**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

**MAHARASHTRA VAT APPEAL NO. 22 OF 2017**

**IN**

**VAT SECOND APPEAL NO. 952 OF 2014**

Painterior (India),
A-1, Star Mansion,
66, Warden House Road,
Colaba, Mumbai-400 005. ….Appellant.

Vs.

The State of Maharashtra,
through Commissioner of Sales Tax,
8th Floor, Vikrikar Bhavan,
Mazgaon, Mumbai-400 012. ….Respondent.

Mr. Vinayak Patkar a/w Mr. Ishaan Patkar i/by roshni Naik for the Appellant.
Ms. Jyoti Chavan, AGP for the Respondent-State.

**CORAM : ANOOP V. MOHTA AND**
**SMT. ANUJA PRABHUDESSAI, JJ.**
**RESERVED ON : 11 JULY 2017.**
**PRONONUCED ON : 25 JULY 2017.**

***JUDGMENT (PER ANOOP V. MOHTA, J.):-***

Admit. Heard finally by consent of the parties.



::: Uploaded on - 27/07/2017 ::: Downloaded on - 26/06/2024 07:29:51 :::

HIGH COURT OF JUDICATURE AT BOMBAY


2 This Appeal is filed under Section 42(3) of the Maharashtra Value Added Tax, Act 2002 (for short, *"MVAT Act"*). The following are the basic backgrounds, leading to this Appeal.

***Background of the Appeal:-***

3 The Appellant is a registered partnership firm registered under the MVAT Act. The Appellant is in the business of repairs/reconstruction of buildings. Application dated 14 June 2010, was filed by the Appellant before the Commissioner of Sales Tax, Maharashtra State (for short, *"The Commissioner"*) under Section 56 of the MVAT Act, for determination of the rate of tax applicable to a contract for repairs of a building, as the repairs/reconstruction contracts are covered by the expression *"construction contracts"*, which is used in Section 42(3) of the MVAT Act read with Notification No. VAT.1506/CR134/Taxation/1 dated 30 November 2006. The rate of tax applicable thereto, would be 5% as notified under the Act. The Appellant had forwarded along with the Application to the Commissioner such type of contract with the Sangam Bhavan Building.



::: Uploaded on - 27/07/2017 ::: Downloaded on - 26/06/2024 07:29:51 :::

HIGH COURT OF JUDICATURE AT BOMBAY


4 The Appellant also prayed for the direction that the determination of the Commissioner should not affect the liability of the Appellant under the Act in respect of any sale effected prior to the determination. The Commissioner by order dated 25 July 2014, rejected the contention of the Appellant and made a determination that the contract is not a *"Construction Contract"*, thus attracting the rate of tax at 8%. Being aggrieved by the order passed by the Commissioner, the Appellant approached the Maharashtra Sales Tax Tribunal (for short, *"the Tribunal")* in Appeal. The Tribunal by Judgment and order dated 15 December 2016, confirmed the order passed by the Commissioner. Hence, the Appeal.

5 ***Following substantial questions of law are raised.***

(a) Whether a contract for repairs or reconstruction of building is a "Construction contract" as contemplated by Section 42(3) of the MVAT Act?

(b) Whether the Tribunal is justified in upholding the decision of the Commissioner of rejecting the prayer for prospective effect?



::: Uploaded on - 27/07/2017 ::: Downloaded on - 26/06/2024 07:29:51 :::

HIGH COURT OF JUDICATURE AT BOMBAY


6 The Appellant who is a Building Contractor entered into an agreement of construction contract for substantial repairing of the buildings “Sarang” and “Sangam Bhavan”. The dispute arose as to the classification of the contract executed by the Appellant as “Construction Contract”. The Appellant's case is that the terms “construction” includes “Repairs and Reconstruction”. The nature of repairs of “Sangam Bhavan” Colaba, Mumbai” were external repairs and painting, internal structural damage, replacement of water supply and drainage pipeline, extra items of plumbing works, extra items of civil works, Addendum items of civil works.

