R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

REVIEW PETITION NO. 5 OF 2019
IN
MAH. VALUE ADDED TAX APPEAL NO. 26 OF 2018
IN
VAT SECOND APPEAL NO. 384 OF 2017

The Addl. Commissioner of Sales Tax, VAT-I, M.S. Mumbai .. Petitioner

In the Matter Between :
The Addl. Commissioner of Sales Tax, VAT-I, M.S. Mumbai .. Petitioner
V/s.
M/s. Benchmark Engineering Pvt Ltd .. Respondent

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- Mr. V.A. Sonpal, Special Counsel a/w Mr. Himanshu Takke, AGP for the Petitioner.
- Mr. C.B. Thakkar for the Respondent.

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CORAM : AKIL KURESHI &
M.S. SANKLECHA, JJ.

DATE : JUNE 27, 2019
(IN CHAMBER AT 3.00 P.M.)

P.C.:

This Review Petition seeks a recall of the order dated 28th November, 2018 passed by this Bench in the present appeal.

2 In our order dated 28th November, 2018, we dismissed the Revenue's appeal on the ground that the issue raised by the Revenue stands concluded against the Revenue by virtue of Trade Circular No,6T of 2015 issued by the State Government. By the above Circular No.6T of 2015,

the State Government accepted the decision of the Tribunal in the case of Sujata Printers v/s. State (VAT Appeal Nos.18 of 2013 and 63 of 2014) dated 9th March,, 2015. In the above decision, as accepted by the Circular No.6T of 2015, it has been held that Service Tax cannot form part of the sale price under Section 2(25) of the MVAT Act ,where the sale price is determined subject to Rule 58 of the MVAT Rules. We, therefore, in our order dated 28th November, 2018 held that it was not open for the Revenue to contend that service tax will form part of the sale price for the purposes of MVAT Act.

3 Our attention is now drawn to the fact that Rule 58 of the MVAT Rules applies only in the cases of regular assessments of works contract and not in cases of assessment under composition scheme. At the time, we passed the order dated 28th November.2018, our specific attention was not drawn to the fact that Rule 58 of the MVAT Rules applies only to the regular assessment of work contracts while in this case, we are dealing with assessment under the composition scheme.

4 In the above view, there is an error apparent on the face of the record, as this admittedly is a case of composition

scheme and not of works contract. This issue of application of Rule 58 of MVAT Rules to the composition scheme would require our consideration in this appeal.

5 Hence, the order dated 28th November, 2018 is recalled and Mah. Value Added Tax Appeal No.26 of 2018 be placed for fresh consideration.

6 Review Petition is allowed in above terms.

[M.S. SANKLECHA, J.] **[AKIL KURESHI, J]**