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

SALES TAX REFERENCE NO. 8 OF 2009

M/s Kirloskar Oil Engines Ltd.
Laxmanrao Kirloskar Road,
Khadki, Pune 411 003 ...Applicant.

vs

The Commissioner of Sales Tax
Maharashtra State, Vikrikar Bhavan
8th floor, Mumbai 400 010. ...Respondent.

WITH

SALES TAX REFERENCE NO. 9 OF 2009

M/s Kirloskar Oil Engines Ltd.
Laxmanrao Kirloskar Road,
Khadki, Pune 411 003 ...Applicant.

vs

The Commissioner of Sales Tax
Maharashtra State, Vikrikar Bhavan
8th floor, Mumbai 400 010. ...Respondent.

WITH

SALES TAX REFERENCE NO. 10 OF 2009

M/s Kirloskar Oil Engines Ltd.
Laxmanrao Kirloskar Road,
Khadki, Pune 411 003 ...Applicant.

vs

The Commissioner of Sales Tax
Maharashtra State, Vikrikar Bhavan
8th floor, Mumbai 400 010. ...Respondent.

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Mr P.V.Surte a/w Mr Subhash Surte i/b M/s P.V.Surte & Co. for the Applicant in all references.

Mr V.A.Sonpal, Special Counsel for the Respondent -State.

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**CORAM : S. C. DHARMADHIKARI &
B.P.COLABAWALLA, JJ.**

Reserved On : 13th December, 2016

Pronounced On : 28th February, 2017.

JUDGMENT:- [Per B. P. COLABAWALLA J.]

1. By these three Sales Tax References, a larger bench of the Maharashtra Sales Tax Tribunal, Mumbai (for short the **"MSTT"**) has referred the following question of law for an opinion of this Court under Section 61 of the Bombay Sales Tax Act, 1959 (for short the **"BST Act"**). These references have been preferred at the instance of the applicant – assessee. The question of law referred for our opinion is as under:-

"Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that the bearings sold by the Applicant were covered by Entry C-II-146 of the Bombay Sales Tax Act, 1959 and not by Entry C-II102(2) as auto parts and C-II-135 as tractor parts read with Entry A-35 of the Notification

issued under Section 41 of the Bombay Sales Tax Act, 1959?"

2. The question of law referred for our answer is identical in all the three references. The only reason why three references have been preferred is because they relate to three different years, namely, financial years 1996-97; 1997-98 and 1998-99. Since, the facts are identical and so is the question of law, before we analyze the relevant entries in the Schedule to the BST Act, we would like to advert to some brief facts. They are as follows:-

- (a) It is the case of the applicant that it is engaged in the business of manufacture and sale of oil engines, and parts thereof. Over and above this, it also undertakes manufacture of bearings required by the manufacturer of automobiles and agricultural tractors. These bearings are manufactured as per the drawings and designs supplied by the said manufacturers.
- (b) Accordingly, the applicant manufactured bearings for motor vehicles and agricultural tractors. According to the applicant these bearings were parts of motor vehicles and parts of tractors, and therefore, classified them

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under entries C-II-102(2) and C-II-135 read with the Notification Entry A-35, respectively. It accordingly, charged sales tax at the rate of 8% and 4% respectively. However, the Assessing Officer, for the period 1.4.1996 to 31.3.1997 levied sale tax on these bearings at 13% by classifying them under Entry C-II-146. Similarly, for the period 1.4.1997 to 31.3.1999, the Assessing Officer levied tax at 8% as mentioned earlier. This was done on the basis that bearings fell under Entry C-II-146 whether they were supplied as parts of a motor vehicle or parts of an agricultural tractor.

- (c) Being aggrieved by this, the applicant approached the Deputy Commissioner of Sales Tax (Appeals) Pune. This Appellate Authority confirmed the assessment for the reasons more particularly set out in its detailed order. Thereupon, the applicant filed second appeals before the MSTT. Since, the MSTT was of the opinion that there were conflicting decisions of the Tribunal in the case of M/s Auto Enterprises and M/s Menon Bearings Ltd. respectively, it referred the matter to the larger bench. Finally, on 21st August, 2007, the larger bench decided

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the issue against the applicant and thereupon the first bench of the MSTT decided the appeals of the applicant on 16th November, 2007 holding against the applicant (as per the decision and ratio of the larger bench).