***The Commissioner's determination:-***

7 The following question for determination was agitated before the Commissioner of Sales Tax, Maharashtra State under Section 56 of MVAT Act on the basis of Appellant's Application dated 12 June 2010. The question for determination was *“What is the rate of tax payable under Section-42(3) Expl. (i) Read with Notification No. VAT-1506/CR-134/Taxation-1 dated 30-11-2006 on the sales effected by the applicant vide Invoice No.220 dated January 01, 2013 raised on*



::: Uploaded on - 27/07/2017 ::: Downloaded on - 26/06/2024 07:29:51 :::

HIGH COURT OF JUDICATURE AT BOMBAY


*Sangam Bhavan C.H.S. Ltd.?*

8 The Appellant submitted a bill along with the Application for determination. It is further submitted that the "Repairs Contract" is a "Construction Contract" as covered under Section 42 (3) Expl. (i) with notification dated 30 November 2006. The Explanation given by the Commissioner of Sales Tax under the erstwhile Bombay Sales Tax Act, 1959 (Circulars dated 6 January 2000 and 31 August 1999) clarifying that "Construction" includes "Repairs and Reconstruction". The Judgments were cited in this support. Alternatively, it is submitted that the order be given prospective effect (under Section 56(2). A written submission of 20 June 2014, was tendered with the bill for an unassessed period. It is submitted that the rate of tax, payable in the contract be restricted to 5%. The commissioner of Sales Tax by order dated 25 July 2014, under Section 56(1) (e) and (2) of the MVAT Act, held that-

1. *The contract effected with Sangam Bhavan C.H.S. Ltd. is a repairs contract and not covered under the notification issued under the Explanation to section 42(3) of the Maharashtra Value Added Tax Act, 2002. The rate of tax on the sales effected by the applicant through invoice no. 220 dated January 01, 2013 raised on Sangam Bhavan C.H.S. Ltd. is 8%.*



::: Uploaded on - 27/07/2017 ::: Downloaded on - 26/06/2024 07:29:51 :::

HIGH COURT OF JUDICATURE AT BOMBAY


*2. For reasons as discussed in the body of the order, the request for prospective effect is rejected."*

***The relevant provisions of MVAT Act:-***

9 The Commissioner read and referred Section 42 (3) of the MVAT Act, which reads as under:-

> ***"Section 42(3)-***
>
> *Where a dealer is liable to pay tax on the sales effected by way of transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract, he may subject to such restrictions and conditions as may be prescribed, in lieu of the amount of tax payable by him under this Act, whether in respect of the entire turnover of sales effected by way of works contract or in respect of any portion of the turnover corresponding to individual works contract, pay lump-sum by way of composition,-*
>
> *(a) equal to five per cent. of the total contract value of the works contract in the case of a construction contract, and*
>
> *(b) eight per cent. of the total contract value of the works contract in any other case, after deducting from the total contract value of the works contract, the amount payable towards sub-contract involving goods to a registered sub-contractor.*
>
> *Explanation.-For the purposes of this sub-section,-*
>
> *(i) "construction contract" shall mean construction contract as may be notified by the State Government in the Official Gazette, from time to*



::: Uploaded on - 27/07/2017 ::: Downloaded on - 26/06/2024 07:29:51 :::

HIGH COURT OF JUDICATURE AT BOMBAY


*time, and*

*(ii) "the amount payable towards sub-contract involving goods" means the aggregate value of the goods on which tax is paid and the quantum of said tax paid by the sub-contractor or the sub-contract value on which tax by way of composition is paid by the sub-contractor, as the case may be.*

10 The reference is also made to Notification issued under same Section (A) and (B) which are as under:-

***Notification***

*No VAT.1506/CR-134/Taxation-1-In exercise of the powers conferred by clause (I) of the Explanation to sub-section (3) of Section 42 of the Maharashtra Value Added Tax Act, 2002 [Mah. IX of 2005], the Government of Maharashtra hereby notifies the following works contracts to be the 'Construction contracts' for the purposes of the said sub-section, namely-*

*(A) Contracts for construction of,-*

*(1) Buildings,*
*(2) Roads,*
*(3) Runways,*
*(4) Bridges, Railway overbridges,*
*(5) Dams,*
*(6) Tunnels,*
*(7) Canals,*
*(8) Barriages,*
*(9) Diversions,*
*(10) Rail tracks,*
*(11) Causeways, Subways, Spillways,*
*(12) Water supply schemes,*



