

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SALES TAX REFERENCE NO.2 OF 2009

IN

REFERENCE APPLICATION NO.96 OF 2006

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

... Applicant

v/s

M/s Bajaj Tempo Ltd.,
Mumbai Pune Road,
Akurdi, Pune 411 035

... Respondent

Mrs Uma Palsuledesai, Assistant Government Pleader for Applicant.
Mr P.C. Joshi for Respondent.

**CORAM : S.C.DHARMADHIKARI AND
B.P. COLABAWALLA JJ.**

Reserved on : 16th August, 2016.

Pronounced on : 23rd August, 2016

Judgment (Per B.P. Colabawalla J.) :-

1. By this Reference, the First Bench of the Maharashtra Sales Tax Tribunal at Mumbai (for short, **"the MSTT"**) has referred the following questions of law for a decision of this Court under section 61 of the Bombay Sales Tax Act, 1959 (for short, **"the BST Act"**) :-

- (I) Whether on the facts and in the circumstances of the case and on a true and correct interpretation of the definition of the word 'Purchase Price' in section 2(22) of the Bombay Sales Tax Act, 1959 read with Explanation-I added to the said definition, the Tribunal was justified in law in holding that the word 'Purchase Price' referred to in sub-rule 3(a) of rule 41D will not include the amount of Customs Duty paid or payable under the Customs Act, 1962 by the Respondent?
- (II) Whether on the facts and in the circumstances of the case and on a true and correct interpretation of Explanation-I to section 2(22) added with effect from 1/9/1990 when the sub-clause 2 of sub-rule 3 of Rule 41D specifically provides reduction of 3 % of the purchase price of goods covered under section 75, the Tribunal was justified in law in holding that the term 'Purchase Price' is applicable only to the purchases effected within the State and is not applicable to the purchases covered by section 75?

2.

The real controversy in the present Reference is whether the customs duty paid by the Respondent herein (M/s Bajaj Tempo Ltd.) on goods imported by it from out of the country, and which are used in the manufacture of their vehicles, should be included in the definition of the words “purchase price” as set out in section 2(22) of the BST Act.

3. The brief facts giving rise to the present controversy are that the Respondent herein (M/s Bajaj Tempo Ltd.) is a manufacturer of motor vehicles, especially three-wheelers and parts thereof. It is duly registered under the provisions of the BST Act as also the Central Sales Tax Act, 1956 (for short, **"the CST Act"**). The Respondent has its factory in Maharashtra and branches in other States. The vehicles manufactured by the Respondent are sold in and from Maharashtra as also transferred to branches in other States for sale over there.

4. For the financial year 1998-99, the Repondent herein was assessed under the BST Act and which gave rise to an assessment order dated 28th January, 2002 passed by the Senior Assistant Commissioner of Sales Tax (Assessment), A-22, Pune Division, Pune. This assessment resulted in a refund of around Rs.15.31 lacs to the Respondent.

5. Being aggrieved by the Assessment Order on various grounds, the Respondent herein filed an Appeal against the same before the Appellate Deputy Commissioner of Sales Tax (Appeals) 2, Pune Division, Pune. After hearing the parties, the Appellate Deputy Commissioner of Sales Tax passed his order dated 23rd July 2003

thereby partly allowing the Appeal filed by the Respondent herein.

6. Still not satisfied with the partial relief granted in the First Appeal, the Respondent herein filed a Second Appeal No.2203 of 2003 before the MSTT. In the Second Appeal filed before the MSTT, three grounds were pressed on behalf of the Respondent herein as more particularly set out in paragraph 4 of the order and judgment dated 10th February, 2006 passed by the MSTT. As far as we are concerned, it is only one ground which is germane to decide the present controversy which reads as under :-

“The lower authorities have erred in holding the customs duty paid by the Appellant himself as part of the purchase price of the imports effected by him and accordingly in making reduction in the set off under rule 41D of the Bombay Sales Tax Rules, 1959 ('Bombay Rules') with reference of such purchase price of the imports.”

7. After hearing both sides on this particular issue, the MSTT in paragraphs 10 and 11 of its judgment dated 10th February, 2006 inter alia held that the situs of the purchase and import was not within the State and therefore such purchases are not a “purchase” as defined in BST Act. According to the MSTT, it thus clearly followed that the term “purchase price” as defined under section 2(22) thereof was applicable only to purchases made within the State. It would not be applicable to purchases covered by section 75 of the BST Act, was the finding of the MSTT.