- (d) Being aggrieved by the decision of the MSTT holding that the bearings sold as parts of motor vehicles as well as parts of agricultural tractors are liable to tax at 13% (for F.Y. 1996-97); at 8% (for F.Y. 1997-98) and again at 13% (for F.Y. 1998-99), the applicant filed three Reference Applications before the larger bench of the MSTT. The MSTT, after hearing both sides was *inter alia* of the opinion that, since there were contradictory views taken by two benches of the Tribunal, the matter was debatable and hence the request of the applicant to refer the matter as a question of law was required to be accepted. It is, in these circumstances, that the three references mentioned above have been forwarded to the High Court for an answer on the question set out by us earlier.

3. In this factual backdrop, Mr Surte the learned counsel appearing for the applicant – assessee, submitted that Entry C-II-

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102(2) refers to components and parts of vehicles specified in sub-Entry (1), which refers the motor-vehicles and attracts tax at 10% with effect from 1st October, 1995. This rate of tax is reduced to 8% for the period from 1st April, 1997 to 31st March, 1999, under Entry 62 of Group-A of the Notification issued under Section 41 of the BST Act. He submitted that bearings are admittedly parts of a motor vehicle. It is required to be manufactured as per the drawings and design supplied by the original Equipment Manufacturer. According to Mr Surte, it is not capable of being used even for any other make of a particular vehicle.

4. Similarly, Mr. Surte also submitted that Entry C-II-35 refers to machinery operated by electricity or any other power and components and accessories thereof, but excluding the machinery specified in any other Entry of this schedule. In this Entry, for the period 1st October, 1995 to 30th April, 1998, tax is attracted at 13%. However, this rate of tax is reduced to 4% in respect of the sales of components, parts and accessories of agricultural tractors for the period 1st October, 1995 to 14th August, 1998 under Entry 35 of Group-A of the Notification issued under Section 41 of the BST Act. He submitted that what is important to note is that Notification Entry A- 35 (which relates to sales of components, parts and accessories of

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agricultural tractors) was amended on 15th August, 1998. By virtue of this amendment, the sales of bearings, tyres and tubes were specifically excluded from the aforesaid Entry. He, therefore, submitted that prior to 15th August, 1998, there was intrinsic evidence to show that the sales of bearings as components, parts and accessories of agricultural tractors, clearly fell within the purview of Notification Entry A-35.

5. Mr Surte submitted that on the other hand, Entry C-II-146 refers to bearings of all types including ball bearings or roller bearings and attracted tax at 13%. This rate of tax was reduced to 8% for the period 1st April, 1997 to 31st March, 1999 under Entry-65 of Group-A of the Notification issued under Section 41 of the BST Act. Mr. Surte submitted that the applicant's bearings were sold to motor vehicle manufacturers like M/s Telco Ltd., M/s Maruti Udyog Ltd., M/s Bajaj Ltd. etc. and to tractor manufacturers like M/s Mahindra & Mahindra Ltd. and M/s Escorts Ltd. etc. He therefore submitted that the bearings sold by the applicant were parts of a motor vehicle and/or an agricultural tractor and had to be classified under entries C-II-102(2) (as parts of a motor vehicle) and C-II-135 read with the Notification Entry A-35 (as parts of an agricultural tractor). In other words, Mr. Surte contended that the bearings sold by the applicant

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had to be assessed to tax as auto parts or as the case may be, tractor parts, notwithstanding Entry C-II-146 which specifically dealt with all types of bearings. He submitted that the Assessing Officer as well as other authorities below had totally misinterpreted the aforesaid entries by classifying the bearings sold by the applicant under Entry C-II-146. It is, in these circumstances, Mr Surte submitted that the question of law framed for our opinion ought to be answered in the negative and in favour of the applicant and against the Revenue.