::: Uploaded on - 27/07/2017 ::: Downloaded on - 26/06/2024 07:29:51 :::

HIGH COURT OF JUDICATURE AT BOMBAY


*(13) Sewerage works,*
*(14) Drainage,*
*(15) Swimming pools,*
*(16) Water Purfication plants and*
*(17) Jettys*

*(B) Any works contract incidental or ancillary to the contracts mentioned in paragraph (A) above, if such work contracts are awarded and executed before the completion of the said contracts.*

11 The trade circular No. 24T of 1999 dated 31 August 1999 based upon Section 6B of Works Contract Act, 1989 (for short, "WC Act") was noted. The clarification is reproduced as under:-

*"Hence, clarifications were being issued. In point no.4, the following query and clarification has been given.*

*"4) Repairs, reconstruction and maintenance to building etc. are construction contacts*

*Queries have been received as to whether the contract of repair, reconstruction and maintenance to buildings, roads, drainage etc. will fall under the 'Construction Contracts'.*

*In this regard, it is clarified that the Works Contract of repair, reconstruction and maintenance of buildings, dams, bridges, canals and barrage etc. will be covered under the expression of 'Construction Contract."*

12 Section 6A of WC Act its explanation dated 1 January 2000 made the position clear that *"For the purpose of this sub-section,*



::: Uploaded on - 27/07/2017 ::: Downloaded on - 26/06/2024 07:29:51 :::

HIGH COURT OF JUDICATURE AT BOMBAY


*the expression "construction contract" shall mean such contract as may be notified by the State Government from time to time."* The Commissioner, however, not accepted the case by referring to the circulars.

13 It is necessary to note that under the WC Act, referring to Section 6A(1) a similar notification dated 8 March 2000 was in existence, referring to the contract for construction of "building". Similar clause (B) of notification under MVAT Act dated 30 November 2006 was in existence under Section 42(3) Explanation. The Trade circular was in existence about the repair, reconstruction and maintenance to buildings, dams, bridges, canals and barrages would be covered under the expression of "Construction Contract", though it was for the purpose of amnesty scheme. This undisputed position on record shows the consistent stand and interpretation even of the Department that the "Construction Contract" includes the repair and reconstruction and maintenance of building. There is no contra circular and/or material available placed on record in this regard. The circulars and the practice so adopted by the Department since long, ought not to have been overruled while rejecting the case/claim of the



::: Uploaded on - 27/07/2017 ::: Downloaded on - 26/06/2024 07:29:51 :::

HIGH COURT OF JUDICATURE AT BOMBAY


Appellant.

14 Therefore, considering the scheme and purpose of Section 42(3)(i) and notification dated 30 February 2006 under the MVAT Act, we are of the view that the 'Works Contract' in question, would be the 'Construction Contract'. the contract for construction of buildings includes the repairing, reconstruction and maintenance of building etc. This is also for the reason that there is no distinguishing features and definitions and/or intention reflected in any provisions about the nature of buildings, whether it is new building or old building. The word “new” or “old” so observed in the impugned order as not specifically defined or explained anywhere, cannot be added by giving such restrictive interpretation to the provisions and the notification in question. The term “Building” cannot be restricted only to the new building specifically when, as per the practice and the explanation so given in similarly placed provisions under the WC Act and the notification explaining the term so referred above. Inspite of the earlier provisions and the interpretation so given, there is no reason to overlook the same specifically when, there is no further clarification and/or provisions brought on record to supersede and/or take away



::: Uploaded on - 27/07/2017 ::: Downloaded on - 26/06/2024 07:29:51 :::

HIGH COURT OF JUDICATURE AT BOMBAY


the clarification so issued by the Commissioner at the relevant time. The repairing and/or reconstruction, if part of Construction Contract, which in normal parlance and/or understanding, cannot be read to mean that the construction contract refers under these provisions only for the new building. It is unacceptable and there is no rational and/or justification for want of specific provisions of such interpretation.

15 Clause B of the notification makes the position clear that any works contract incidental or ancillary to the contracts mentioned in paragraph (A) i.e. for the purposed of contracts for “Construction of Building”, if such Works Contracts are also awarded and executed before the completion of the main contract, falls within the ambit of Section 42(3) clause (i) of the MVAT Act for all the purposes.

