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

SALES TAX REFERENCE NO. 09 OF 2011

M/s. Borosil Glass Works Ltd.,
an existing company, having its registered office at Marol Maroshi Road, Off Military Road, Andheri [E], Mumbai-59. … Applicant

Versus

The Commissioner of Sales Tax and others,
Maharashtra State,
8th Floor, Vikrikar Bhavan,
Mazgaon, Mumbai-400 010. … Respondents

WITH
SALES TAX REFERENCE NO. 96 OF 2009

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

Versus

M/s. Borosil Glass Works Ltd.,
44, Khanna Construction House, Dr. R.G. Thadani Road, Worli, Mumbai-400018. … Respondents

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Mr. Ishaan V. Patkar (V.C) a/w Mr. Vinit V. Raje i/by Roshni Naik, for the Applicant in STR No. 9 of 2011 and for the Respondent in STR No. 96 of 2009.

Mr. Jyoti Chavan, Addl. G.P. a/w Mr. Himanshu Takke, AGP for the Respondent in STR No. 9 of 2011 and for the Applicant in STR No. 96 of 2009.

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

RESERVED ON : 15 October 2025

PRONOUNCED ON : 12 November 2025

JUDGMENT : *(Per Advait M. Sethna, J.)*

1. Heard Mr. Ishaan Patkar, learned counsel for the Applicant in STR No. 9 of 2011, and Ms. Jyoti Chavan, learned Addl. G.P for the Respondent.

A. PROLOGUE.

2. Learned counsel for the parties agreed that both the Sales Tax References i.e. STR No. 9 of 2011 [at behest of the Assessee] and STR No. 96 of 2009 [at behest of the Revenue] arise out of the common judgment and order dated 31 December 2007 of Reference passed by the Maharashtra Sales Tax Tribunal ("**Tribunal**" for short). The common question referred reads thus:-

> *"Whether on the facts and in the circumstances of the case, and on the correct interpretation of Rule 41-D of Bombay Sales Tax Rules, 1959, the full set-off is available under Rule 41D main provision or the set off is available after reducing 6 per cent of purchase price under sub-rule 3(a) of Rule 41D on purchases of furnace oil used in manufacture of goods partly sold locally and partly transferred to branches outside the state?"*

3. This Court is confronted with the above two Sales Tax References ("**STR**" for short) for adjudication/determination. STR No. 9 of 2011 arises from the proceedings preferred by the Assessee

("**Borosil**" for short) against the judgment and order dated 30 April 2002 ("**Impugned Order**" for short) passed by the Tribunal. The Tribunal, vide the said Impugned Order, has allowed set off to Borosil by reducing 6% of purchase price from the taxes paid on purchase of furnace oil, which is used in the manufacture of taxable goods transferred to the branches of Borosil, under Rule 41D of the Bombay Sales Tax Rules, 1959 ("**Sales Tax Rules**" for short).

4. On the other hand, STR No. 96 of 2009 arises from the proceedings preferred by the Revenue against the judgment and order of the Tribunal dated 31 December 1999 ("**Impugned Order**" for short). The Tribunal held that Borosil is entitled to complete set off under Rule 41D of the Sales Tax Rules on the purchase of furnace oil without any reduction in relation to branch transfers and thereby directed necessary computation and reworking of the set-off under the said Rules and in accordance with law.

5. As both the References arise from a common question of law and as parties before us, would agree that similar issues are involved we can dispose the STRs by a common judgment.

RIVAL CONTENTIONS:

B. SUBMISSIONS OF THE APPLICANT / ASSESSEE.

6. Mr. Ishaan Patkar learned counsel for the Applicant would first submit that the Tribunal in its Impugned Order dated 30 April 2002 has taken a view, which he would submit is contrary to law, without discussing the earlier catena of decisions. In this context, he would

refer to the Larger Bench decision of the Tribunal in ***M/s. Pudumjee Pulp and Paper Mills Ltd. Vs State of Maharashtra***[1], where it was held that provisions of Rule 41D(3)(a) of the Sales Tax Rules apply to furnace oil, contrary to 22 years of settled law on such issue. According to Mr Patkar, the Tribunal delivered an erroneous decision on 30 April 2002, when the Bombay Sales Tax Act was quite literally in the process of repeal, and the Larger Bench decision of the Tribunal in ***M/S. Pudumjee Pulp (Supra)*** came into existence in the year 2005, much after the said Act was repealed. At the time of passing the reference dated 31 December 2007, the Larger Bench decision of the Tribunal in ***M/S. Pudumjee Pulp (Supra)*** was very much available and holding the field.

7. Mr. Patkar would submit that on a strict construction of Rule 41D(3)(a) of the Sales Tax Rules, furnace oil can never be covered. The term “export” is defined in Rule 41D(2)(iii) to include branch transfer. The expression “used in manufacture” has always been understood to include consumables like furnace oil since it is “used” in the manufacture, a position that is not disputed to date. The furnace oil certainly never becomes part of the finished product as it remains in the boiler and gets consumed therein. Thus, it can never be said that the furnace oil is “goods which are dispatched” as it appears in Rule 41D(3)(a) of the Sales Tax Rules.

8. In the above context, Mr Patkar would urge that if the furnace oil was supposed to be brought into operation in Rule 41D(3)(a) of

[1]. Second Appeal No. 1010 of 2000 decided on 30 September 2005

the Sales Tax Rules, the legislature would have used the expression "purchases which are used in the manufacture of goods dispatched". However, the legislature has consciously chosen to use different language in the set of rules, which cannot be overlooked, much less ignored.

9. Mr Patkar, in support of his submission, would rely on the decision of the *Supreme Court in* ***The State of Madras v. Swasthik Tobacco Factory*** [2]**,** where the Supreme Court had the occasion to deal with the question whether excise duty paid in respect of "goods sold" as per Rule 5(1)(i) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939 included excise duty paid not only in respect of finished product or also excise duty paid in respect of raw material used in the manufacture of the finished product. The Court held that "goods sold" in Rule 5(1)(i) can only mean the finished product and not the raw material which are different goods. The Court in the context of the meaning of "in respect of" held that though such words can be given a wide meaning, the meaning given in tax statues is "on" and therefore the said Rules refer to excise duty paid on finished goods and not on the raw material which are completely different products. Thus, Rule 41D(3)(a) of the Sales Tax Rules would refer only to goods which actually leave the State and not to the raw material which are completely different products.