6. On the other hand, Mr Sonpal, learned counsel appearing on behalf of the Revenue, sought to support the orders passed by the authorities below. He submitted that Entry C-II-146 covered bearings of all types and being a specific Entry with reference to all types of bearings, the Assessing Officer as well as the authorities below had correctly classified the bearings sold by the applicant under Entry C-II-146. He submitted that there being a specific Entry with reference to bearings, it was irrelevant whether the sale of those bearings was effected as parts of a motor vehicle or parts of an agricultural tractor, as sought to be contended by the applicant. In support of this proposition, Mr Sonpal placed reliance on a decision of the Supreme Court in the case of the **State of Maharashtra Vs.**

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Bradma of India Ltd.¹ Relying upon the aforesaid decision, Mr Sonpal submitted that a specific Entry in the schedule to a taxing statute would override a general Entry. Resort has to be had to the residuary or general Entry only when a liberal construction of the specific Entry cannot cover the goods in question.

7. In the facts of the present case, Mr Sonpal submitted that Entry C-II-146 was a specific Entry relating to all types of bearings. This being the case, there was no question of classifying the bearings sold by the applicant to the motor vehicle manufacturers as auto parts, or to tractor manufacturers as tractor parts. There being a specific Entry in the taxing statute for bearings, the same had to be classified under the specific Entry namely, Entry C-II-146. In these circumstances, Mr Sonpal submitted that the question of law referred for our opinion be answered in affirmative and in favour of the Revenue and against the applicant – assessee.

8. We have heard the learned counsel for parties at length and perused the papers and proceedings in all the aforesaid three references. Before we deal with the rival contentions, it would be necessary to set out the relevant entries that would arise for our

¹ (2005) 2 SCC 669 : [2005] 140 STC 17

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consideration. Schedule Entry C-II-102 reads as under:-

Entry	Description of the goods	Rate	Period
102(1)	Motor vehicles including motor cars and motor vehicles primarily designed for the transport of persons or goods, public transport type passenger motor vehicles, special purpose motor vehicles other than those principally designed for transport of persons or goods; motorcycles (including scooters and mopeds and cycles fitted with auxiliary motor, with or without sidecars), chassis of motor vehicle and bodies or tanker built or meant for mounting on chassis of motor vehicles, but excluding tractors specifically designed for agricultural use.	10 per cent	01.04.1996 to 31.03.1999
102(2)	Components and parts of vehicles specified in sub-entry (1)	10 Percent	01.04.1996 to 31.03.1999

9. As can be seen from the aforesaid Entry, it deals with motor-vehicles including motor cars and motor vehicles primarily designed for the transport of persons or goods etc. The same includes scooters, mopeds and cycles fitted with an auxiliary motor, with or without sidecars. However, it specifically excludes tractors designed for agricultural use. As far as Schedule Entry 102(2) is concerned, it deals with components and parts of vehicles specified in sub-Entry (1). It is relying upon Entry C-II-102(2) that Mr Surte would contend that bearings sold by the applicant to motor vehicle manufacturers

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would fall within the aforesaid sub-Entry as it covers components or parts of a motor vehicle.

10. The next entries that we would like to make a note of is Schedule Entry C-II-135 and Notification Entry No.A-35. They read as under:-

Entry	Description of the goods	Rate	Period
135	Machinery operated by Electricity or any other power but excluding machinery specified in any other entry of this schedule and components, parts accessories thereof	13 per cent	01.04.1996 to 30.04.1998
135	Machinery operated by Electricity or any other power and components, parts and accessories thereof but excluding machinery & component, parts and accessories thereof specified in any other entry in this schedule	13 per cent	01.05.1998 to 31.03.1999
Notifica tion Entry A- 35	Sales or purchases by a registered dealer of tractors specifically designed for agricultural use and components, parts and accessories thereof covered by entry 135 of Part-II of Schedule C	4 per cent	01.04.1995 to 14.08.1998
Notifica tion Entry A- 35	Sales or purchases by a registered dealer of tractors specifically designed for agricultural use and components, parts and accessories thereof (excluding bearing tyres and tubes) covered by entry 135 of Part-II of Schedule C	4 per cent	15.08.1998 to 31.12.1999