16 The basic requirement that such incidental or ancillary contract must be awarded and/or proceeded and/or completed along with the construction of building. In the present case, as the repairs and reconstruction falls within the ambit of 'Construction Contract', in incidental or ancillary contract so awarded before the completion of



::: Uploaded on - 27/07/2017 ::: Downloaded on - 26/06/2024 07:29:52 :::

HIGH COURT OF JUDICATURE AT BOMBAY


the contract, it also falls within the ambit of these provisions for all the purposes. Therefore, the repair and the reconstruction of the buildings includes such incidental or ancillary work. Such related and ancillary work needs to be given an equal treatment.

17 The identical notification under the erstwhile Bombay Sales Tax Act, 1959, dated 8 March 2000 and further notification/circular under the extension of minutes 1998, dated 6 January 2000 under the WC Act giving consistent explanation that Works Contract of repairs and reconstruction and maintenance of the building etc. shall be covered under the explanation of expression of "contract" in our view, make the interpretation, which is in support of the consistent intention of the statute. The interpretation so put in by the Authorities, in our view, therefore, is wrong and contrary to the law.

18 The two notifications and interpretations so given, was in existence since long. Merely because there is no fresh notification and/or explanation issued under the Act, that itself cannot be the reason to overlook the same with observation that, as there is no



::: Uploaded on - 27/07/2017 ::: Downloaded on - 26/06/2024 07:29:52 :::

HIGH COURT OF JUDICATURE AT BOMBAY


afresh explanation given under the Act. Those earlier notifications ought to have been read to interpret similar and same identical notification and the term. We are not accepting the case of the Tribunal in this regard. The Tribunal is bound by the notifications so issued, specifically when those notifications are referring to the identical situation and granting benefits to the Works Contract of repair, reconstruction and maintenance of building. As legally and even otherwise also, it is difficult to dissect and reflect the "Construction Contract" only for stating "new building" and not applicable to the "old building".

19 The concept "Works Contract" is defined and explained under Articles 286 (1), (2) and (3) and 366(29-A) of the Constitution of India and further elaborated in *Builders Association of India and Ors. Vs. Union of India & Ors.*[1]. Therefore, the contract in question of repairing or reconstruction, falls within the ambit of "Construction contract" of building. All ingredients of works contract of repair and reconstruction are applicable. Therefore, there is no reason to not to grant the benefits to the Appellant and/or such similarly placed

1 [1989] 73 STC 370 (SC)



::: Uploaded on - 27/07/2017 ::: Downloaded on - 26/06/2024 07:29:52 :::

HIGH COURT OF JUDICATURE AT BOMBAY


persons, of Section 42(3) (A), as the Works Contract is in case of Construction Contract.

20 We are inclined to observe that, in absence of any specific contra notifications, we are of the view that the Appellant has made out a case to interpret the provisions in favour of assessee-Appellant. The statute, its object and background of provisions, required to be kept in mind and so also the notification/circulars/explanation given by the Authorities are in existence since long. The Appellant themselves also, in the background that based upon the then existing interpretation and the long existing practice, has collected VAT only at 5%. Therefore, the demand so raised and/or denying the claim is unsustainable.

21 The ratio of the Judgment so referred in *M/s. Bansal Wire Industries Ltd. & Anr. Vs. State of U. P. & Ors. dated 26 April 2011, (SLP (C) No. 21999 of 2010)* was not properly extended. On the contrary, this supports the case of the Appellant that-

> *"**It is as settled principle of law that the words used in the section, rule or notification should not be rendered redundant and should be given effect to. It is also one of the cardinal principles***



::: Uploaded on - 27/07/2017 ::: Downloaded on - 26/06/2024 07:29:52 :::

HIGH COURT OF JUDICATURE AT BOMBAY


> ***of any statute that same meaning must be given to the words used in the section or notification."***
>
> *(2) In the case of* ***Union of India v/s Hansoli Devi reported in (2002) 7 SCC 273*** *wherein Hon'ble Supreme Court held that-*
>
> ***"It is a cardinal principle of construction of a statute that when the language of the statute is plain and unambiguous, the court must give effect to the words used in the statute. Besides, in a taxing Act one has to look merely at what is clearly said and there is no room for any intendment. In a taxing statute nothing is to be read in, nothing is to be implied, one can only look fairly at the language used."*** *(emphasis supplied).*

