CHAITANYA ASHOK JADHAV
Digitally signed by CHAITANYA ASHOK JADHAV
Date: 2025.10.04 10:58:08 +0530

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

SALES TAX REFERENCE NO. 4 OF 2023.

M/s. Maharashtra Distilleries Ltd.
(Presently Known as United Spirits Ltd.) … Appellant

Versus

State Of Maharashtra … Respondent

WITH
SALES TAX REFERENCE NO. 1 OF 2024

M/s. Maharashtra Distilleries Ltd.
(Presently Known as United Spirits Ltd.) … Appellant

Versus

State Of Maharashtra … Respondent

Ms. Nikita Badheka, for Appellant.

Mr. Amar Mishra, A.G.P., for Respondent-State.

CORAM : M.S. Sonak &
Advait M. Sethna, JJ.

DATED : 01 October 2025

PC:-

1. Heard Ms. Nikita Badheka, for the Appellant and Mr. Amar Mishra, for the Respondents.

2. Learned counsel for the parties agree that both these References can be disposed of by a common order, since they are interconnected and arise out of the same order.

3. The Tribunal, by its order dated 02 May 2016, concerning Sales Tax Reference No. 4 of 2023, referred the following questions:

> *"(i) Whether on facts, circumstances and evidence on record, Tribunal was justified in holding that there was an error apparent on record in giving decision in Second Appeal No. 851 of 1999 on 7th June, 2007 although the Miscellaneous Application bearing No. 177 of 2002 dated 06/09/2002 filed by Revenue was not brought to the notice of Tribunal while deciding the matter on 07/6/2007 and to decide the matter on the basis of earlier decision in Second Appeal No. 1820 of 1997 dated 29/07/2000.*
>
> *(ii) Whether on facts, circumstances and evidence on record was Tribunal justified in allowing the Rectification Application No. 16 of 2009 without specifically recording the argument of applicant on the facts noted down in Miscellaneous Application bearing No.177 of 2002 filed by revenue on 06/09/2002."*

4. By further order dated 19 July 2017, the Tribunal referred the following question in relation to Sales Tax Reference No. 1 of 2024:

> *"(iii) Whether on facts, circumstances, and evidence on record, the Tribunal was justified in withdrawing the relief granted in the First Appeal on a debatable question of sale of packing material merely on the basis of the decision made by the Tribunal in the earlier year against the assessee, overlooking the fresh agreement passed in the year under consideration"*

5. The above questions arise in the factual context briefly discussed hereafter.

6. These matters relate to the period from 1994 to 1995, for which an assessment order was issued on 31 January 1998, assuming a sale of packing material at 25%. The First Appellate Authority, by order dated 17 March 1999, partly allowed the Assessee's appeal. The Assessee filed a Second Appeal No. 851 of 1999, challenging the First Appellate Authority's order dated 17 March 1999.

7. In the Second Appeal No. 851 of 1999, the Revenue filed a Miscellaneous Application No. 177 of 2002, urging the withdrawal of the relief allowed by the First Appellate Authority and to confirm the levy of tax on the packing material. This Application was filed on 06 September 2002.

8. The Tribunal disposed of the Second Appeal No. 851 of 1999 on 07 June 2007, but this disposal was without considering the Revenue's Miscellaneous Application.

9. Therefore, on 06 February 2009, the Revenue filed a Rectification Application urging recall of the Tribunal's Order dated 07 June 2007 and for a direction to dispose of the Second Appeal after considering the Revenue's Miscellaneous Application No. 177 of 2002.

10. The Tribunal, by order dated 16 February 2015, allowed the Rectification Application, modified the Second Appeal order dated 07 June 2007 and proceeded to even modify the

First Appellate Authority's order dated 17 March 1999, restoring the demand of Rs. 1,58,91,300/- in relation to the implied sale of packing material.

11. The Tribunal, having issued its order dated 16 February 2015, dismissed the Revenue's Miscellaneous Application No. 177 of 2002 on the grounds that it had become infructuous, as relief had already been granted by the order dated 16 February 2015.

12. In the context of the above facts, the above-referred questions came to be referred to this Court.

13. Ms. Badheka, the learned counsel for the Applicant, submits that the Tribunal, upon noticing that the Revenue's Miscellaneous Application No. 177 of 2002 remained to be decided when Second Appeal No. 851 of 1999 was disposed of, could have, at the highest, rectified its order of 07 June 2007 and directed the consideration of Revenue's Miscellaneous Application No. 177 of 2002. However, the Tribunal's impugned order dated 16 February 2015, which allowed the Rectification Application and proceeded to modify the First and Second Appellate Authority's orders, was in gross violation of the principles of natural justice and fair play. She submitted that no opportunity was granted to the Applicant to make any submissions on the merits of the Miscellaneous Application. More so, since according to her, the issue ought to have been decided in favour of the Applicant in view of the law clarified by this Court in the case of **The Commissioner of Sales Tax Vs. M/s. Associated Cement Company Limited**[1].

14. Ms Badheka further submitted that the Tribunal, by order dated 09 April 2015, has already dismissed the Miscellaneous Application No. 177 of 2002 filed by the Revenue, and against such order, no challenge is raised by the Revenue. Therefore, she pointed out that now there are two contradictory orders holding the field.

15. Mr Mishra, the learned counsel for the Revenue, submitted that the Revenue would be satisfied with the setting aside of the Tribunal's order dated 07 June 2007 and re-hearing of Miscellaneous Application No. 177 of 2002 after giving full opportunity to all the parties. He, however, submitted that the order dated 09 April 2015 must be interfered with because the same was made in view of the Tribunal's earlier order dated 16 February 2015 granting the Revenue the reliefs claimed in the Miscellaneous Application. He submitted that since the Applicant is urging a ground based on failure of natural justice and fairness, it is only fair and equitable that the Reference is disposed of by giving equal opportunity to all the parties.

