribunal's order by this court by terming it as applicable to all live proceedings. If the assessment in hand pertaining to financial year 2013-14 is considered live, then, the assessment order overlooks the fact that it is not the financial year, but the transactions covered and dealings up to 20th January, 2015, which is the relevant factor. It is nowhere indicated in the impugned assessment order that the transactions covered are post 20th January, 2015. The case of the petitioner that up to January, 2015 they have collected and paid tax at the rate of 15% of the turnover actually used by them after claiming goods return and therefore, the claim of

goods return will have to be allowed and the payment of tax on the remaining value as per the return filed by the petitioners up to 20th January, 2015 should be held as valid, appears to be correct. It is an accurate understanding of this court's order.

32. We are, therefore, not in agreement with Mr.Sonpal, when he urges that the impugned assessment order should be sustained. This is not a case of any undue or uncalled for or illegal benefit being conferred on the dealer. This is a case of misreading and misinterpretation of the judgment of this court. Merely because the order of 11th September, 2006 is set aside by the Maharashtra Sales Tax Tribunal by its judgment and order dated 20th January, 2015, the transactions covered and dealt with by that judgment, which gave rise to a tax liability, cannot now be reopened. Even if the assessment is done for the assessment year 2013-14, it is the date of filing of the returns and the transactions covered therein, which will be the crucial factor. If the attempt is made to get over and brush aside a binding judgment of this court, then, that must be strongly

deprecated. We cannot countenance this attempt for we are of the firm opinion that the same amounts to overreaching this court and refusing to abide by its binding judgments by a back-door or oblique method. We cannot allow the reopening of the issues and covered by this court's judgment. It is well settled that what is prohibited directly cannot be done in indirect or in an oblique manner.

33. As entire emphasis is placed on section 52(2) of the BST Act, it would be useful to reproduce section 52 for properly appreciating the controversy. :

“S.52 . Determination of disputed questions –

(1) If any question arises, otherwise than in proceedings before a Court, or before the Commissioner has commenced, assessment or re-assessment of a dealer under section 33 or 35, whether, for the purpose of this Act;

(a) any person, society, club or association or any firm or any branch or department of any firm, is a dealer, or

(b) any particular thing done to any goods amounts to or results in the manufacture of goods, within the meaning of that term, or

(c) any transaction is a sale or purchase, or where it is a sale or purchase the sale price or the purchase price, as the case may be therefor, or

(d) any particular dealer is required to be registered, or

(e) in the case of any person or dealer liable to pay tax, any tax is payable by such person or dealer in respect of any particular sale or purchase, or if tax is payable the rate thereof,

the Commissioner shall subject to rules, make an order determining such question.

[Explanation – For the purpose of this sub-section, the Commissioner shall be deemed to have commenced assessment or re-assessment of dealer under section 33 of 35, when the dealer is served with any notice by the Commissioner under section 33 or 35, as the case may be.]

(2) – The Commissioner may direct that the [determination or, as the case may be, review] shall not affect the liability of any person under this Act, as respects any sale or purchase effected prior to the [determination or, as the case may be, review]

(2A) The Commissioner, for the reasons to be record in writing may, on his own motion, review the order passed by him under subs-section (1) or (2), and pass such order thereon as he thinks just and proper. The order of review shall not affect the liability of any person under this Act, in respect of any sale or purchase effected prior to the review:

Provided that, no order shall be passed under this sub-section unless the dealer or the person in whose case the order is proposed to be reviewed, has been given a reasonable opportunity of being heard:

Provided further that, before initiating any action under sub-section (2A) the Commissioner shall obtain prior permission of the Government.]

34. Earlier the order of MSTT dated 21/02/2105

came to be challenged in this Court by way of Writ Petition No. 2217 of 2015. Having gone through the findings, we notice that this Court exhaustively dealt with the issue of prospective effect to the judgment of the MSTT as contemplated under section 52(2) of the BST Act. In the concluding paragraph of the judgment, it has been specifically observed on the issue of prospectivity by stating thus :

“however, considering that there has been a long and checkered history between the parties, we think that it would be in the fitness of things, if the same was decided by us in the present proceedings especially when both parties have addressed us extensively on this issue.”