22 The Judgments, so cited by the learned Counsel appearing for the Respondent in support of the Department, are also of no assistance as the position of law, with regard to the interpretation of fiscal statute and/or interpretation of law, needs no discussion, as it is settled. The insistence on the word "family" is also of no assistance, in view of the reasons so recorded above and in view of the erstwhile provisions of law and the interpretation so given by the Department for more than 15 years whereby, the "Construction Contract" of building includes its repair, reconstruction and maintenance. The Division Bench of this Court vide order dated 6 May 2016 in Sales Tax Reference No. 55 of 2014 in the case of *M/s. Permasteelisa (India) Pvt.*



::: Uploaded on - 27/07/2017 ::: Downloaded on - 26/06/2024 07:29:52 :::

HIGH COURT OF JUDICATURE AT BOMBAY


Ltd. Vs. State of Maharashtra & Ors. is also of no assistance, though reference to the same notification, as that was not contract for construction of building, but it was construction of Glass Walls.

23 The concept and its utility of works contract is settled by Supreme Court in the case of ***Kone Elevator India Private Limited vs. State of Tamil Nadu*** reported in ***2014 (7) SCC 1.***

> ***62.*** ……
> *"**5.** ……. Therefore, in judging whether the contract is for a "sale" or for 'work and labour', the essence of the contract or the reality of the transaction as a whole has to be taken into consideration. The predominant object of the contract, the circumstances of the case and the custom of the trade provide a guide in deciding whether transaction is a "sale" or a "works contract". Essentially, the question is of interpretation of the 'contract'. It is settled law that the substance and not the form of the contract is material in determining the nature of transaction. No definite rule can be formulated to determine the question as to whether a particular given contract is a contract for sale of goods or is a works contract. Ultimately, the terms of a given contract would be determinative of the nature of the transaction, whether it is a "sale" or a "works contract". Therefore, this question has to be ascertained on facts of each case, on proper construction of terms and conditions of the contract between the parties."*

24 In the construction of Industrial building/real estate, the term "construction" itself means construction, alteration or repair of building structures or other real property. This includes, but not



::: Uploaded on - 27/07/2017 ::: Downloaded on - 26/06/2024 07:29:52 :::

HIGH COURT OF JUDICATURE AT BOMBAY


limited to improvements of all types such as bridges, dams, plants, highway-street, railway, airport, canals, channels. Above meaning has been recognized in practice and explained under the related law, since long. There is no specific artificial definition brought in force by this Act/notification. Therefore, above meaning, in our view, still hold the field. Therefore, the law needs to be interpreted accordingly.

25 We are not concerned with the manufacture, production, construction or assembling of vessels, aircrafts or such kind of personal property. We are also not concerned with the sale of goods or manufacture or production of goods or service, separately. We are concerned with the construction of building, which falls within the concept "Works Contract" of repair/alteration of building.

26 The building and other related items so added in the definition, itself make the position clear that any construction of building if repairs or alters from 2006, it will liable to 5% tax and not 8%. Therefore, not granting benefit of 5% tax to the Appellant is contrary to law. This tax is applicable to repairing or re-alteration to the old building, bridge and road also.



::: Uploaded on - 27/07/2017 ::: Downloaded on - 26/06/2024 07:29:52 :::

HIGH COURT OF JUDICATURE AT BOMBAY


27 In the present case, the terms "Works Contract" of repair and reconstruction and "Contract of Construction" of building, include repairs and reconstruction, have been in existence for more than 15 years. There is no contra material to dislodge the same. Therefore, the impugned order so passed, requires interference. The question so raised are answered positive accordingly.

28 Hence, the following order.

**ORDER**

a) The Appeal is allowed.

b) Question No.1 is answered in Positive in favour of the Appellant.

c) Question No. 2 is answered in the negative against the Respondent.

d) There shall be no order as to costs.

The parties to act on the basis of an authenticated copy of this order.

**(ANUJA PRABHUDESSAI, J.)** **(ANOOP V. MOHTA, J.)**



::: Uploaded on - 27/07/2017 ::: Downloaded on - 26/06/2024 07:29:52 :::