8. Since the Revenue was unhappy with this decision, they preferred a Reference Application No.96 of 2006 requesting the MSTT to refer the above referred questions of law for determination of this Court. The MSTT, after hearing the parties, by its order and judgment dated 11th August, 2006 was pleased to refer the questions of law set out in paragraph 1 above, for determination of this Court. It is in these circumstances that the present matter has come up before us.

9. In this factual backdrop, Ms Uma Palsuledesai, learned Assistant Government Pleader, appearing on behalf of the Applicant, contended that “purchase price” has been defined in section 2(22) of the BST Act. It means the amount of valuable consideration paid or payable by a person for any purchase made, including any sum charged for anything done by the seller in respect of the goods at the time of or before delivery thereof. She submitted that Explanation I to the said definition categorically states that the amount of duties levied or leviable on goods inter alia under the Customs Act, 1962 shall be deemed to be a part of the “purchase price” for such goods. Laying heavy stress on this Explanation, the learned Assistant Government Pleader contended that on a true and correct interpretation of the definition of “purchase price” read with

Explanation I thereto, the same would clearly include the amount of customs duty paid or payable under the Customs Act, 1962. This being the case, Ms Palsuledesai contended that the submission made on behalf of the Respondent that only the cost of material purchased from outside the country should be considered while reducing set off under Rule 41D, is without any substance. According to her, while effecting the purchase of the said goods from abroad, the Respondent herein had to pay customs duty. As per the definition of the word "purchase price" [section 2(22) of the BST Act], and more particularly Explanation I thereto, the amount of duties levied or leviable under the Customs Act 1962, were deemed to be a part of the purchase price of such goods. For all the aforesaid reasons, she submitted that the questions of law as set out in paragraph 1 above be answered in the negative and in favour of the Revenue / Applicant.

10. Before we deal with the present controversy, it would be necessary to set out a few provisions of the BST Act. Firstly, section 2(22) of the BST Act defines "purchase price" which reads thus:-

"2. Definitions – In this Act, unless the context otherwise requires, –

(22) "purchase price" means the amount of valuable consideration paid or payable by a person for any purchase made include any sum charged for anything done by the seller in respect of the 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.

Explanation I – For the purposes of this clause, the amount of duties levied or leviable on goods under the Central Excise and Salt Act 1944, or the Customs Act, 1962 or the Bombay Prohibition Act, 1949 shall be deemed to be part of the purchase price of such goods, whether such duties are paid or payable by or on behalf of the seller or the purchaser or any other person;

Explanation II – Purchase price shall not include sales tax, (turnover tax, surcharge and resale tax) paid or payable by a person in respect of any such purchase;”

11. As can be seen from the definition, “purchase price” means the amount of valuable consideration paid or payable by a person for any purchase made, including any sum charged for anything done by the seller in respect of the 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. Explanation I to the said definition stipulates that for the purposes of this clause, the amount of duties levied or leviable on goods under the Central Excise and Salt Act, 1944 or the Customs Act, 1962 or the Bombay Prohibition Act, 1949 shall be deemed to be part of the purchase price of such goods, whether such duties are paid or payable by or on behalf of the seller or the purchaser or any other person. Explanation II stipulates that the purchase price shall not include sales tax, turnover tax, surcharge and resale tax paid or payable by a person in respect of any such purchase.

12. Thereafter, the word “sale” has also been defined in section 2(28) which reads as under :-

“2. Definitions – In this Act, unless the context otherwise requires, –

(28) 'sale' means a sale of goods made within the State for cash or deferred payment or other valuable consideration and includes any supply by a society or club or an association to its members on payment of a price or of fees or subscription but does not include a mortgage, hypothecation, charge or pledge and the words 'sell', 'buy' and 'purchase' with all its grammatical variations and cognate expressions, shall be construed accordingly.