10. Mr. Patkar would urge that since a view prevailed in the Tribunal for 22 years on basis of arithmetic and accounting

[2]. *1966 17 STC 316 SC*

impossibility of apportionment of furnace oil, the Tribunal never had the occasion to interpret the actual wordings under Rule 41D(3)(a) of the Sales Tax Rules. A frail attempt was made for the first time in this regard by the Larger Bench which can never be good law.

11. Mr. Patkar further submits that the view of Larger Bench of the Tribunal in ***M/s. Pudumjee Pulp (Supra)*** cannot be accepted as it fails to meet the standard of strict construction which is imperative in taxing statues. In such cases, Courts ought not to use purposive construction as the intention of the legislature has to be what is expressed in clear terms in the provision itself and intention cannot be presumed. In this regard, he would rely on the decision in the case of ***Mathuram Agrawal vs. State of Madhya Pradesh***[3]***.***

12. Mr. Patkar would urge that two important judgments of this Court were somehow not shown by the Counsel for Borosil during his main arguments before the Tribunal, but were brought in rejoinder arguments for which he has expressed his apology. In this context, he relies on decision of this Court in ***Commissioner of Sales Tax Vs. Berar Oil Industries***,[4] where the Court held that where the dealer did not maintain separate books of account to show co-relation of purchases, to permissible and non-permissible sales, the statutory burden of proof on him was not discharged. Therefore, the apportionment was required pro-rata in ratio of permissible and non-permissible sales. He would then rely on the decision of this Court in

[3]. *1999 8 SCC 667*

[4]. *1975 (36) STC 473*

Amar Dye Chem Ltd. Vs. State of Maharashtra[5]***.*** This Court held that pro rata apportionment formula applies only where it is possible to maintain separate books of account, i.e., to raw material and not to machinery for which it is not possible to apportion between permissible and non-permissible sales. Mr. Patkar has relied on the decision of ***M/s. International Chemicals Co. Vs. State of Maharashtra***[6] to buttress that furnace oil cannot be apportioned between permissible and non-permissible sales. Thus, the decision of the Larger Bench of the Tribunal in ***M/s. Pudumjee Pulp (Supra)*** is flawed as it failed to consider the aforesaid two decisions of this Court.

13. Mr. Patkar would submit that when Rule 41D of the Sales Tax Rules came into force, the Tribunal followed the previous judgments starting from ***M/s. International Chemical Co. (Supra)*** and held that furnace oil cannot be apportioned at all and therefore full set-off ought to be allowed. In fact the Revenue accepted the principle of non-apportionability and thus it is not open for them to take a contrary stand. This is also because the decision in ***M/s. Mahalaxmi Steel Industries vs State of Maharashtra***[7] has not been assailed by the Revenue.

14. Mr. Patkar would submit that the Tribunal in Larger Bench decision in ***M/s. Pudumjee Pulp (Supra)*** did not anywhere deal with the issue of apportionability and the issue of impossibility by virtue

[5]. 1983 (53) STC 14

[6]. Second Appeal No. 1466 of 1980 decided on 7 August 1981.

[7]. Second Appeal 1297 of 1991 decided on 23 April 1993

of non-segeregability and continuance used at varying level of production including NIL production being a vexed issue for 22 years. The said decision in Paragraph 16 does not lay down any complete formula for apportionment but makes general observations on nexus and then lays the issue hanging. In fact according to him there is contradiction in Paragraph 16 of the said decision itself. This is because machinery is held to be non-apportionable even though just like furnace oil, machinery is not expressly mentioned in Rule 41D(3)(a) of the Sales Tax Rules.

15. The Larger Bench decision of the Tribunal in ***M/s. Pudumjee Pulp (Supra)*** according to Mr. Patkar, lacks application of mind. This is because, the Tribunal in the said decision nowhere records what books or working were before it to reach a finding of fact on the issue of apportionability, either way. In fact, Mr. Patkar would urge that issues such as non-segregability and continuance use at varying levels of production including NIL production is a pure finding of fact which could be decided only on the basis of evidence before it. However, there was no such evidence before the Larger Bench of the Tribunal when it opined on such pure findings of fact.

16. Mr. Patkar has placed due reliance and much emphasis on ***Merind Limited vs. State of Maharashtra***[8]. This is to buttress that a similar situation had occurred in that case where the Larger Bench of the Tribunal overruled the view settled for decades. In such situation, this Court held that views settled for two decades cannot be

[8]. 2004 SCC Online Bom 1269

overruled, unless there is a finding recorded that the earlier view was patently erroneous and there are compelling reasons and mere possibility of another view is not the threshold. In the present facts, the Larger bench of the Tribunal does not render any findings on the crucial issue of non-segeregability and difficulty in apportionment at NIL level of production. Thus, the principle used in the Judgment of ***Merind Ltd. (Supra)*** must be strictly applied and the Larger Bench decision of the Tribunal thus, cannot be good law.

17. Mr. Patkar has relied on other decisions including that in the case of ***Hanuman Vitamins Food Pvt. Ltd. Vs. The State of Maharashtra***[9]***, M/s. Godrej Food Ltd. Vs. State of Maharashtra***[10]***, Union of India vs. Satish Panalal Shah***[11], ***Collector of Central Excise & Customs vs. P.M.P. Components Ltd.***[12] and ***M/s. Wipro Limited, Amalner vs. The State of Maharashtra***[13] to hold that once the Revenue accepts a view in one case by not challenging it, it cannot discriminate against other Assessees, by taking a different view. Thus, Mr. Patkar would submit that Borosil is being singled out and discriminated against.

18. Mr. Patkar would urge that there was no justification in the Impugned Order of the Tribunal dated 30 April 2002 to apply the pro-rata formula of apportionment. The Tribunal in the given case,

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[9]. SA No. 407 of 1986-decided on 19 February 1988

[10]. STR No. 1 of 1997 decided on 14 January 1998

[11]. 2002 1 SCC 605

[12]. 2005 12 SCC 242

[13]. SA No. 727 of 1989 decided on 21 December 1996

erred in directing reduction of set-off to the extent of 6% of purchase price of furnace oil with respect to branch transfer. Mr. Patkar further relies on the decision of ***K. Damodarasamy Naidu & Bros Vs. State of Tamil Nadu & Anr.***[14] to submit that the State was injuncted from taxing until an appropriate formula was legislatively enacted, like in the present case also where an evolution of formula cannot be left to the officers of the Sales Tax Department.

