

(2018) 07 BOM CK 0110
In the Bombay High Court
Case No : Writ Petition No.3406 Of 2018

Empire Industries Limited

APPELLANT

Vs

State of Maharashtra And Other

RESPONDENT

Date of Decision : 26-07-2018

Acts Referred:

Maharashtra Value Added Tax Act, 2002 — Section 2(21), 6, 6A, 6B, 7, 8, 9(1), 16(6A), 54, 55, 56, 60, 61
Maharashtra Goods and Services Tax Act, 2017 — Section 10
Maharashtra Value Added Tax Rules, 2005 — Rule 53(1), 53(1A)

Citation : (2018) 07 BOM CK 0110

Hon'ble Judges : S.C. DHARMADHIKARI, J; PRAKASH D. NAIK, J

Bench : Division Bench

Advocate : A.R. Bamane, V.A. Sonpal

Final Decision : Dismissed

Judgement

S.C. Dharmadhikari, J

1. Since the above petitions involve common questions of fact and law and identical arguments were canvased by both the sides, we proceed to

dispose them of by this common judgment.

2. Rule in each of the petitions is issued. Respondents have waived service. With the consent of both the sides, the Writ Petitions are disposed of by this common judgment.

3. The challenge in these petitions is to a Trade Circular No.3T of 2018 dated 16th January 2018.

4. The prayer is that notification No.VAT 1517/C.R.136(A)/Taxation dated 13th October 2017 should be given effect to and operated from 24th

August 2017. The argument is that the Trade Circular No.3T of 2018 dated 16th

October 2018 and the Addenda 30th January 2018 enabled recovery of Value Added Tax in excess of 3%.

5. Since, the petitioner—Deepak Fertilisers and Petrochemicals Corporation Ltd., in WP No.2424 of 2018 more or less represented the common case

of parties, we take the facts from its case.

6. That company is engaged in the manufacture of fertilizers at its factory, details of which are mentioned in the cause title. These fertilizers are

thereafter subsequently sold.— The first respondent is the State of Maharashtra, whereas the respondent Nos.2,3 and 4 are the Officers and the

Authorities exercising powers under the Maharashtra Value Added Tax Act, 2002 (for short 'MVAT').— The respondent No.5 is Gas Authority of

India Limited, a company registered under the Companies Act, 1956 and has been impleaded as a respondent simply because the petitioner says that

for the purposes of manufacture of fertilizers, the petitioner purchases natural gas from respondent No.5.— This is an intra—state purchase.— The

purchase is under various gas purchase agreements. The purchase in natural gas is either utilized as fuel or as an input in the manufacture/processing

of fertilizers/chemicals.

7. With effect from 01.07.2017, the GST regime has been implemented in India.— As a matter of policy, the Central and the various State

Governments chose to leave petroleum crude, high speed diesel, motor spirit, natural gas, aviation turbine fuel and alcoholic liquor for human

consumption outside GST regime and continue to levy VAT/Central Sales Tax on the said commodities.

8. Various amendments were made to the MVAT Act vide Maharashtra Act No.XLII of 2017 to make the MVAT compatible with the GST

regime.— In and amongst the said amendments, was the insertion of Section 16(6A) into the MVAT Act which provided that any person who was

not involved in the sale of the six commodities mentioned in Para 5 above would no longer have a valid registration under the MVAT Act.—

However, the proviso to Section 16(6A) provided that any person who was affected by Section 16(6A), but wished to continue to do business in the

aforementioned six commodities would have to apply to the Respondents in the prescribed manner to have the cancellation of his registration revoked.

9. Prior to 01.07.2017, the sale of natural gas was governed by the residuary

Entry of the MVAT Act, namely, Schedule E and hence the applicable rate of tax on 30.06.2017 was 13.5%. Furthermore, the petitioner was eligible to claim set-off of the input MVAT paid by it subject to a reduction of 3% on account of the provisions of Rule 53(1) and Rule 53(1A) of the MVAT Rules. In other words, the net effective rate of MVAT on natural gas was only 3% prior to 01.07.2017 if the natural gas was consumed domestically as fuel or as an input for manufacture.