Explanation – For the purpose of this clause -

- (a) a sale within the State includes a sale determined to be inside the State in accordance with the principles formulated in sub-section (2) of section 4 of the Central Sales Tax Act, 1956 (LXXIV of 1956);**
- (b)(i) every disposal of goods referred to in the Explanation to clause (11);**
- (ii) a delivery of goods on hire-purchase or any system of payment by installments;**
- (iii) the supply, by way of or as part of any serviced or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drinks (whether or not intoxicating, where such supply or service is made or is given on or after the 2nd day of February 1983; for cash deferred payment or other valuable consideration);**
- (iv) the transfer, otherwise than in pursuance of a contract of property in any goods for cash, deferred payment or other valuable consideration;**
- (v) the supply of goods by any unincorporated association or body of persons, to a member thereof for cash, deferred payment or other valuable consideration;**

shall be deemed to be a sale”

(emphasis supplied)

13. As can be seen from the said definition, the term “purchase” has been defined in section 2(28) with reference to the definition of the term “sale”. From the aforesaid definition, it would thus be clear that the term “purchase” for the purposes of the BST Act is a purchase made within the State. This is made further clear by the fact that whilst computing the turnover of purchase for ascertaining the liability for registration under section 3, or for ascertaining the leviability of additional tax under section 15AI, or the turnover tax under section 9, only the purchases which are effected within the State have to be taken into consideration. As far as taxes on purchases from another State or purchases in the course of imports, the same are covered by section 75 of the BST Act. Section 75 reads thus :-

“75. Certain sales and purchases not to be liable to tax – Nothing in this Act or the rules made thereunder shall be deemed to impose or authorise the imposition of a tax on any sale or purchase of any goods, where such sale or purchase takes place -

- (a) (i) outside the State; or***
- (ii) in the course of the import of the goods into the territory of India; or the export of the goods out of such territory; or***

(b) in the course of inter-State trade or commerce,

and the provisions of this Act and the said rules shall be read and construed accordingly;

Explanation – For the purpose of this section whether a sale or purchase takes place -

- (i) outside the State, or***

- (ii) ***in the course of the import of the goods into the territory of India or export of the goods out of such territory, or***
- (iii) ***in the course of inter-State trade or commerce,***

shall be determined in accordance with the principles specified in sections 3, 4 and 5 of the Central Sales Tax Act 1956."

(emphasis supplied)

14. Section 75 clearly stipulates that nothing in the BST Act or the Rules made thereunder shall be deemed to impose or authorise the imposition of tax on any sale or purchase of any goods of which sale or purchase takes place inter alia in the course of import of the goods into the territory of India or the export of the goods outside such territory. Section 75 further provides that the provisions of the BST Act and the Rules framed thereunder shall be read and construed accordingly.

15. On a conjoint reading of the aforesaid provisions, it is clear that if the situs of the inter-State purchases and imports is not within the State then such purchases are not a "purchase" as defined under section 2(28) of the BST Act. This being a case, it would therefore logically follow that the term "purchase price" as defined in section 2(22) is applicable only to purchases made within the State and would not be applicable to purchases which take place in the course of import of the goods into the territory of India or export

of the goods out of such territory (section 75 of the BST Act). This being the clear position, as can be discerned from the statutory provisions as set out in the BST Act, the customs duty paid on the goods imported into the territory of India by the Respondent herein, cannot be held to be a part of the import purchase price for the purposes of deduction or set off under Rule 41D. We must mention here that this issue has been decided and in our view correctly so, by the MSTT in Second Appeal No.2203 of 2003. The reasoning of the MSTT can be found at paragraphs 10 and 11 of its decision dated 10th February, 2006 and we are in full agreement with the same.

16. Before parting, we must mention that the BST Act is a State Legislation and does not have extra-territorial jurisdiction. This is clear from the preamble of the Act which clearly states that this is a law (BST Act) relating to the levy of tax on the sale or purchase of certain goods in the State of Bombay. Section 1(2) of the BST Act clearly stipulates that it extends to the whole of the State of Maharashtra. This is yet another factor which would persuade us to hold that the customs duty paid on purchases which take place in the course of import of goods into the territory of India can never be included in the definition of “purchase price” of the said goods.

17. Accordingly, both the questions of law referred to this

Court by the MSTT and more particularly set out in paragraph 1 above, are answered in the affirmative and in favour of the Respondent. The Sales Tax Reference is disposed of in the aforesaid terms. However, in the facts and circumstances of the case, there shall be no order as to costs.

(B.P. COLABAWALLA J.)

(S.C.DHARMADHIKARI J.)