19. Mr. Patkar would urge that on all counts as submitted above, the Impugned Order of the Tribunal dated 30 April 2002 in STR No. 9 of 2011 cannot be followed and consequently the STR No. 9 of 2011 ought to be decided in favour of Borosil and against the Revenue.

C. SUBMISSIONS OF REVENUE / SALES TAX DEPARTMENT.

20. Per contra, Ms. Jyoti Chavan, learned Additional Government Pleader for the Revenue in STR No. 9 of 2011 has refuted each and all of the submissions of Mr. Patkar as being unsustainable and legally untenable. She would endorse support and seeks to adopt the view taken by the Tribunal in the Impugned Order dated 30 April 2002. According to her, there is no reason whatsoever to depart from the said Impugned Order dated 30 April 2002 and/or the decision of the Larger Bench of the Tribunal in ***M/s. Pudumjee Pulp (Supra)*** which would squarely apply in the given facts and circumstances.

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[14]. 2000 (1) SCC 521

21. Ms. Chavan at the outset would state that the assessment period in the given case is 1 April 1992 to 31 March 1993. In this context, she would refer to Rule 41D of the Sales Tax Rules to submit that on a plain reading of the said Rule, the set-off can be availed by claimant/dealer on satisfying the conditions stipulated therein. These are as follows :-

a) That the claimant is a registered dealer of the Bombay Sales Tax Act;

b) That the claimant has purchased the goods covered in Part-II Schedule-C;

c) That the goods are purchased by him in the State for manufacture of taxable goods or sale or export. (exports here would include the branch transfers outside the State);

d) That the goods so manufactured are actually sold or exported by the claimant and not given away as samples;

e) That the goods purchased by the claimant are used in the packing of the goods manufactured;

f) That the set off is subject to reduction contained in Sub-Rule 3 of Rule 41D of the Sales Tax Rules. However, the second proviso to Rule 41D prior to its substitution as it stood between 1 April 1988 to 1 May 1998 expressly excluded plant and machinery and its component for the purposes of apportionment to the extent of taxable goods manufactured. In light of such clear language in the

said proviso, Ms. Chavan would submit that the contentions of Mr. Patkar would run contrary to the meaning and purport thereof, which cannot be legally accepted. This is in as much as the given case deals with a situation of purchase of furnace oil to be used in the manufacture of final product and not purchase of plant and machinery, in any manner and whatsoever.

22. Ms. Chavan then submits that furnace oil is consumable in the manufacture of the final product. Thus, it falls under Entry-(C-II-41A) whereas machinery and parts, components and accessories of plant and machinery fall under Entry-(C-II-44A), whereas boiler falls under Entry-(C-II-73(a)). In light of such distinct and clear classification for these items, Ms. Chavan would contend that the submission of Mr. Patkar that furnace oil is synonymous to plant and machinery would be in the teeth of such clear classification as provided under the extant statutory framework.

23. Ms. Chavan would submit that the assessment order dated 20 February 1996 for the period 01 April 1992 to 31 March 1993 was passed after examining the Borosil's manufacturing activity. This comprised of sales within the State and branch transfers outside the State. The Assessing Officer duly recorded that 61% of the total turnover represented local sales and 39% represented branch transfers. Considering the statutory amendment dated 01 July 1981 and 01 April 1988, in the Sales Tax Rules, the Assessing Officer reasoned that furnace oil will not form a part of plant and machinery, components or accessories as stated under Rule 41D of the Sales Tax

Rules, but will be treated and regarded as consumables. Since the Rule permitted only limited set off, the Assessing Officer applied apportionment based on the ratio between branch transfers and local sales and accordingly computed the set-off under Rule 41D of the Sales Tax Rules or at Rs. 36,11,373/- and after adjusting the taxes paid determined a refund of Rs. 7,10,418/-.

24. Ms. Chavan in such backdrop would submit that the Assessing Officer correctly interpreted Rule 41D of Sales Tax Rules by excluding fuel from the ambit of the expression plant and machinery. Accordingly, the proportionate deduction which flows from Sub-Rule 3(a) of Rule 41D of the Sales Tax Rules mandated a reduction of 6% on purchases of furnace oil against branch transfers, to avail of the set-off under such provision. Thus, according to Ms. Chavan there is absolutely no ambiguity, irregularity, much less illegality in such finding of the Assessing Officer which is in conformity with Rule 41D of the Sales Tax Rules.

25. Ms. Chavan would submit that order of the Assessing Officer was carried in appeal by Borosil before the Deputy Commissioner of Sales Tax (Appeals). The said Appellate Authority rightly noted that post amendment, with effect from 1 April 1988 upto 1 May 1998, in Rule 41D of the Sales Tax Rules, the second proviso expressly excluded to plant and machinery, component/spares thereof. The legislative intent was to differentiate between plant and machinery, and goods in the nature of consumable to be used in the process of manufacture of finished products. Accordingly, furnace oil though

essential to manufacturing of such product, cannot qualify, in itself, as machinery or a component thereof. Thus, according to Ms. Chavan there is no irregularity much less illegality in the findings of the Appellate Authority, in the given facts, which correctly reduced the amount by 6% for the purposes of set-off against branch transfers, in respect of purchase of furnace oil despatched to such branches.

26. Ms. Chavan would submit that the Tribunal in its Impugned Order dated 30 April 2002 has correctly interpreted Rule 41D of the Sales Tax Rules. The Tribunal has applied its mind to the meaning and purport of Sub Rule 3(a) of Rule 41D of the Sales Tax Rules which was the subject matter of interpretation and consideration before the Tribunal, then. Accordingly, the Tribunal went by the clear and unambiguous language of the Sub Rule 3(a) of Rule 41D of the Sales Tax Rules which expressly stipulated that with effect from 1 July 1982 the aggregate of such amount shall be reduced by 6% of such purchase price.