10. With effect from 01.07.2017, when any person purchased natural gas domestically, the seller would charge and collect full tax from him at the rate of 13.5%. However, since the person was no longer a dealer under the MVAT Act due to Section 16(6A), he could not claim set-off or refund of the input MVAT collected from him. Furthermore, he would be liable to pay GST on his outputs at the full rate since the GST Act only provided for adjustment of GST paid and not of VAT paid. Hence, such a person would be taxed at the full rate on his outputs without adjustment of the input tax paid by him. Whilst the effective rate of taxation on natural product prior to 01.07.2017 was 3%, the effective rate after 01.07.2017 rose to 13.5%.

11. Realizing the above, the Respondents sought to provide relief to the taxpayers. As stated earlier, the net effective rate of tax on natural gas prior to 30.06.2017 was 3%. Hence, vide Notification No.VAT 1517/CR 136(A)/Taxation 1 dated 24.08.2017, w.e.f. 24.08.2017, Entry 16 was inserted into Schedule B of the MVAT Act which made provisions for a concessional rate of 3% on the sale of natural gas. In other words, the Notification dated 24.08.2017 sought to maintain quo ante.

12. The Notification dated 24.08.2017 also provided that for a seller to be eligible to avail the 3% concessional rate, the purchasing dealer must be certified by the Respondents in Proforma A. The petitioners duly applied and received from the Respondents Proforma w.e.f. 24.08.2017 (Exhibit F of WP No.2424 of 2018 and Exhibit F of W.P. No.2430 of 2018).

13. However, unfortunately, it is submitted that there existed anomaly in the Notification dated 24.08.2017. While subclause(i) of Entry 16 used the phrase 'dealer', the main body of the entry uses the phrase 'registered dealer'. The word 'dealer' continued to be defined under the MVAT Act as a person who is involved in buying or selling goods. Hence, a person who was

involved in purchase of natural gas, but not in the sale of natural gas

would still be considered as a dealer.Â However, such a person would not be a 'registered dealer' on account of the provisions of Section 16(6A).Â

It is submitted that it was never the intention of the respondents at the time of the enactment of the Notification dated 24.08.2017 to restrict the

benefits to only registered dealers.Â That is clear from the fact that no goods as defined in the Maharashtra Goods and Services Tax Act, (for short

'MGST Act') can be manufactured from natural gas as well as the usage of the phrase 'of any other goods whatsoever.'

14. The above is further supported by the issuance of Notification No.VATÂ1517/CRÂ136(a)/TaxationÂ1 dated 13.10.2017 by the respondents.Â

This Notification dated 13.10.2017 sought to cure the anomaly in the Notification dated 24.08.2017 and amended Entry 16 of Schedule B to do so.Â

Explanations (b) and (c) as inserted by the Notification dated 13.10.2017 expands the scope of terms 'goods' and 'registered dealers' to include goods

covered by the MGST Act and persons registered under the MGST Act respectively.Â This effectively cured the anomaly in the Notification dated

24.08.2017.

15. The petitioner then contended that it submitted ProformaÂB as required by the Entry No.60 to the respondents and had been issued a ProformaÂ?

A dated 15.09.2017 w.e.f. 15.09.2017. At the request of the respondent No.5, the petitioner applied for a revision of ProformaÂA and was duly

issued a new ProformaÂA dated 1st November 2017 w.e.f. 24.08.2017 itself.Â ExhibitÂF to the petitions are copies of the original ProformaÂA and

the revised ProformaÂA.Â It is claimed that the respondent No.5 charged rate of Rs.13.5% upon the petitioner from the period of 24Â08Â2017 to

13.10.2017, but after the issuance of the amended ProformaÂA, this fifth respondent issued credit notes reducing the tax charges from 13.5% to 3%.

Copies of the various invoices raised by respondent No.5 and credit notes issued are annexed as ExhÂ?G to the petition.