11. On a plain reading of these entries, it is clear that they apply to machinery operated by electricity or any other power but

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excluding machinery, components, parts and accessories specified in any other Entry in this Schedule. Notification Entry A-35 deals with the sale or purchases by a registered dealer of tractors specifically designed for agricultural use and the components, parts and accessories thereof covered by Entry C-II-135. Relying upon the aforesaid two entries, Mr Surte would contend that the bearings sold by the applicant - assessee to tractor manufacturers such as M/s Mahindra & Mahindra Ltd. and M/s Escorts Ltd. would fall under this Notification Entry No. A-35, and therefore, liable to tax at four per cent. To buttress this argument, Mr Surte contended that Entry A-35 was amended in the year 1998. It was only then that bearings, tyres and tubes were specifically excluded from the said Entry. Placing heavy reliance upon this amendment, Mr Surte contended that this was intrinsic evidence to show that bearings sold by the applicant - assessee to tractor manufacturers such as M/s Mahindra & Mahindra and M/s Escorts Ltd., prior to 15 August, 1998, would fall within the Notification Entry No. A-35 and would, therefore, be taxed at four per cent.

12. The last entries that we need to make a note of is Schedule Entry C-II-146 and Notification Entry No. A-65 which read thus:-

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Entry	Description of the goods	Rate	Period
146	Bearings of all types including Ball or Roller Bearings	thirteen percent	01.04.1996 to 31.03.1999
Notification Entry A-65	Sales or purchases by a registered dealer of bearings covered by Entry 146 in Part – II of Schedule C for the period ending 31.03.1999	eight percent	01.04.1997 to 31.03.1999

13. As can be seen from the aforesaid Entry C-II-146, bearings of all types including Ball or Roller bearings are covered under the aforesaid Entry. The Notification Entry A-65 reduces the tax of sales or purchases by a registered dealer of bearings covered by Entry 146 to eight per cent for the period 1.4.1997 to 31.03.1999. According to the Revenue, the bearings sold by the applicant – assessee would have to be classified under the aforesaid two entries.

14. Having noted aforesaid entries, in the facts of the present case, it is the case of the applicant that these bearings are manufactured by the applicant as per the particular drawing and design of the motor vehicle and tractor manufacturers and can be used exclusively in the said motor vehicles or tractors. They are auto parts or tractor parts of motor vehicles and tractors respectively. These bearings have exclusive use or application in the motor vehicle, or as the case may be in the tractor and they have no general

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application in practice other than in motor vehicles and/or tractors. It is, in these circumstances, that the applicant would contend that these bearings would classify as auto parts or as the case may be, tractor parts for the purpose of levy of sales tax.

15. We are unable to agree with the submissions of the applicant on this point. As far as the bearings are concerned, there is special Entry which deals with bearings of all types including Ball or Roller bearings. This Entry is Schedule Entry C-II-146. There being a specific / special Entry for bearings (Entry C-II-146), we are unable to hold that the bearings sold by the applicant would fall either under Entry C-II-102(2) [as a components, parts of a motor vehicle] or under Entry C-II-135 read with the Notification Entry A-35 [as a components and/or parts of tractors specifically designed for agricultural use]. When there is a specific Entry in the schedule to a Taxing Statute, the same would override a general Entry. In fact, resort should be taken to the general Entry only when a liberal construction of the specific Entry would not cover the goods in question. As far as bearings sold by the applicant are concerned, it can hardly be disputed that Entry C-II-102(2) and C-II-135 read with the Notification Entry A-35 would be general entries in comparison to Entry C-II-146 which specifically deals with all types of bearings.