35. It would be material to reproduce the relevant portion of the decision of this Court in the earlier Petition. Taking into consideration that RIL and BPCL entered into commercial transaction based on the established trade practices and that the supplier, namely BPCL, is a Government of India undertaking, it was held that this would be a fit case to exercise power to grant prospective effect to the judgment of the MSTT. It has been specifically observed about request made by the

learned counsel appearing for the petitioners to consider the plea for grant of prospective effect to the decision of the MSTT. After setting out the contentions of the learned Senior Counsel and hearing them at length, this Court after reproducing section 52 of the said Act, said as under:

“what is ex-facie clear from reading the provisions of section 52 is that the Commissioner, in the given facts and circumstances of the case, certainly has the power to exercise his discretion and give prospective effect to the DDQ order passed by him under section 52(1). As correctly submitted by Mr. Venkatraman as well as Mr. Dada, in the facts of the present case, since the DDQ order dated September 11, 2006 was passed in favour of the assessee, there was no occasion nor any reason to request the Commissioner to grant prospective effect to his order. The question of prospective effect would only arise when the order of the Commissioner was reversed by the Tribunal vide the impugned order dated January 20, 2015. Further, it is not in dispute before us that it is for the first time in the history of the Bombay Sales Tax Act that the DDQ order passed by the Commissioner under section 52(1) was challenged by the State of Maharashtra before the MSTT. From the facts narrated in this judgment, it is also clear that bona fide litigation between the parties has gone on right from the year 1992 till 2015. Further, right from the

assessment years 1988-89 till 2004-2005, the assessments have been allowed in favour of the assessee, namely RIL on the basis that the return stream of Kerosene was a "goods return". If prospective effect is not given to the order of the Tribunal it would effectively lead to a situation that all past assessments would have to be reopened and which would be highly unfair and prejudicial not only to RIL but also to BPCL.

36. Having reasoned thus, this Court concluded :

“Looking to the totality of the facts of the case and as narrated earlier, we think that the MSTT was unjustified in not granting the prospective effect to its judgment and order dated January 20, 2015. Considering the long checkered history of the litigation between the parties, the assessment orders allowed earlier on the basis that the return stream kerosene was a sales return/goods return and the DDQ order passed in favour of the assessee dated September 11, 2006, we feel that this was a fit case where the MSTT ought to have exercised its discretion and granted prospective effect to its judgment and order. We order accordingly and set aside the order of the MSTT only to this extent. For the foregoing reasons, the writ petitions are partly allowed as indicated herein.”

37. The challenge of the State to the order passed by this

Court before the Hon'ble Supreme Court having failed and even Review Petition filed by the State having been dismissed by the Hon'ble Supreme Court, the order passed by this Court now has attained finality. We are in agreement with the submission of the learned Counsel that it would not be permissible for us to interpret section 52 (2) of the BST Act in the manner now sought to be canvassed by Shri Sonpal in the teeth of the order passed by this Court while deciding the issue of prospectivity which has now attained finality. For, if we are to accept the submissions of Shri Sonpal, we would be virtually sitting in appeal over the decision of this Court, which course of action is obviously not open for us in exercise of writ jurisdiction under Article 226 of the Constitution of India. This Court has clearly dealt with the issue of prospectivity to the order of the MSTT in the light of section 52(2) of the BST Act. Once this Court has come to the conclusion that 'this was a fit case where the MSTT ought to have exercised its discretion and granted prospective effect to its judgment and order', then, the contention of Shri Sonpal that 'the order of the MSTT having merged with the

order of the Commissioner and therefore the effect of prospectivity has to be from the year 2006', can only be stated to be rejected.

38. The Petition (WP/2795/2018) therefore deserves to be allowed and is accordingly allowed in terms of prayer clauses (a), (b), (c) and (d). Consequently, WP/10239/2018 also is allowed on same terms. Rule is made absolute with no order as to costs.

(M.S.KARNIK, J.)

(S.C.DHARMADHIKARI, J.)