16. However, the second respondent issued a subsequent Trade Circular No.3T of 2018 dated 16.01.2018Â declaring that the earlier clarification

issued by Trade Circular 39T of 2017 had been discussed by the Ministry of Finance, Maharashtra.Â The said Circular No.3T of 2018 further

provided that the Ministry disagreed with the previous clarification and therefore

the earlier clarification was in effect rescinded.Â Thus, the Trade

Circular No.3T of 2018 provided that the concessional rate of 3% would only be applicable to persons who are registered dealers under the MVAT

Act and not to the persons who are taxable persons under the Maharashtra Goods and Services Tax Act.Â The third respondent suoÂmoto amended

the petitioner's ProformaÂA vide addenda dated 30.01.2018 as is clear from ExhibitÂH. Acting upon the Trade Circular No.3T of 2018, the fifth

respondent raised a debit note dated 30.01.2018 for the differential tax of 10.5% upon the petitioner (ExhibitÂI to the petition).

17. It is in these circumstances that being aggrieved and dissatisfied by the Trade Circular No.3T of 2018 dated 16.01.2018 that the Writ Petition is filed challenging it on various grounds.

18. In this Writ Petition, on notice being issued, Mr.Sonpal was engaged by the respondent Nos.1 to 4 and argued it. We granted him time to file an

affidavit.Â Till 20.03.2018, the reply affidavit was not filed.Â However, on 27.03.2018 the reply affidavit was filed by the State and the

Officials/Authorities under the MVAT Act.Â In this affidavit, it is claimed that after the Constitutional amendments were made by Constitution (101

Amendment) Act, 2016 to enable the Government to replace the levy of Sales Tax and Service Tax separately by State and Central Government

independently, the same was replaced now by common levy of tax on goods and services.Â After the constitutional amendments, both State and

Central Government were empowered to levy tax on supply of goods and supply of services. Petroleum goods, high speed diesel, motor speed

(commonly known as petrol), natural gas, aviation turbine fuel, alcohol and liquor for human consumption remained with the State for levy of Sales

Tax.

19. The affidavit states that prior to 01.07.2017 natural gas was taxed at 13.5% as covered by ScheduleÂE appended to the MVAT Act (residual

entry).Â Those who purchased natural gas from a supplier or manufacturer used to pay 13.5% to supplier and they were entitled to full input tax

credit subject to production of 3% under Rule 53(1) and 53(1)ÂA of the value of purchase if it is used as fuel or raw material in manufacturing

goods.Â Hence, net effective burden on dealers who use natural gas as fuel or raw material was 3%.Â However, if natural gas was not used as fuel

or raw material, then, no retention of 3% was required.Â However, if the taxable person under the MGST Act does not continue to be registered

under the MVAT Act, he is not entitled to input tax credit or refund of tax paid on purchases of goods covered by the MVAT Act, since under MGST

Act any tax paid under MVAT Act is not available to be claimed as input credit.Â In order to extend the benefit to the taxable persons under the

MGST Act and in order to ensure that impact of tax on dealers registered under the MVAT Act and MGST Act is same, the Government issued

notification (ExhibitÂE) to the Writ Petition No.2424/2018 w.e.f. 14.10.2017.Â Earlier similar notification was issued on 24.08.2017 for benefit of

MVAT Act registered dealers only and sales to MGST dealers were excluded.

20. The petitioners', cannot challenge any effective date because none of the fundamental rights are violated.Â Circular No.39T dated 08.09.2017

mentions that the purchaser of natural gas is required to be a registered dealer under MVAT Act or MGST Act, though requirement of being

registered under the MGST Act was not included in the notification under consideration.Â In absence of such reference to requirement of registered

dealer under the MGST Act in notification dated 24.08.2017, circular mentioning it as such, is irrelevant. Notification dated 24.08.2017 must be read in

the context and therefore reference to registration under the MGST Act 2017 is irrelevant in its circular dated 08.09.2017 and not binding on the

Government.Â It is therefore, claimed that rate of tax was reduced to 3% under notification of 24.08.2017 provided the purchaser is registered dealer

under Section 2(21) of MVAT Act, the purchaser uses gas in manufacture of goods as enumerated in paragraph 7 of the affidavit, or any other goods,

which meant that he should use the natural gas in manufacture of any goods or use it as fuel.Â A bare reading of this notification clearly excludes

taxable persons under the MGST Act.Â Thus, the reduced rate of tax was not applicable to the sales made to taxable persons registered under the

MGST Act.Â In paragraphs 15 and 16 of this affidavit in reply, the State Government clarifies the position as under:Â?