27. Ms. Chavan submits that the Tribunal in the Impugned Order dated 30 April 2002 has rightly observed that, at the highest, boiler can be said to be machinery but not furnace oil, which can be classified as consumable, as it is consumed in producing the heat by way of burning in the boiler. Accordingly, for the purpose of granting set-off, the purchase of furnace oil as provided under Rule 41D(3)(a) of the Sales Tax Rules can be bifurcated into two parts one used for the product sold and the other for product transferred to the branches of the Assessee. Thus, it is Sub-Rule 3(a) of Rule 41D of the

Sales Tax Rules which is clearly applicable in the given facts as against the full set-off that also after deducting 6% of the purchase price as stated in the said Sub-Rule.

28. In the given facts, Ms. Chavan would submit that none of the judgments cited by Mr. Patkar are in the context of interpretation of Sub Rule 3(a) of the Rule 41D of the Sales Tax Rules. Thus, there is no reason much less justification for the said decisions in those distinct facts and circumstances to be made applicable to the given situation which is squarely covered by the decision of the Larger Bench of the Tribunal in ***M/s. Pudumjee Pulp (Supra)***, which does not warrant any interference.

29. For all of the above reasons, Ms. Chavan would submit that STR No. 9 of 2011 should be answered in favour of the Revenue and by upholding the impugned order of the Tribunal.

D. ANALYSIS :-

30. At the outset to answer the question referred to this Court in STR No. 09 of 2011, as extracted (Supra), firstly, it would be apposite to refer to the principal Rule, i.e. Rule 41D of the Sales Tax Rules, which is the subject matter of consideration in the present proceedings. The said Rule as it existed for the assessment period in question i.e., 01 April 1992 to 31 March 1993, reads thus:-

> *"**Rule 41D. Drawback, set-off, etc., of tax paid by a manufacturer in respect of purchases made on or after the notified day**.- (1) In assessing the amount of tax payable in respect of any period by a Registered dealer who manufactures taxable goods for sale or export*

(hereinafter in this rule referred to as "the claimant dealer") the Commissioner shall, in respect of purchases made by claimant dealer on or after the notified day, of any goods specified in Part II of Schedule C and used by him within the State:

(i) in the manufacture of taxable goods for sale, which manufactured goods have in fact been sold by him or exported by him, or,

(ii) in the packing of goods so manufactured, grant him subject to the reduction specified in sub-rule (3), a draw back, set-off, or as the case may be, a refund of aggregate of the sums determined in accordance with the provisions of Rule 44D.

(Provided that where the turnover of sales of such manufactured goods consists principally of sales of waste or scrap goods, then the claimant dealer shall not be entitled to any drawback, set-off, or as the case may be, a refund under this rule:

Provided further that where such manufacture results in the production of taxable goods as well as goods other than taxable goods, then such drawback, set-off, or as the case may be, the refund, in so far as it pertains to purchases of Goods other than plant and machinery, shall be apportioned as between taxable goods and goods other than taxable goods on the basis of the sale prices of such manufactured goods and shall be allowed only to the extent that it pertains to the taxable goods manufactured.

(2) For the purpose of this rule the expression "export" shall include -

(i) a sale in the course of inter-State trade and commerce or in the course of export of the goods out of the territory of India, where such sale occasions the movement of the goods from the State.

(ii) despatches made by the claimant dealer to a person outside the territory of India, with a view to selling the goods to the said person and the said goods have actually been sold to him within the period of one year from the date of despatch, and

(iii) despatches made by the claimant dealer to his own place of business or to his agent outside the State where the claimant dealer produces certificate in Form 31C issued by his manager, or as the case may be, his agent declaring inter alia that the goods will in fact be sold by him or will be used by him in the manufacture of goods which will in fact be sold by him and that he, his manager or, as the case may be, his agent is registered under the Central Sales Tax Act, 1956

(LXXIV of 1956) in respect of that place of business.

(3) The aggregate of the sum referred to in sub-rule (1) shall be reduced by -
(a) 5 per cent of the purchase price representing the sums in respect of the goods which are despatches in the manner referred to in clause (iii) of sub-rule 2,

[Provided that, with effect from the 1st day of July 1982, the aggregate of such sum shall be reduced by 6 per cent, of such purchase price]

(b) 4 per cent of the purchase price representing the said sums in all other cases."

31. The fulcrum of the STR before us revolves around the examination and interpretation of the said Rule 41D and more particularly sub-Rule (3)(a) thereof. This entails deliberation on the adjudication of the above question, framed in the context of the Larger Bench judgment in the case of ***M/S. Pudumjee Pulp (Supra)*** which has delved into the said issue,. as we decide the applicability of the said decision to the given factual complexion.

32. A plain reading of the afore-stated Rule would entail the following:-

a) Sub-Rule 1 of the said Rule categorically refers to a reduction which is specified in Sub-Rule 3 of the said Rule.

b) The proviso to the said Rule which held the field between 1 April 1988 and 1 May 1998 expressly excluded the plant and machinery, parts and components and accessories thereof for the purpose of apportionment between taxable and non-taxable goods on the basis

of sales price of such manufactured goods, where set-off is to be allowed only to the extent of manufacture of taxable goods.

c) Sub-Rule 3(a) of Rule 41D categorically stipulates that for purchases made on or after 1 July 1982, the aggregate of such amounts in respect of goods which are dispatched to the branches shall be reduced by 6% of the purchase price of the goods i.e., furnace oil in the given case, to claim set-off, after such statutory reduction.

33. It is on the basis of the above contours that the Court is required to examine Rule 41D of the Sales Tax Rules in its proper perspective. In this context, the said Rule makes it clear that it contemplates bifurcation for set-off in the proportion of taxable goods and tax free goods, in the event the manufacturing process results into taxable goods, as in the present case. However, the said extant Rule 41D does not provide for bifurcation in the case of plant and machinery, its parts and components as is clear from the plain language of the second proviso, as noted above. Therefore, there is no ambiguity in the said provision neither does it leave any room for interpretation in light of the expressly clear language impregnated therein.

