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

SALES TAX REFERENCE NO. 79 OF 2009

The Commissioner Of Sales Tax, Mumbai ...Applicant
Versus
Parle Products Ltd. ...Respondents

SALES TAX REFERENCE NO. 55 OF 2017

The Commissioner Of Sales Tax Maharashtra State, Mumbai ...Applicant
Versus
M/s. Parle Products Ltd. ...Respondents

WITH

SALES TAX REFERENCE NO. 65 OF 2017

The Commissioner Of Sales Tax, Mumbai ...Applicant
Versus
M/s Parle Products Ltd. ...Respondent

WITH

SALES TAX REFERENCE NO. 80 OF 2009

The Commissioner Of Sales Tax, Mumbai ...Applicant
Versus
Parle Products Ltd. ...Respondent

WITH

SALES TAX REFERENCE NO. 81 OF 2009

The Commissioner Of Sales Tax, Mumbai ...Applicant
Versus
Parle Products Ltd. ...Respondent

WITH

SALES TAX REFERENCE NO. 22 OF 2010

The Commissioner Of Sales Tax, Mumbai ...Applicant

Versus
M/s Parle Products Ltd. ...Respondent

Ms. Jyoti Chavan, Addl. G.P. a/w Mr. Himanshu Takke, AGP, for the Applicant/State of Maharashtra in STR No. 79 of 2009, STR No. 55 of 2017, STR No. 65 of 2017, STR No. 80 of 2009, STR No. 81 of 2009, STR No. 22 of 2010, for Applicants.

Mr. Ishaan V. Patkar a/w Mr. Vinit V. Raje, Durgesh G. Desai and Mr. Yeshwant J. Patil i/by Alaksha Legal for the Respondents in STR No. 79 of 2009, STR No. 55 of 2017, STR No. 65 of 2017, STR No. 80 of 2009, STR No. 81 of 2009, STR No. 22 of 2010, for Respondents.

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

DATED : 12 September 2025

Oral Judgment *(Per M.S. Sonak)*.:-

1. Heard Ms. Chavan learned counsel for the Applicants and Mr. Patkar learned counsel for the Respondents.

2. Learned counsel for the parties agree that common issues of law and facts arise in these references and therefore, these references could be disposed of by a common order.

by treating Sales Tax Reference No. 79 of 2009 as the lead reference.

3. By judgment and order dated 12th December 2007, the Maharashtra Sales Tax Tribunal (Tribunal) referred the following question to this Court for its decision under Section 61 (1) of the Bombay Sales Tax Act, 1959 ("***said Act***").

"(i) Whether in the particular facts and circumstances of the case as revealing from the agreements entered into by the opponent (original appellant) with the wholesalers for the sale of the goods and the matter incidental thereto, as also the agreements made by the opponent(original appellant)with the transport company and other related documents like Sale Bill, Transport Receipts etc., the sale can be legally said to have completed at the factory gates and whether the freight amount incurred and collected by the appellant for transporting the goods from the factory gates to the wholesaler's destination can be said to be a post-sale expense,not forming part of the sale price within the meaning of Section 2(2) of the Bombay Sales Tax Act, 1959?

(ii) Statement of facts and necessary copies of documents as mentioned in the Reference Application No. 71 of 2007 shall accompany the reference."

4. The above question came to be referred for the decision of this Court in the following circumstances:-

A) The respondent assessee manufactures biscuits, chocolates, and confectionery goods;

B) For the assessment between 01.04.1990 to 31.03.1995, certain demands were raised on the assessee for some of the assessment years, and certain refunds were allowed to the assessee in respect of the remaining assessment years;

C) The respondent assessee filed appeals against those assessment orders in which demands were raised against them by contending that the inclusion of charges towards freight in the sales price was incorrect.

D) The Appellate Authority dismissed the appeals by relying upon the tribunal's judgment in Second Appeal No. 1555 of 1993, decided on 11.04.1997;

E) The respondent assessee then filed a second appeal before the tribunal. This time, tribunal, by considering the decision of the larger bench of the tribunal in Appeal No. 154 of 1998 along with Rectification Application No. 68 of 2021 on 31.05.2003 held that the freight cost incurred by the respondent assesses on behalf of the wholesale dealers, which was to be subsequently reimbursed to the respondent assessee does not form a part of the sale price and hence, was not exigible to sale tax.

F) Accordingly, at the behest of the applicant, Sales Tax Reference No. 55 of 2017 was made to this Court questioning the decision of the full Bench of the tribunal in Appeal No. 154 of 1998, along with Rectification Application No. 68 of 2001.

G) At the behest of the applicant, Sales Tax Reference No. 79 of 2009 was already made against the tribunal's judgment and order allowing the respondent assessee's second appeal.

H) It is in the above circumstances that the tribunal referred the above questions for the determination of this Court.

5. In all these references, there is no dispute that the respondent assessee had entered into a contract with the purchaser. All the contracts contain similar terms. All the contracts provide for the delivery of the goods to be made ex-factory. The contracts provide that the transportation of goods from the factory to the places indicated by the purchaser was

to be undertaken by the respondent assessee on behalf of the purchasers, and the freight charges incurred by the respondent assessee for the purposes of such transportation had to be reimbursed by the purchasers to the respondent assessee.