â??15. I say by Notification dated 24.08.2017 at ExhibitC at page No.49 of the Writ Petition, rate of tax was reduced to 3% provided the purchaser is

registered dealer under section 2(21) of MVAT Act; purchaser uses gas in manufacture of goods as enumerated in para 7 above or any other goods,

which meant he should use the natural gas in manufacture of any goods or use it as fuel.Â Bare reading of the Notification on 24.08.2017

conspicuously, noticeably and clearly excludes taxable person under the MGST Act.Â Thus the reduced rate of tax was not applicable to sales made

to taxable person registered under the MGST Act.

16. I say if registered dealer manufactures goods enumerated at para 7 above INPUT TAX CREDIT would be permissible on 13.5% except

reduction of 3% of the purchase price when goods are used as fuel.Â But if he manufactures any other goods which State is not entitled to tax under

Item 54 List II after Constitution (One Hundred and First Amendment) Act, 2016, there is no provision in the MGST Act 2017 to get INPUT TAX

CREDIT on the goods which are not covered under the MGST Act.Â That means the purchases of Natural Gas made by the taxable person shall

not get INPUT TAX CREDIT under MGST Act 2002 on the tax paid for purchase of natural gas under MVAT Act and will consequently bear a

burden of tax at 13.5 %.Â In order to remove the brunt of 13.5% and make it comparable with the dealers who are manufacturers of any of the

goods as mentioned in para 7 of this reply, the rate of VAT on the purchases made by taxable persons under MGST Act 2017 of Natural Gas when

used in manufacture of any other goods or as fuel for manufacture of any other goods was reduced from 13.5% to 3%.Â Therefore the Notification

dated 13.10.2017 with effect from 14.10.2017 was issued.â??

21. In paragraph 17, it is urged that the petitioner is not challenging the notification, copy of which is at ExhibitÂC to the petition, and the notification,

copy of which is at ExhibitÂE to the petition which amends the rate of tax on natural gas as prescribed in ScheduleÂB of the MVAT Act.Â Thus,

the circulars merely explain the ambit and scope of the notification and seek to interpret the same. They are explanatory and, therefore, so long as the

law is clear, the circular does not either modify or amend it.Â The language of the notifications referred to above is clear.Â Even without the

circulars being referred their ambit and scope is plain and clear.Â Therefore, the prayer to quash the circular cannot be granted particularly when the

notifications are not amended or modified by the Government in exercise of its power under law.Â It is in these circumstances thatÂ in the further

paragraphs it is clarified that there is no tax liability on the seller under the MVAT

Act.Â The dealer like respondent No.5 gets concessional rate of tax and it is the one who is really aggrieved, if at all, if there is any withdrawal of that concession.

The petitioner has no locus standi to file the present petition, for what the petitioner is paying by way of price and a component thereof is a tax.Â

Once the restrictions imposed by the notifications and the notifications themselves are clear, then, the Writ Petition has no merit and must be dismissed.

22. It is on this material, that we have to consider the challenge raised in these Writ Petitions.Â The lead argument was canvassed by Mr.Shridharan,

learned Senior Counsel and he would urge that the interpretation of the respondents of notification dated 24.08.2017 renders that notification

inapplicable to no one.Â It is an accepted position that natural gas is not and cannot be used to manufacture other than five items that are covered by

the MVAT Act.Â The primary condition of notification dated 24.08.2017 was that the purchase of natural gas must be for use in manufacture of

goods as defined under the Act or any other goods whatsoever, or a dealer, who uses it as fuel.Â Even the natural gas cannot be used to

manufacture any goods as defined in MVAT Act, hence, the term 'or any other goods, whatsoever' have great meaning.Â If the contention of

the respondents is accepted and particularly that this notification of 24.08.2017 is held to be applicable only to dealers registered under MVAT Act,

then, the notification will be applicable to no one, as it is impossible to manufacture the other five items mentioned in MVAT Act from natural gas.Â

Hence, it is submitted that the concessional rate cannot be said to be only applicable on sales made to dealers registered under the MVAT Act.

