Amol

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SALES TAX REFERENCE NO. 33 OF 2010

The Commissioner of Sales Tax,]
Maharashtra State, 8th floor,]
Vikrikar Bhavan, Sardar]
Balwant Singh Dhodi Marg,]
Mazgaon, Mumbai – 400 010.]…Applicant

Versus

M/s. Wockhardt Ltd.,]
Wockhardt House,]
C-13, Bandra Kurla Complex,]
Mumbai – 400 060]…Respondent

Ms Jyoti Chavan, Addl GP, *with Mr Himanshu Takke, AGP, for the Applicant-State.*

Mr Ishaan V Patkar, *with Mr Vinit V Raje, Durgesh G. Desai & Yeshwant J. Patil, i/b, Jindagi Shah, for the Respondent.*

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

DATED: 18 September 2025

Oral Judgment: - *(per M. S. Sonak, J)*

1. Heard Ms Jyoti Chavan, learned Additional Government Pleader with Mr Himanshu Takke, AGP for the Applicant-State and Mr Ishaan V Patkar with Mr Vinit V Raje, Mr Durgesh G

Desai, Mr Yeshwant J Patil i/b, Ms Jindagi Shah for the Respondent.

2. By Judgment and Order dated 31 December 2005,the Maharashtra Sales Tax Tribunal (Tribunal) has referred the following question to this Court for our decision:-

> "Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the product 'Byozyme' is a Fertiliser covered under Entry C-I-4 of the Bombay sales Tax Act, 1959, and not a 'Plant Growth Promoter' covered by Schedule Etry C-II-85 taxable at the rate of 8% as determined by the Commissioner of Sales Tax, Maharashtra State, Mumbai."

3. The facts and circumstances in which this reference came to be made are set out in the statement of facts annexed to the Tribunal's referral order dated 31 December 2005, and therefore, we do not propose to repeat them in this order.

4. Schedule entries C-I-4 and C-II-85 for the relevant period, read as follows: -

"SCHEDULE ENTRY C-I-4 :

Fertilisers excluding anhydrous ammonia	4%

"SCHEDULE ENTRY C-II-85 :

Insecticides, pesticides, fungicides, weedicides, rodenticides, herbicides, antispouring products and plant growth promoters or regulators and similar products other than mosquito repellants and disinfectants.	8%"

5. The Applicant-Revenue contends that the assessee's product qualifies as a "plant growth promoter". The Respondent assessee, however, claims that their product is nothing but a fertiliser under entry C-I-4.

6. At the outset, we note that the onus of establishing that goods are classifiable under a particular tariff entry is on the Revenue. This principle is not in dispute and has been stated so by the Hon'ble Supreme Court in the case of **Hindustan Ferodo Ltd. Vs Collector of Central Excise, Bombay**[1].

7. In this case, the Revenue has not led any evidence to establish that the assessee's goods can be classified as "plant growth promoters". On the contrary, the assessee has laid expert evidence to suggest that their product is a fertiliser covered under entry C-I-4.

8. Ms Chavan did try to pick several holes in the expert evidence produced on behalf of the assessee. However, even we were to discard the expert evidence produced by the assessee, in the absence of any evidence laid on behalf of the Revenue to show that the assessee's product could be classified as plant growth promoter, we fail to comprehend how the Revenue, could be said to have discharged the onus which lay upon it show that the assessee's products were classifiable under Schedule entry C-II-85.

9. In the above circumstances, it would be difficult to answer the referred question in favour of the Revenue or against the assessee.

10. In the case of *Hindustan Ferodo Ltd* (supra), the issue involved was whether the rings punched from asbestos boards fell under Item 22F of the Central Excise Tariff. In this context, the Hon'ble Supreme Court noted that it was not in dispute, as it could not be that the onus of establishing that the rings

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[1] 1997 (89) ELT 16 (SC)

fell within Item 22F lay upon the Revenue. The Revenue led no evidence. The onus was not discharged. Assuming, therefore, that the Tribunal was right in rejecting the evidence that was produced on behalf of the Appellant (assessee), the Appeal should, nonetheless, have been allowed.