34. The submission of Ms. Chavan that furnace oil, and plant and machinery i.e. Boiler in the given case along with its components and accessories fall within different classification entries does not appear to be disputed. Thus, these are distinct and different and cannot be

intermingled or mixed with one another. Such position is further fortified by the decision of the Tribunal in the case of ***M/s. New Era Fabrics Pvt. Ltd. Vs. The State of Maharashtra***[15] and ***M/s. Polyolefins Industries Ltd. Vs. The State of Maharashtra***[16] . The Tribunal in ***M/s. New Era Fabrics (Supra)*** has categorically held that the set-off provision under Rule 41D of the Sales Tax Rules does not use the word furnace oil or oil and lubricants etc, which cannot be read into, in the said Rule, when they are obviously not there.

35. Similarly, in ***M/s. Polyolefins Industries Ltd. (Supra)***, it is categorically held furnace oil/fuel oil can certainly not be equated with plant and machinery following the decision of the Tribunal in ***M/s. New Era Fabrics Pvt. Ltd. (Supra).*** Therefore, there is no occasion to depart from such precedents in this regard. This is more particularly, when the Larger Bench decision of the Tribunal in ***M/s. Pudumjee Pulp (Supra)*** has followed such precedents, as there was nothing on record, to the contrary, for the Larger Bench of the Tribunal to take a divergent or different view. Thus, Mr. Patkar's submission that furnace oil is synonymous to plant and machinery so as to make it fall within the framework and ambit of Rule 41D of the Sales Tax Rules to claim complete set-off, cannot be accepted.

36. In the above backdrop, we are afraid that accepting the submission of Mr. Patkar, inter alia, in regard to his interpretation of Rule 41D of the Sales Tax Rules and the second proviso thereto

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[15]. Second Appeal No. 930 of 1993 dated 19 July 1997

[16]. Second Appeal No. 103 of 1997 decided on 21 August 1999

would tantamount to reading down the said Rule and supplying meaning and language which is *ex-facie* alien and extraneous to the said Rule, which cannot be countenanced.

37. Mr. Patkar, however, relies on the decision of the Tribunal in ***Hanuman Vitamins Foods Pvt. Ltd. (Supra)*** to submit that the Tribunal in that case had held that the chemical hexane was used in plant and machinery and must be treated on par with furnace oil in the given case as well as plant and machinery. However, it appears that the decision of the Tribunal in ***Hanuman Vitamins Pvt. Ltd. (Supra)***, firstly, is prior to the decision of ***M/s. New Era Fabrics Pvt. Ltd. (Supra)*** and ***M/s. Polyolefins Industries Ltd. (Supra)*** which are subsequent decisions and thus, hold the field. That apart, more importantly, the decision in the case of ***Hanuman Vitamins Pvt. Ltd. (Supra)*** is in the context of hexane oil which was required in the solvent extraction plant for extraction of oil from oil cake. It is in such peculiar facts that the Tribunal took such view in the case of ***Hanuman Vitamins Pvt. Ltd. (Supra).*** It cannot be overlooked that in the case of Borosil, we are concerned with furnace oil and its use as a consumable in the manufacture of finished products, which is different from the fact situation from ***Hanuman Vitamins Pvt. Ltd. (Supra)***.

38. The decision in the case of ***M/s. New Era Fabrics Pvt. Ltd. (Supra)*** and ***M/s. Polyolefins Industries Ltd. (Supra)*** dealt exactly with furnace oil and its use in plant and machinery which is therefore rightly followed by the Larger Bench decision of the

Tribunal in ***M/s. Pudumjee Pulp (Supra)***. Thus, reliance on the decision of the Tribunal in ***Hanuman Vitamins Pvt. Ltd. (Supra)*** does not support the case of Borosil, in the given facts.

39. We are inclined to accept the reasoning of the Larger Bench decision of the Tribunal in ***M/s. Pudumjee Pulp (Supra)*** in the above context. This is because it cannot be disputed that plant and machinery do not get consumed in the process of manufacturing the finished product in the given case. The purchase price of such machinery, i.e. boiler, as in the given case that remains a fixed asset, will, therefore, have no nexus with the goods dispatched.

40. Moreover, such plant and machinery, along with its components and accessories, is expressly excluded from the second proviso to Rule 41D of the Sales Tax Rules, as noted above. Thus, we are not in agreement with Mr. Patkar that the principle applicable to plant and machinery should be applied to furnace oil so as to equate furnace oil with plant and machinery. This, also, in our view, is not the legislative intent as far as Rule 41D of the Sales Tax Rules, when examined in its entirety.

41. On the above aspect of the nexus of the furnace oil in the goods dispatched, we may refer to the observations, inter alia, in paragraph 16 of the Larger Bench decision of the Tribunal in ***M/s. Pudumjee Pulp (Supra).*** Mr. Patkar has expressed serious doubts on the observations made in this paragraph. This is particularly because, according to Mr Patkar, it must be presumed that the Larger Bench

did not go through the actual assessment, accounting and costing records in coming to a finding on the nexus aspect, in the judgment. In our view, when a fact-finding authority makes a categorical finding and explanation on the basis of costing which is evidently found in Paragraph 16, such presumption of Mr Patkar appears to be premised on surmises and conjectures. Therefore, this does not persuade us any further.

42. Mr. Patkar's fundamental objection appears to be that the Larger Bench decision of the Tribunal in ***M/s. Pudumjee Pulp (Supra)*** does not anywhere deal with the issue of apportionability and the issue of impossibility created by non-segeregability and continuous use at various levels of production including NIL production, an issue which was repeatedly raised for 22 years. To put this in perspective, it is necessary to note that the question under reference before this Court is premised on the correct interpretation of Rule 41D of the Sales Tax Rules, including the Sub Rule 3(a) thereof. The issue to be determined is thus whether set-off is available after reducing 6% of purchase price under Sub-Rule 3(a) of Rule 41D of the Sales Tax Rules on purchase of furnace oil partly transferred to branches of Borosil outside the State. Therefore, it is to be examined whether the submission of Mr. Patkar with regard to the issue of impossibility of apportionability would indeed form the fulcrum of the reference before us. If so, to what extent, the contention of non-segregability or issue of impossibility would need to be gone into, at this stage. This is to be also viewed in light of the

Larger Bench decision of the Tribunal in ***M/s. Pudumjee Pulp (Supra)*** .