23. It is submitted that in any case, the proviso to Section 16(6A) states that a person continuing business in the aforementioned six commodities may

apply in the prescribed manner to have his cancellation of registration revoked.Â However, the manner has not been prescribed as yet.Â The word

'business' includes trade or commerce and the word 'dealer' is understood as including a person who buys and sells goods.Â It is submitted that

the petitioner's applications and the subsequent issuances of proforma by the respondents w.e.f. 24.08.2017 itself should be considered as registration

under the MVAT Act.Â Thus, the petitioner should be considered as a registered

dealer.

24. In any case, the second notification dated 13.10.2017 is merely curative and declaratory in nature and hence, the amendments made by it would be applicable from 24.08.2017 itself. It is argued that curative/clarificatory amendments would have retrospective effect.Â The Circulars adverse to the assessee can only operate prospectively.Â Hence, the Trade Circular No.3T of 2018 dated 16.01.2018 would operate prospectively and would not affect the earlier period, namely, 24.07.2017 to 13.10.2017.Â The Department cannot argue that the circulars issued by them are contrary to law.Â Similarly, the Department cannot challenge the Trade Circular No.3T of 2018.Â Hence, it is only open to the purchaser to challenge the circular as the burden of taxation in indirect taxes falls on the purchaser.Â In any event, this aspect need not be gone into in this matter wherein the rate of tax depends on to the purchaser and such certification issued to the petitioners is also under challenge.

25. In the other petitions Mr.Rafique Dada, learned Senior Advocate has also argued on identical lines and invited our attention to the statutory provisions in MVAT Act.Â He has also invited our attention to the Maharashtra Value Added Tax Rules, 2005 and the MGST Act.

26. Mr.Shridharan has relied upon the following decisions in support of his contentions:Â?

â??1. Birla Jute and Industries Ltd.V/s. Asstt. Collr. Of C.E.(1992) 57 ELT 674 (Cal.).

2. CST V/s. Indra Industries (2000) 9 SCC 66

3. Suchitra Components Ltd. Vs. CCE (2007 (208) ELT 321 (SC).

4. Zile Singh Vs. State of Haryana (2004) 8 SCC 1

5. W.P.I.L. Ltd V/s. CCE (2005Â?181Â?ELT 359 (SC)â??.

27. We must also note the argument of Mr.Rafique Dada and Mrs.Badheka that the petitioners paid the tax and were granted the set off.Â In that

regard Mr.Rafique Dada relied upon page 42 of the paper book in the case of JSW Steel Ltd.Â Mr.Rafiqe Dada submitted that the object is to

prevent a cascading effect.Â Hence, the certificate at page 42 is valid and holds the field.Â The wording of the notification dated 13.10.2017 itself

would denote that it is prospective and not retrospective.Â In that regard, he relied upon the expression â??with effect from the 14.10.2017â?

appearing in the notification dated 13.10.2017.Â Hence, the argument of Mr.Rafique Dada is that the benefit of lower rate of duty from 24.08.2017 to

14.10.2018 can be availed of the by petitioner.Â Â It cannot be worse off.

28. Mr.Rafique Dada has also relied upon the extract of the communication from the Finance Minister of India Shri.Arun Jaitley to the State Chief

Minsters to reduce the burden of the Value Added Tax on petroleum products used as inputs in the making of goods, after the introduction of the

Goods and Service Tax Act.

29. Mrs.Badheka has also argued on identical lines.Â She argued Writ Petition No.819 of 2018 and invited our attention to page 40 of the paper book

in that petition.Â She also relied upon the wording in the ProformaÂA to urge that the certificate is issued with effect from 24th August 2017.Â She

has also invited our attention to Section 16(6A) of MVAT Act.Â She submits that on 18th July 2017 itself the petitioners had pointed out to the

Deputy Commissioner of Sales Tax, Large Tax Payer Unit, Alibag Division, Belapur Navi Mumbai that the amendment should be made to the

registration certificate for the goods dealt by the petitioner under MVAT Act and Central Sales Tax (CST) Act and to allow the petitioner to continue

to hold the registration certificate under the existing Act.Â She submits that there has been no reply to this communication.Â The petitioner has been

following this certificate, copy of which is at page 35 and the benefit thereof cannot be taken away.Â She therefore, submits that the first

interpretation by the notification dated 24.08.2017 is the correct one and that should be maintained.