16. Ms Badheka, however, submitted that the Tribunal's order dated 7 June 2007 should not be set aside, as the Revenue never challenged it.

---

1 Sales Tax Reference No. 20 of 2010 and connected matters

17. We have considered the rival contentions in the context of the questions now referred to us.

18. Insofar as Question Nos. (i) and (ii), concerning Sales Tax Reference No. 4 of 2023, are concerned; they relate to the issues of procedural fairness.

19. As discussed earlier, it is apparent that the Second Appeal No. 851 of 1999, instituted by the Assessee, was disposed of by the Tribunal without taking cognisance of the Revenue's pending Miscellaneous Application No. 177 of 2002. The Revenue's Rectification Application should therefore have been allowed to the extent of recalling the order dated 07 June 2007 and for re-consideration of the Second Appeal along with Miscellaneous Application No. 177 of 2002. Both parties should have been given a full and fair opportunity to make all their submissions on this Miscellaneous Application at the stage of disposing of the Second Appeal No. 851 of 1999.

20. However, we agree with Ms Badheka that the Tribunal was not justified at the stage of deciding the Rectification Application to dispose of the Miscellaneous Application on merits, thereby modifying the First and Second Appellate Authority's orders. From the record, we are satisfied that no proper opportunity was given to the Applicant to meet with the Revenue's case set out in the Miscellaneous Application. The order of 16 February 2015, to this extent, certainly requires interference.

21. Similarly, we are also satisfied that the order of 9 April 2015 made by the Tribunal must be set aside, even though the Revenue may not have formally challenged it. The learned counsel for the parties consented to the setting aside of this order because it is apparent that this order was made, given the order of 16 February 2015, under which the Revenue was already granted the reliefs claimed in Miscellaneous Application No. 177 of 2002. Now that the order of 16 February 2015 is being interfered with, it is only appropriate that the Tribunal's order dated 9 April 2015, disposing of Miscellaneous Application No. 177 of 2002 as infructuous, cannot be allowed to stand.

22. Irrespective of consent, the order dated 9 April 2015 cannot stand because it was made on the premise that relief had already been granted to the Revenue by the order dated 16 February 2015. Since this latter order is now set aside and the reliefs withdrawn with a direction for reconsideration, it would be grossly unfair for the order dated 9 April 2015 to remain in effect.

23. The first and second questions now referred to stand answered in the above terms.

24. Regarding the third question, we do not believe it is necessary to address this issue, as it pertains to the merits. We propose to set aside the Tribunal's orders dated 16 February 2015 and 09 April 2015. We further propose to set aside the Tribunal's order dated 07 June 2007 in Second Appeal No.

851 of 1999 and restore the Second Appeal to the file of the Tribunal for fresh consideration along with Miscellaneous Application No. 177 of 2002. The Tribunal must first consider the issues now raised in the third question in accordance with the law; therefore, we do not propose to decide the third question referred to us at this stage.

25. Ms Badheka states that there is no necessity to set aside the Tribunal's order dated 07 June 2007 because the relief granted by that order of the Assessee has nothing to do with the relief sought by the Revenue in its Miscellaneous Application. However, with respect, we disagree with this submission.

26. In our opinion, the Tribunal should not have disposed of the Second Appeal No. 851 of 1999 without considering the Miscellaneous Application No. 177 of 2002, which was pending before the Tribunal at the time of disposal of the Second Appeal. The final hearing in the Second Appeal and the hearing on the Miscellaneous Application should have been taken up simultaneously. Accordingly, we set aside the order of 07 June 2007 and direct that the Second Appeal and the Miscellaneous Application be considered and disposed of simultaneously in accordance with the law.

27. The argument that there is no challenge to the order dated June 7, 2007, cannot be accepted. The Revenue's rectification application complained about the passing of this order without considering the pending M.A. 177 of 2002.

Even otherwise, since the Applicant invokes equity and procedural fairness, such an argument cannot be countenanced.

28. The Applicant is at liberty to contend that the reliefs granted by the order of 07 June 2007 should be again granted to the Appellant. The Revenue is entitled to oppose such a contention. All contentions on the merits of the Second Appeal No. 851 of 1999 and the Miscellaneous Application No. 177 of 2002 are kept open, so that there is procedural fairness.

29. We note that the Applicant has based its case on the allegation of a procedural fairness violation. It is well settled that he who wields the procedural sword must perish by the same sword. Therefore, there cannot be procedural fairness at the expense of one party over the other. Neither procedural fairness nor equity is a one-way street. (See **William Vincent VITARELLI, Vs. Fred A. SEATON, Secretary of the Interior.**[2])

30. Accordingly, we dispose of both these References by answering the first two questions in the above terms and by declining to answer the third question, as we have left the issue raised therein to be decided by the Tribunal in accordance with the law in the first instance.

31. In the result, the orders dated 07 June 2007, 16 February 2015 and 09 April 2015 made by the Tribunal are set

---

[2] 1959 SCC OnLine US SC 87

aside. The Tribunal is directed to decide the Second Appeal No. 851 of 1999 together with Miscellaneous Application No. 177 of 2002, in accordance with law simultaneously and on its own merits, as expeditiously as possible.

32. All contentions of all parties on the merits of the matter are left open to be decided by the Tribunal in the first instance. There shall be no order for costs. All concerned are to act on an authenticated copy of this order.

(Advait M. Sethna, J) **(M.S. Sonak, J)**