43. To answer the above, we would advert to the submission of Ms. Chavan who has pointed out that the Assessment Order dated 20 February 1996 clearly records that, in any event, apportionment has been done in the case of Borosil. The relevant portion of the findings in this regard from the said order, reads thus :-

> *"19. For working out set-off the ratio of branch transfer to net sales out of manufacturing activity is taken. The same is at 61% of net sales out of mfg. And 39% out of branch sales.*
>
> *In respect of fuel, same is a consumable and is not governed by the words stated under the rule 41D in respect of machinery, machinery components parts, accessories thereof from 1.7.81 and 1.4.88 respectively. Hence for working set off on fuel, appointionment is done. The set-off 41D is allowed at Rs. 36,11,373/.*
>
> *20. Taxes payable after adjustment of set-off comes to Rs. 1,42,62,672/-.The taxes Paid with returns is Rs.1,49,86,710/-. The payments are late, interest u/s 36(3) is levied At Rs. 13,068/-.The excess collection forfeited is R.552/- Balance is Rs.7,10,418/-."*

It is not for this Court, at this stage, in deciding a reference application, to delve into the calculation and mathematical accuracy of such apportionment, an exercise duly carried out by the Assessing Officer. Therefore, in the absence of any perversity, it would not be appropriate for us to interfere with such findings of fact.

44. The above findings were assailed by Borosil in appeal before the Deputy Commissioner of Sales Tax who for the reasons recorded in the order dated 14 October 1999 confirmed the order of Assessing Officer. In other words, the Appellate Authority duly considered the

issue of grant of set off in respect of purchase of furnace oil in the context of Rule 41D of the Sales Tax Rules and the submissions made on behalf of Borosil. It cannot be disputed that the factual finding of apportionment as undertaken by the Assessing Officer was very much before the Appellate Authority in Appeal before it. The same was further carried to the Tribunal who passed the Impugned Order dated 30 April 2002 from which the reference has arisen before us.

45. Thus, it is clear that the Tribunal in the Impugned Order was conscious of the factual aspect of apportionment in the context of set-off in the context of the Rule 41D of the Sales Tax Rules, more particularly Sub-Rule 3(a) thereof. For such reason, we are not in agreement with Mr. Patkar's submission as he would call it the impossibility of apportionment of purchase of furnace oil between goods locally sold and to the branches of Borosil outside the State. The factual findings in the Assessment Order which have traveled upto the Impugned Order of the Tribunal dated 30 April 2002 do not support such hypothesis of Mr. Patkar. Needless to observe that, our jurisdiction as reference court would be limited to decide the question referred to the Court, in the context of the applicable legal framework and provisions.

46. Mr. Patkar has relied on the decisions of ***International Chemical (Supra), M/s Century Rayon vs. The State of Maharashtra***[17] and ***M/s. Mahalaxmi Steel Industries (Supra)*** to buttress his argument on the impossibility of apportionment where the Tribunal had allowed full

[17]. Second Appeal No. 918,919,920 and 1543 of 1979 decided on 25 January 1984

set-off clearly in the facts of that case. However, a bare perusal of the said decisions would reveal that those decisions of the Tribunal were in the peculiar facts in those cases which cannot be plucked mechanically and juxtaposed to the given factual matrix. Mr. Patkar would submit that the Revenue by not challenging the decision in ***M/s. Mahalaxmi Steel Industries (Supra)*** has accepted the said decision. In this regard, he would rely on the decision of ***Satish Panalal Shah (Supra)*** and ***Collector of Central Excise & Customs (Supra)***. However, it is settled law that merely by not assailing a decision in a particular case which was in the context of a factual position in the given factual complexion of that case, cannot be stretched to the extent of discrimination by the Revenue against Assessees in all other cases. This cannot be accepted nor can be countenanced. In any event, such aspects are duly dealt with in the Larger Bench decision of the Tribunal in ***M/s. Pudumjee Pulp (Supra)*** from which, in our view a departure is not called for, as also indicated above.

47. Mr. Patkar contends that the crucial decisions of a Coordinate Bench of this Court in ***Berar Oil Industries (Supra)*** and ***Amar Dye Chem Ltd. (Supra)*** were not placed for consideration before the Tribunal, which would have a bearing on the issues raised in the present proceedings. A Coordinate Bench of this Court in ***Berar Oil (Supra)*** was confronted with a issue where the dealer did not maintain separate books of account to show co-relation of purchases to permissible and non-permissible sales. The statutory burden of

proof on him was not discharged and therefore apportionment was required on pro rata basis. In the given factual complexion, we are called upon to adjudicate the question strictly in terms of reference which, *inter alia*, involves the issue of set-off in the context of Sub-Rule 3(a) of Rule 41D of the Sales Tax Rules. In any event, as indicated above by us, the pro-rata apportionment between local sales and branch sales has been done by the Assessing Officer, whose decision traveled upto the Tribunal. Thus, on such clear facts, we are at loss to comprehend as to how the decision in ***Berar Oil (supra)*** delivered in those facts would be of any assistance to Borosil, in the given case.

48. Further, the decision of a Coordinate Bench of this Court in ***Amar Dye Chem Ltd.*** was in the context where pro rata apportionment formula was held to be applicable only where it is possible to maintain separate books of accounts that is for raw material and not with respect to machinery. However, undisputedly, in the given case we are concerned with apportionment of purchase price of furnace oil between local sales and branch transfers and not that of plant and machinery. Thus, we are not persuaded by the reliance of Mr. Patkar, on this decision.

49. Mr. Patkar has also placed reliance on the decision in ***K. Damodarasamy Naidu & Bros (Supra)***. On a perusal of the same, it was in the peculiar facts of that case, where the Supreme Court held that leaving the formula to be determined by the officers, in a situation, where composite price sought to be broken in terms of

taxable and non-taxable elements by the Revenue, would cause arbitrariness. However, we are not in the present case, confronted with such situation. Mr. Patkar's emphasis on the impossibility of apportionment thus pales into insignificance.