30. On the other hand, Mr.Sonpal, learned Special Counsel appearing for the respondents argued that the Writ Petitions deserve to be dismissed.Â

He pointed out that there is no substance in any of these petitions.Â Mr.Sonpal, has invited our attention to the affidavit in reply, which is filed in these

petitions.

31. Mr.Sonpal while answering the contentions of Mr.Rafique Dada, learned Senior Counsel appearing for the petitioners that the triggering point is

the initiation of the Maharashtra Goods and Service Tax Act contended that the petitioners, are not paying any taxes under the State law.Â There is

no registration obtained by these petitioners under the MVAT Act. The matter is entirely between the Gas Authority of India Ltd. and the State

Government.Â The GAIL has rightly understood the legal position.Â It is only for the GAIL to approach this Court and petitioners have no locus to

approach this Court.Â Further, from 01.07.2017 to 14.10.2017 the dealers paid 13.5% tax to GAIL and the GAIL has deposited this amount in

Government Treasury.Â For these reasons, Mr.Sonpal would submit that these Writ Petitions deserve to be dismissed.Â Mr.Sonpal has relied upon

the following

decisions in support of his contentions:Â?

Â??1. Accountant General V/s. S.Doraiswamy (1981) 4 SCC 93.

2. Glaxo Smithkline Pharmaceuticals Ltd V/s. Union of India (2014) 2 SCC 753.

3. Director General of Foreign Trade V/s.Kanak Exports and Another (2016) 2 SCC 226.Â??

32. Thus, the issue raised in all these petitions is whether the petitioners can seek the Writ of mandamus and the direction claimed by them.

33. For this purpose, we would have to refer to the Trade Circular and the Notification.Â The Trade Circular dated 16.01.2018 says that the

Maharashtra Goods and Services Tax Act was introduced with effect from 1.07.2017.Â Accordingly, the Maharashtra Value Added Tax Act, 2002

was amended from 01.07.2017.Â After the amendment to the MVAT Act, the definition of the term 'goods' cover only six goods, petroleum crude,

high speed diesel, motor spirit, natural gas, aviation turbine fuel and alcoholic liquor for human consumption. This Circular also invites the attention of

all concerned to Section 16(6A) in the MVAT Act. According to this Circular, subÂsection (6A) is inserted in Section 16 of MVAT Act to provide

for the deemed cancellation of the registration, with effect from 01.07.2017, of the dealers who have not effected any sales of the aforesaid six goods

during the period 2016Â2017.Â Therefore, only those dealers who are effecting the sales of these goods remain registered dealers under the MVAT

Act.

34. The Government of Maharashtra in exercise of its powers conferred under Section 9(1) of the MVAT Act had issued a notification dated

24.08.2017.Â A new entry 16 was added to the Schedule Â??BÂ? of the MVAT Act, by the said notification, effective from 24.08.2017.Â The

entry BÂ16 provides that the sale of natural gas to a registered dealer, subject to the condition mentioned in the said notification, is entitled for a lower

rate of VAT at 3%. To avail the benefit of reduced rate, namely, 3%, the purchasing dealer was required to be certified (as per Proforma) by the concerned Joint Commissioner.

35. After issuance of the aforesaid notification dated 24th August 2017, certain queries were received from the trade as also from the Departmental

Authorities and that query was whether the benefits given under the Notification dated 24th August 2017 are also available to the Tax payer

registered under the Maharashtra Goods and Services Tax Act 2017. To clarify this aspect, a Trade Circular No.39T was issued on 08.09.2017 and

it was clarified that the benefits of notification dated 24th August 2017 would also be available to the taxable persons registered under the MGST.

36. Subsequently, by Notification No..VAT/1517/CR 136(a)/Taxation dated 13th October 2017, the Schedule Entry B16 was amended with

effect from 14th October 2017. In addition to certain other amendments, an explanation is inserted to the effect that the benefit of the Entry 16 in

Schedule 'B' shall not be available to a registered taxable person if it is a hotelier or restaurant and has opted to pay tax under Section 10 of the MGST

Act.'