6. Ms. Chavan learned counsel for the applicant referred to the definition of 'sales price' under Section 2(29) of the said Act, which reads thus:-

> *"Sale Price means the amount of valuable consideration paid or payable to a dealer for any sale made including any sum charged for anything done by the dealer in respect of goods at the time of or before delivery thereof, other than (the cost of insurance for transit or of installation) when such cost is separately charged"*

7. Ms. Chavan fairly admitted that 1st and 2nd explanations to the definition clauses were inserted in 1990 and 1992, respectively, and the 3rd explanation was inserted in 1998. In these references, as noted earlier, we are concerned with the assessments between 1992 and 1995. Still, Ms. Chavan submitted that these explanations, mainly clarificatory in nature, would apply to the assessment years that are the subject matter of these references.

8. Even if we go by the explanations that Ms. Chavan seeks to rely upon, we are afraid that the same will not assist the case of the applicant. There is nothing in the explanations, even assuming that they apply to the assessment period, which would include the freight charges within the definition of sales price under Section 2(29) of the

said Act, given the admitted contractual provision between the respondent assesses and its purchaser.

9. The contractual provisions clearly stipulate that the sale was to be completed *ex-factory*. Though the respondent assessee may have agreed to transport the sold goods to the purchaser at the purchaser's premises, the freight for purposes of such transportation was paid by the respondent assessee in its capacity as an agent/bailee of the purchasers. This is why the contracts stipulated that the purchasers would reimburse this amount to the respondent assessee. Under such circumstances, the freight amount could not have been included in the definition of sales tax or formed a part of the sales price. Accordingly, no sales tax could be imposed on such freight charges by treating the freight charges as a part of the sales price.

10. Ms. Chavan, however, relying upon the decision in ***Hindustan Sugar Mills vs. State of Rajasthan and others***[1], contended that the freight charges represent the expenditure incurred by the dealer in making the goods available to the purchaser at the place of sale and therefore, would constitute an addition to the cost of goods to the dealer and would clearly be a component of the price charged to the purchaser. Accordingly, she submitted that the freight charges would form part of the sale price and be subject to sales tax.

11. The applicant raised an almost identical contention

[1]. 1978 4 SCC 271.

before this Court (Nagpur Bench) in the case of ***Commissioner of Sale Tax, Maharashtra State, Bombay vs. Ravi Trading Company*** [2]. But the same was rejected by the Coordinate Bench.

12. The Division Bench, upon considering the decision in Hindustan Sugar Mills (*supra*) rejected such contentions in facts almost identical to those involved in the present references.

13. The Division Bench in Ravi Trading Company relied upon paragraph 7 of Hindustan Sugar Mills (*Supra*), which is incorporated below for the convenience of reference:-

> *"In para 10 of the said decision, the court, however, deals with a distinctive case where the contract of sale may not be F. O. R. destination railway station, but the price alone may be so. The court holds that the contract does not have all the incidents of a F. O. R. destination railway station contract, but merely the price is stipulated on that basis.* ***The terms of such a contract may provide that the delivery shall be complete when the goods are put on rail and thereafter it shall be at the risk of the purchaser. Such a stipulation would make the railway agent of the purchaser for taking delivery of the goods. The freight in such a case would be payable by the purchaser though the price agreed upon is F. O. R. destination railway station. The court holds that the amount representing freight would not be payable as part of the consideration for the sale of the goods but by way of reimbursement of the freight which was payable by the purchaser, but, in fact, disbursed by the dealer and hence it would not form part of the "sale price".***"
>
> *(**emphasis supplied**)*

14. The Division Bench, based upon the above emphasised portion, concluded that the amount representing freight would not be payable as part of the consideration for

[2]. 2018 48 GSTR 370

the sale of the goods but by way of reimbursement of the freight which was payable by the purchaser, and in fact, disbursed by the dealer and hence it would not form part of the "sale price".

15. The decision of the Division Bench in *Ravi Trading Company* (Supra), along with paragraph 10 of the judgment in *Hindustan Sugar Mill* (*supra*), is sufficient to answer the referred question against the revenue and in favour of the respondent assessee.

16. Ms. Chavan tried to urge that the contracts between the respondent assessee and their purchaser were sham, invalid and void. She submitted that such contracts were only to artificially exclude the freight component from the sales price and evade sales tax. This contention cannot be accepted.

17. Firstly, such a question has not been referred to us for our determination. Secondly, Mr. Patkar pointed out that a similar argument, in similar circumstances, was rejected by the Karnataka High Court. Moreover, the Hon'ble Supreme Court in the case of **State of Karnataka vs. Bangalore Soft Drinks Pvt. Ltd.**[3] dismissed the SLP against the same.

18. The Karnataka High Court held that it was open for an assessee to contract that the sale would be ex-factory and the assessee would initially bear the freight charges to transport the goods to the purchaser's place, subject to the

[3]. (2000) 117 SCC 413 (SC)

purchaser reimbursing the freight amount to the assessee. The Karnataka High Court held that there was nothing sham about such a contract. This view was upheld by the Hon'ble Supreme Court, which dismissed the Special Leave Petition after leave was granted therein.

19. Accordingly, the argument of the Appellant (Revenue) regarding a sham agreement or sham contract also cannot be a valid reason to interfere with the tribunal's orders favouring the respondent assesses.

20. Accordingly, we dispose of these references by answering the question referred against the revenue and in favour of the assessee. No costs.

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