50. Let us now examine the findings of the Larger Bench decision of the Tribunal in ***M/s. Pudumjee Pulp (Supra)*** on the issue of interpretation of Rule 41D of the Sales Tax Rules read with Sub-Rule 3(a) thereof. We find much substance in the finding of the Larger Bench which has observed that just like raw material and packing material furnace oil, also has a nexus with the goods manufactured. This is in as much as furnace oil is undoubtedly used/consumed in the machinery but cannot be equated with the machinery itself. The manufactured goods are despatched to branches and therefore the furnace oil used in such goods have nexus to the goods despatched to the branches of Borosil. The quantum of raw material, packaging material and furnace oil to be used would depend upon the quantity of goods to be manufactured. For such reasons, it is not improbable, much less impossible to take a view that the furnace oil would not have a nexus with the goods despatched.

51. In the above context, considering the fact that the furnace oil is indeed used as a consumable in the manufacture of finished products, it cannot be ruled out that the same would constitute a part of the goods which are dispatched to the branches of Borosil. Thus, Mr Patkar's submission and interpretation in the context of Sub-Rule 3(a) of Rule 41D of Sales Tax Rules that furnace oil cannot

be "goods which are dispatched" does not persuade us. In this context, the said Sub Rule 3(a) which refers to Sub Rule 2(iii) reads thus :-

> *"(2) For the purpose of this rule the expression "export" shall include -*
>
> *.....*
>
> *.....*
>
> *(iii) despatches made by the claimant dealer to his own place of business or to his agent outside the State where the claimant dealer produces certificate in form 31C issued by his manager, or as the case may be, his agent declaring inter alia that the goods will in fact be sold by him or will be used by him in the manufacture of goods which will in fact be sold by him and that he, his manager or, as the case may be, his agent is registered under the Central Sales Tax Act, 1956 (LXXIV of 1956) in respect of that place of business.*
>
> *(3) The aggregate of the sums referred to in sub-rule (1) shall be in respect of purchases made on or after the 1st April 1999 reduced by,-*
>
> *(a) 6 per cent of the purchase price representing the sums in respect of the goods which are despatched in a manner referred to in clause (iii) of sub-rule (2);"*

In view of the above, the expression "goods which are dispatched" as mentioned in Sub Rule 3(a) ought to be read in the context of Sub Rule 2(iii) (Supra) and not in isolation, as Mr Patkar would ask us to do.

52. We have also considered the contention of Mr. Patkar to the effect that the Larger Bench decision of the Tribunal in ***M/s. Pudumjee Pulp (Supra)*** does not answer the question of strict interpretation of Rule 41D(3) of the Sales Tax Rules and the effect of the decision of the Supreme Court in ***Swasthik Tobacco (Supra)***. In this context, in our view, we find substance in the decision of the

Larger Bench of the Tribunal in ***M/s. Pudumjee Pulp (Supra)***, *inter alia*, on its findings on the interpretation of Rule 41D of the Sales Tax Rules and Sub-Rule 3(a) thereof. As indicated by us above, the Larger Bench has rightly observed that the price of the furnace oil would have a nexus with the goods dispatched. There is no perversity in such findings, also in the canopy of factual complexion in these proceedings.

53. It may be apposite to refer to the celebrated decision in ***Quinn Vs. Leathem***[18], where it is held that a case is only an authority for what itself actually decide. It cannot be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical, at all. Such dictum was approved and followed by the Supreme Court by in several cases including ***Sarv Shramik Sangh vs. State of Maharashtra***[19] and ***Bihar School Examination Board vs. Suresh Prasad Sinha***[20]***.***

54. In regard to the above, the logical corollary would be to apply the provisions of Rule 41D(3)(a) of the Sales Tax Rules as it stands, without reading it down, on the purchase of furnace oil in proportion to the finished goods despatched to the branches of Borosil. We do not find it legal or proper to go behind the factual findings in the given proceedings, more so, in the absence of any perversity, much

[18]. AII ER p.7 G-I
[19]. (2008) 1 SCC 494
[20]. (2009) 8 SCC 483

less illegality. In fact, both the Tribunal in the Impugned Order dated 30 April 2002 and the Larger bench of the Tribunal in ***M/s. Pudumjee Pulp (Supra)*** have correctly interpreted the Rule and Sub–Rule strictly following the principles of strict interpretation. Considering the expression "goods which are despatched" as it appears in Sub Rule 3(a) of Rule 41D of the Sales Tax Rules, we have already expressed our view above. Therefore, any other interpretation would tantamount to reading down the provision and expanding the scope of the Rule and the Sub-Rule which we refrain from doing particularly, not losing sight of the fact that we are dealing with a fiscal statute, in the present case.

55. We are in fact not departing from the legal principles applied in the decision of the Supreme Court in the case of ***Swasthik Tobacco (Supra)*** on the issue of strict interpretation in so far as interpretation of the Rule 41D of the Sales Tax Rules and Sub-Rule 3(a) thereof are concerned. We may note that the decision in ***Swasthik Tobacco (Supra)*** is on different facts and in the context of completely different provisions.

56. In fact the expression "in respect of" which was interpreted by the Supreme Court in that case also finds reference in Sub-Rule 3(a) of Rule 41D of the Sales Tax Rules and it ought to be interpreted contextually as it appears in the said statutory provision. It is true that the Supreme Court in ***Swasthik Tobacco (Supra)*** in interpreting the Rule 5(1)(i) of General Sales Tax Rules, 1939 has interpreted the expression 'in respect of' as 'on' in that case. However, as far as the

present Sub-Rule 3(a) of Rule 41D is concerned, it has to be interpreted only in the context of the language and intent of such Sub-Rule.

57. It is a well settled principle of interpretation that individual words are not considered in isolation but may have their meaning determined by other words in the section in which they occur, as held in the decisions in ***Jewish Blind Society Trustees vs Henning***[21]***, Ratcliffe vs. Ratcliffe***[22]***, Cumberland Court (Brighton), Ltd vs. Taylor***[23] ***and R. vs. Price***[24]. So also it would be apposite to refer to the observations in the decision in the case ***Lincoln College***[25] that the good expositor of an act of Parliament should make construction on all parts together, and not of one part only by itself. Every clause of a statute is to be construed with reference to the context and other clauses of the Act, so far as possible, to make a consistent enactment of the whole statute. This principle, which also appears in **Maxwell on The Interpretation of Statutes (at Page 47)** has been duly reiterated by the Supreme Court in the case of ***Commissioner of Income tax, Central Calcutta vs. National Taj Traders***[26] and thereafter, it was observed as follows :-

> *"In other words, under the first principle a casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the*

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[21]. (1961) 1 W.L.R. 24

[22]. [1962] 1 W.L.R. 1455

[23]. [1964] Ch. 29

[24]. [1964] 2 Q.B. 76

[25]. [(1595) 3 Co. Rep. 58b at p.59b]

[26]. (1980) 1 SCC 370

same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute."