37. After, the above notifications were issued, the matter was discussed within the Finance Department. There was a view expressed that the

reduced rates of tax in respect of sales of natural gas to the registered dealer for use in manufacture vis-à-vis clarification given by the Trade

Circular No.39T of 2017 is not available to the dealer registered under the MGST Act. During this discussion, the Finance Department was of the

opinion that since the earlier notification issued on 24.08.2017 refers to sale of natural gas to a registered dealer which should mean the dealer

registered under the MGST Act, therefore, benefit of lower rate of tax 3% (VAT) as provided by the Notification dated 24.08.2017 shall not be

available to the taxable person registered under the MGST Act for the period 24.08.2017 to 13.10.2017.

38. Hence, the clarification was issued that the manufacturer buyers (petitioners in all these cases) who are not holding registration certificate under

the MVAT Act on or after 01.07.2017 either due to cancellation of said registration certificate or because of the deeming provision relating to

cancellation of the registration certificate under Section 16(6A) of MVAT Act,

they shall not be entitled for the benefits of reduced rate of tax in

respect of use of natural gas.Â Hence, certain guidelines were prescribed and issued, which read as under:Â?

â??(a) For the period 24th August 2017 to 13th October 2017 the sales of Natural Gas, to manufactures, who were not holding the registration

certificate under the MVAT Act during the said period, shall be liable for VAT @ 13.5% under Schedule entry BÂ?15.

(b) For the period starting on or after 14th October 2017 the sales of Natural Gas, to manfactueres, whether registered under the MVAT Act or under

the MGST Act, subject to the conditions given in the notification against a certificate in â??Proforma Aâ? would be entitled to avail the benefits of

reduced rate of VAT @ 3%.

(c) In view of the aforesaid circumstances, it is also necessary that the concerned Joint Commissioners, who had earlier issued certificate in

â??Proforma Aâ?? with effect from the 24th August 2017, issue an addenda and change the date of effect to the 14th October 2017.

(d) From the date of issuance of this Trade Circular, the certificate in Proforma 'A' shall be issued effective from the date of filing of the application

for the said certificate.

(e) The dealers, who have sold natural gas during the period 24th August 2017 to 13th October 2017 to manufactures who were not holding

registration certificate under the MVAT Act, applying lower rate of tax at 3% during the aforesaid period, are advised to arrange their affairs

accordingly and take the necessary corrective steps at earliest.

8. In view of the above, the clarification issued vide Trade Circular No.39T of 2017 dated 8th September 2017 shall stand modified.â??

39. We have also perused the Maharashtra Act No.XLII of 2017.Â That Amendment Act amends inter alia the Maharashtra Value Added Tax Act,

2002.Â ChapterÂIX of the amendment Act contains the amendments to the MVAT Act 2002.Â In Section 54,55 and 56 of the amendment Act, the

following amendments have been made:Â?

â??54. In the long title of the Maharashtra Value Added Tax Act, 2002 (hereinafter, in this Chapter, referred to as â??the Value Added Tax Actâ?),

the words â??or purchaseâ?? shall be deleted.

55. In the preamble of the Value Added Tax Act, the words "or purchase" shall be deleted.

56. In section 2 of the Value Added Tax Act,

(1) clauses (1),(2) and (3A) shall be deleted;

(2) after clause (3A) so deleted, the following clause shall be inserted, namely:

"(3B) appointed date for the Maharashtra Goods and Services Tax Act means the date on which the Maharashtra Goods and Services Tax

Act, 2017 comes into force;"

(3) in clause (4), in the Explanation, clause (i) shall be deleted;

(4) clause (7) shall be deleted;

(5) in clause (8), Exception I,II and III shall be deleted;

(6) clause (9) shall be deleted;

(7) for clause (12), the following clause shall be substituted, namely :

"(12) "goods" means petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and

alcoholic liquor for human consumption;"

(8) after clause (14) the following clause shall be inserted, namely :

"(14A) "Maharashtra Goods and Services Tax Act" means the Maharashtra Goods and Services Tax Act, 2017;"

(9) clause (17A) shall be deleted;

(10) in clause (20), Explanation IA shall be deleted;

(11) in clause (24), in the Explanation, in clause (b), in subclause (vi), for the words and brackets "of goods", being food or any other article for

human consumption or any drink (whether or not intoxicating), the words "of alcoholic liquor for human consumption" shall be substituted; (12) in

clause (25), Explanation IA shall be deleted;

(13) clause (27) shall be deleted.