11. The Court held that it was not the function of the Tribunal to enter into the arena and make suppositions that are tantamount to evidence that a party before it has failed to lead. Other than supposition, there is no material on record that suggests that a small-scale or medium-scale manufacturer of brake linings and clutch facings "would be interested in buying" the said rings or that they are marketable at all. As to the brittleness of the said rings, it was for the Revenue to demonstrate that the appellants' averment in this behalf was incorrect and not for the Tribunal to assess their brittleness for itself. Articles in question in an appeal are shown to the Tribunal to enable the Tribunal to enable the Tribunal to comprehend what it is that it is dealing with. It is not an invitation to the Tribunal to give its opinion on the matter, brushing aside the evidence before it.

12. The Court held that the technical knowledge of members of the Tribunal makes for better appreciation of the record, but not its substitution. The Revenue sought to make the said rings dutiable as asbestos articles. The affidavit evidence of a dealer in asbestos was of some relevance. So was the affidavit evidence that explained the character and use of the said rings. It was wrong of the Tribunal to find that the deponents of these affidavits were "not the right persons to give an opinion on the type of products" with which it was concerned. Regrettably, the Tribunal's order under appeal

shows that it was not fully conscious of the dispassionate judicial function it was expected to perform, and it must be quashed.

13. Thus, *Hindustan Ferodo Ltd* (supra) is an authority for the proposition that the onus to establish the product falls within a particular tariff entry is always on the Revenue. Without discharging such onus, the Revenue cannot insist upon a particular classification. Besides, the adjudicating authorities are not entitled to speculate or indulge in any supposition that would amount to evidence which the parties before it have failed to lead.

14. Applying the principle laid down in the above decision to the facts of the present case where the Revenue has failed to lead any evidence on whether the assessee's product could have been classified as plant growth promoter, it would not be appropriate for us to answer the referred question in favour of the assessee merely on the basis of the criticism leveled by the Revenue either on the expert opinion produced on behalf of the assessee or the findings of the Tribunal in favour of the assessee. As noted in the above decision of the Hon'ble Supreme Court, even if we were to reject the assessee's evidence, still the revenue could not succeed without it having discharged the onus the law has placed on it.

15. Even otherwise, this is a matter where the assessee provided expert evidence. The assessee also presented some evidence about trade parlance or common parlance, in the form of letters from agriculturists, etc. The assessee additionally pointed out that the excise authorities had classified this product as a fertiliser rather than as a plant

growth promoter. If, based on all these materials, the Tribunal concluded that the assessee's product was not a plant growth promoter but a fertiliser, we do not believe it is appropriate for us to interfere with this finding of fact within our limited jurisdiction when considering a reference.

16. The question referred, at least in this case, turns significantly on factual aspects rather than the law. At the highest, the question referred could be regarded as a mixed question of law and fact. This Court, while exercising its reference jurisdiction, does not sit in appeal over the decision of the Tribunal but exercises jurisdiction akin to that of judicial review. In the exercise of such jurisdiction, it will be difficult to answer the referred question in favour of the Revenue or against the assessee.

17. In the case of **G Ventakasami Naidu & Co. Vs Commissioner of Income-Tax**[2], the Hon'ble Supreme Court was concerned with the jurisdiction conferred upon the High Court under Section 66(1) of the Income Tax Act, 1922, regarding the entertainment of references involving the questions of law. There is no significant difference between the provisions that were considered by the Hon'ble Supreme Court and the provisions of Section 61 of the Bombay Sales Tax, 1959, under which this reference has been made.

18. In the above context, including particularly dealing with the jurisdiction of the High Court in entertaining references involving questions of fact or mixed questions of law and fact, the Hon'ble Supreme Court observed as follows: -