16. The proposition that where there is a specific Entry in the schedule to a Taxing Statute, the same would override a general Entry, is very well settled and in this regard Mr Sonpal has correctly laid stress on the decision of the Supreme Court in the case of **Bradma of India Ltd.**¹ In this decision the Respondent before the Supreme Court manufactured electronic cash registers. In addition to the usual functions of a cash register, the Respondent's models performed various other functions. The question before the Supreme Court was whether such cash registers are classifiable under Entry 90 or under Entry 97(b) of part II of Schedule C of the BST Act. It is whilst construing these entries that the Supreme Court held thus:-

"6. The High Court answered the questions framed in favour of the assessee. Contrary to the opinion expressed by the Tribunal, the High Court was of the view that Entry 90 was the general entry and Entry 97(b) the special entry. Since there was no controversy that the electronic registers sold by the assessee were operated electronically, the High Court thought that it would more appropriately fall under Entry 97(b) and not under Entry 90. In arriving at this conclusion, the High Court relied upon a Bench decision of the Andhra Pradesh High Court in *State of A.P. v. Apex Agencies*[(1997) 104 STC 44 (AP)].

7. We are of the opinion that the High Court was wrong. Both the Tribunal and the High Court commonly enunciated the principle that a specific entry would override a general entry. In addition we would add, and as has been held in *CCE v. Wood Craft Products Ltd.* [(1995) 3 SCC 454] , SCC at p. 462, resort has to be had to the residuary heading only when by a liberal construction the specific heading cannot cover the goods in question. The language of Entry 97(b) clearly shows, by use of the phrase "other

¹ (2005) 2 SCC 669 : [2005] 140 STC 17

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than those specified elsewhere” that it is not only a residuary entry but also that electronic systems, instruments, etc. may be classified under other entries. Entry 90 on the other hand does not contain any words of limitation. The items mentioned therein would cover every species thereof irrespective of the mode of their operation. Cash registering machines are specifically mentioned. In the absence of any limitation or qualification as to the different kinds of cash registering machines, there is no reason to read in any such qualification and limit the entry to particular kinds of cash registering machines. It is significant that by contrast, data processing machines have expressly excluded computers. Were it not so excluded, computers would have also fallen within Entry 90. In fact computers are separately dealt with in Entry 97(a). But the exclusion of computers from data processing machines would indicate that the items mentioned in Entry 90 are generic covering all species of such items. Given the language of the two entries we fail to understand how the High Court could have come to the conclusion that Entry 97(b) was the specific entry and that Entry 90 was the general entry. Such an interpretation goes against the express language of the two entries.”

17. To our mind, the ratio of this judgment would apply to the facts of the present case with full force. Even in the facts of the present case, the Schedule Entry C-II-135 categorically states *“but excluding machinery and components, parts and accessories thereof specified in any other entry in this Schedule”*. This would clearly go to show that the Schedule Entry C-II-135 read with Notification Entry A-35, as far as bearings are concerned would be the general Entry and C-II-146 would be the specific Entry. We, therefore, find that the authorities below have correctly classified the bearings sold by the applicant under Schedule Entry C-II-146.

18. There is yet another reason why we have come to the aforesaid conclusion. Notification Entry A-35 talks about sale or purchases by a registered dealer of tractors specifically designed for agricultural use and components, parts and accessories thereof covered by Entry C-II-135. From a plain reading of the said Notification Entry, it is clear that it applies to sales or purchases only by a registered dealer of tractors specifically designed for agricultural use and the components, parts and accessories thereof. Admittedly, the applicant does not sell or purchase tractors for agricultural use and neither is it a registered dealer thereof as contemplated under Notification Entry A-35. We, therefore, additionally find that the bearings sold by the applicant to tractor manufacturers could never be classified under Notification Entry A-35 and have to be classified only under Schedule Entry C-II-146.

19. Once we have taken this view, then the amendment that was done to the Notification Entry No.A-35 in 1998 pales into insignificance. Once we find that the said Entry A-35 cannot apply to the bearings sold by the applicant, the effect of the amendment is irrelevant because the said Notification Entry itself does not apply as it stood in its original form or even after the amendment.

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20. In view of the foregoing discussions, we have no hesitation in holding that the bearings sold by the applicant would fall under Schedule Entry C-II-146. The question of law, as framed by us earlier, is therefore, answered in affirmative and against the applicant and in favour of the Revenue. All the three Sales Tax References are, therefore, answered 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)