58. In this context, it would be apposite to refer to another decision of the Supreme Court in the case of ***Reserve Bank of India vs. Peerless General Finance and Investment Co. Limited***[27], wherein it was observed thus :-

"Interpretation must depend on the tax and the context they are the bases of interpretation one may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual.

……

……

……

No part of a statute and no words of a statute can be construed in isolation."

59. Again in ***N.K. Jain vs. C.K. Shah***[28], the Supreme Court has categorically observed that in gathering the meaning of a word used in the statute, the context in which that word has been used has significance and the legislative purpose must be noted by reading the statute as a whole and bearing in mind the context in which the word has been used in the statute.

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[27]. (1987) 1 SCC 424

[28]. (1991) 2 SCC 495

60. Similarly, the Coordinate Bench of this Court in the case of ***Code Engineers Pvt. Ltd vs. Union of India***[29] in paragraph 37 of the said decision has categorically observed thus :-

> *"37. It is a settled principle of interpretation that words and expressions used in a legislation must take their colour from the context in which they appear. For ascertaining the true meaning of words and expression used in a legislation, it is therefore necessary that the legislation must be read or understood as a whole."*

61. Let us now apply these principles above in the context of Rule 41D of Sales Tax Rules read with Sub Rule 3(a) of the said Rule. The expression "goods which are dispatched" in a manner referred to in clause (iii) of Sub-Rule 2 is the language used in Sub-Rule 3(a) of the said Rule. Such Sub-Rule categorically refers to Sub-Rule 2(iii) which we have referred to above. Thus, to construe goods which are dispatched in Sub Rule 3(a) shall include goods which will be used in the manufacture of goods in fact sold, would embrace furnace oil. Therefore, a skewed interpretation as sought to be espoused by Mr. Patkar on the said Sub-Rule 3(a) in Rule 41D of the Sales Tax Rules, if accepted, would render the said Sub Rule redundant and otiose.

62. The decision of the Larger Bench of the Tribunal in ***M/s. Pudumjee Pulp (Supra)*** has, in our view, rightly interpreted the provision as it appears in Sub-Rule 3(a) of Rule 41D of Sales Tax Rules including the expression 'in respect of' as mentioned in the said Sub-Rule 3(a) of Rule 41D. There is no question of purposive interpretation being applied in the given facts as far as Rule 41D of

[29]. 2021 (46) G.S.T.L. 400 (Bom.)

the Sales Tax Rules and the Sub Rule 3(a) thereof, are concerned. Thus, the decision cited by the Mr. Patkar in the case of ***Mathuram Agrawal (Supra)***, the principles of which are not disputed, is of no assistance to him, in the given factual complexion.

63. Mr. Patkar has been at pains to submit that a position holding the field for 22 years with regard to non-segregability and impossibility of apportionment ought not to be disturbed. He would submit that the Larger Bench of the Tribunal in ***M/s. Pudumjee Pulp (Supra)*** had absolutely no material, much less, no evidence on such pure findings of fact i.e., cost of production of furnace oil etc. Despite that, the Larger Bench of the Tribunal refused to grant full set-off to the Assessee, by its judgment. In this context, we may reiterate that the question of reference to be decided by this Court revolves specifically around the interpretation of Sub Rule 3(a) of the Rule 41D of the Sales Tax Rules.

64. We do not find that for all these years such issue had come up for consideration, much less adjudication before a judicial forum. The Larger Bench of the Tribunal in ***M/s. Pudumjee Pulp (Supra)*** has categorically observed that the issue of interpretation of Rule 41D(3)(a) of Sales Tax Rules, was never raised earlier. It further recorded that as pointed out by the learned counsel from both sides, the dispute was centralized on the application of the provisions of Rule 41D(3)(a) or (b) of Sales Tax Rules. It was only after the Impugned Order dated 30 April 2002 of the Tribunal, in the given facts, that the

Tribunal, by its order dated 31 December 2007, decided to place the question under reference for adjudication of this Court.

65. Incidentally, by then, such issue was already decided by the Larger Bench in ***M/s Pudumjee Pulp (Supra)*** on 30 September 2005. The Larger Bench of the Tribunal in ***M/s. Pudumjee Pulp*** (***Supra***), after due and proper application of mind, considering various factual aspects and a statement of law backed by judicial pronouncements, came to the conclusion that set-off cannot be admitted in full in the said decision. Therefore, Mr. Patkar's submission that a 'frail' attempt was made for the first time in the said judgment by the Larger Bench is misconstrued.

66. For all of the above reasons, as indicated above, we are not inclined to differ and /or take a view contrary to that of the Larger Bench decision of the Tribunal in ***M/s. Pudumjee Pulp (Supra)***. In this view of the matter, we are not in agreement with Mr. Patkar when he submitted that the decision of a Coordinate Bench of this Court in the case ***Merind Ltd. (Supra).*** The said decision clearly records that views which are settled for two decades, cannot be overruled unless there is a finding that the earlier view was patently erroneous and that there are compelling reasons. However, as noted by us there has been no view, much less erroneous view on the specific applicability and the interpretation of Sub-Rule 3(a) of Rule 41D of the Sales Tax Rules to be read in the context of Sub-Rule 2(iii) thereof. In such a complexion, as we accept the principle laid down in ***Merind Ltd. (Supra)*** that the long-standing precedents ought not

to be disturbed, we are afraid that the ratio of ***Merind Ltd (Supra)*** in the given facts and circumstances is not applicable.

67. In our considered opinion, the Question under Reference ***(Supra)*** in STR No. 96 of 2009 at the behest of the Revenue shall be covered by the above analysis and reasoning.

68. For the foregoing reasons, we answer the questions referred to in both the references, i.e. the STR No. 9 of 2011 and STR No. 96 of 2009, in favour of the Revenue/Sales Tax Dept. and against the Assessee/Borosil. The reference is answered accordingly.

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