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[2] 1959 (35) ITR 594

"There is no doubt that the jurisdiction conferred on the High Court by section 66(1) is limited to entertaining references involving questions of law. If the point raised on reference relates to the construction of a document of title or to the interpretation of the relevant provisions of the statute, it is a pure question of law; and, in dealing with it, though the High Court may have due regard for the view taken by the Tribunal, its decision would not be fettered by the said view. It is free to adopt such construction of the document or the statute as appears to it reasonable. In some cases, the point sought to be raised on reference may turn out to be a pure question of fact; and if that be so, the finding of fact recorded by the Tribunal must be regarded as conclusive in proceedings under section 66(1). If, however, such a finding of fact is based on an inference drawn from primary evidentiary facts proved in the case, its correctness or validity is open to challenge in reference proceedings within narrow limits. The assessee or the revenue can contend that the inference has been drawn on considering inadmissible evidence or after excluding admissible and relevant evidence; if the High Court is satisfied that the inference is the result of improper admission or exclusion of evidence, it would be justified in examining the correctness of the conclusion. It may also be open to the party to challenge a conclusion of fact drawn by the Tribunal on the ground that it is not supported by any legal evidence; or that the impugned conclusion drawn from the relevant facts is not rationally possible; and if such a plea is established, the court may consider whether the conclusion in question is not perverse and should not, therefore, be set aside. It is within these narrow limits that the conclusions of fact recorded by the Tribunal can be challenged under section 66(1). Such conclusions can never be challenged on the ground that they are based on misappreciation of evidence. There is yet a third class of cases in which the assessee or the revenue may seek to challenge the correctness of the conclusion reached by the Tribunal on the ground that it is a conclusion on a question of mixed law and fact. Such a conclusion is no doubt based upon the primary

> evidentiary facts, but its ultimate form is determined by the application of relevant legal principles. The need to apply the relevant legal principles tends to confer upon the final conclusion its character of a legal conclusion and that is why it is regarded as a conclusion on a question of mixed law and fact. **In dealing with findings on questions of mixed law and fact the High Court would no doubt have to accept the findings of the Tribunal on the primary questions of fact; but it is open to the High Court to examine whether the Tribunal had applied the relevant legal principles correctly or not; and in that sense, the scope of enquiry and the extent of the jurisdiction of the High Court in dealing with such points is the same as in dealing with pure points of law."**

19. Applying the above principles, we cannot say that the conclusion reached by the Tribunal in this case favouring the assessee was based on any inadmissible evidence or after excluding admissible and relevant evidence. This is also not a case where any legal evidence does not support the conclusion of fact drawn by the Tribunal or that such conclusion was not rationally possible or perverse. This is also not a case where the Tribunal has committed any error on primary questions of fact or has applied the relevant legal principles incorrectly. As noted earlier, while exercising reference jurisdiction, this Court does not act as an appellate forum.

20. Therefore, on the mere ground that upon reappreciation of evidence, some other view could have been taken by the fact-finding authorities, we cannot, in the exercise of this limited jurisdiction, answer the reference in favour of the Revenue. Besides, Ms Chavan's arguments proceeded on her plea that fertilisers are essentially composed of inorganic chemicals and not organic chemicals. This may or may not be correct. But in the absence of any evidence being led by the

Revenue to make good this supposition, we cannot fault the Tribunal for discarding such a generalised contention.

21. Ms Chavan then contended that the Tribunal had found that the product in question was a biofertilizer. She submitted that biofertilizers were included in entry C-I-4 only in the year 2000. She submitted that in this reference, we are concerned with the period prior to 2000. Therefore, she contended that biofertilisers, during the relevant period, were not included in the entry C-I-4 dealing with "fertilisers excluding anhydrous ammonia" in entry C-I-4.

22. The above argument could have been considered if the Revenue had presented some evidence indicating that entry C-I-4 referred solely to fertilisers composed of inorganic chemicals, excluding organic or bio-products. The entire burden was on the Revenue to establish this point, and it was never met. Therefore, based on the current argument, it would be difficult to conclude that, by implication, the assessee's product was not covered under entry C-I-4 or that it fell under entry C-II-85 as a "plant growth promoter". As noted earlier, the Revenue did not provide any evidence to justify classifying the assessee's product as a plant growth promoter. Furthermore, the Tribunal's findings must be considered in their entirety and not judged by emphasising specific sentences in its order.

23. For all the above reasons, we answer the referred question against the Revenue by clarifying that our answer is primarily based upon the failure on the Revenue's part to discharge the onus which the law requires by leading proper evidence.

24. This reference is answered accordingly and is disposed of in the above terms. No costs.

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