(14) in clause (29), the words "or purchase tax leviable or as the case may be," shall be deleted;

(15) in clause (32), Explanation I shall be deleted;

(16) in clause (33), Explanation I shall be deleted;"

40. Then there are amendments made to Section 3 of the MVAT Act. Then Section 6, 6A, 6B and 7 were deleted. Then by Section 60 of the

Amendment Act amendments have to be made of the Section 8 of the MVAT Act and by Section 61 of the amendment Act, amendments have been

made to the Section 16 of the MVAT Act Sub-Section 6A has been inserted in Section 16 and it reads as under:

(6A) The registration of a dealer, who has not effected sale, during the year 2016-17, of any goods, specified in column (2) in SCHEDULE A or,

as the case may be SCHEDULE B, as it exists on the appointed date for the Maharashtra Goods and Services Tax Act, shall be deemed to be

cancelled with effect from the said appointed date:

Provided that, any such dealer, whose registration is deemed to be cancelled, may apply in the prescribed manner for the revocation of the

cancellation of his registration, if he intends to carry on the business in these goods.

41. A perusal of sub-section (6A) would reveal as to how the original Section 16 which dealt with the registration would now provide for, by this

sub-section, a deemed cancellation of

registration of a dealer, who has not affected sales during the year 2016-2017, of any goods specified in column (II) in Schedule A or, as the case

may be in Schedule B as it exists on the appointed date for the MGST Act with effect from the appointed date. However, by the proviso any

dealer whose registration is deemed to be cancelled may apply in the prescribed manner for the revocation of the cancellation of his registration if he

intends to carry on the business in these goods.

42. There are various other amendments made to MVAT Act by this Chapter XI of the amendment Act, but they have not been relied upon.

43. The Notification dated 24.08.2017, copy of which is at page 51 of the paper book in Writ Petition No.2424 of 2018, reads as under :

NOTIFICATION

Maharashtra Value Added Tax Act, 2002: No.VAT/CR/1517/136(A)/Taxation In exercise of the powers conferred by sub-section (1) of

Section 9 of the Maharashtra Value Added Tax Act, 2002 (Mah.VAT Act of 2005), the Government of Maharashtra, hereby effect from the 24th August

2017, amends the SCHEDULE 'B' appended to the said ACT, as follows namely :

In the Maharashtra Value Added Tax Act, 2002, in Schedule 'B'

(1) in entry 25, in column (2) for the words 'Natural Gas' the words and figures 'Natural Gas, other than the Natural Gas, specified in entry 16

shall be substituted; (2) after entry 15, the following entry shall be added, namely:

16. Natural gas, sold to registered dealer, subject to the following conditions :

(i) A dealer, who uses the natural gas for use in manufacture of goods, as defined under the act or any other goods, whatsoever, or a dealer, who uses

it as fuel.

(ii) The purchasing dealer, under this entry, should be certified by the Commissioner in the Proforma 'A'.

(iii) The purchasing dealer shall, by the end of the April, furnish to the Commissioner, a statement of account of purchases effected in the immediately preceding financial year, in the Proforma 'B'.

Explanation— for the purposes of this entry, conversion of 'natural gas' from one form to another shall not be deemed to be manufacture.

PROFORMA A

This is to certify that M/s.....holder of TIN.....w.e.f.....is a manufacturer of goods, as defined under the Act or

any other goods, whatsoever.

This certificate is being issued on his application dated....., in which he has given an undertaking that the natural gas purchased by him shall not be resold by him.

(Commissioner of Sales Tax), Maharashtra State, Mumbai.

44. A perusal thereof would reveal that by Section 9 of the MVAT Act, the State Government is empowered to amend the Schedule from time to

time by notification in the official gazette. The amendment of the Schedule may be by adding or modifying or deleting any entry therein, providing for

reducing and enhancing rate of tax or for specifying, rates of tax where Nil rates are specified. The mode in which this has to be done, namely, by

issuing and publishing a notification in the official gazette is the same and identical to the manner and mode of making rules.

45. That is why by this notification of 24.08.2017, after Entry 15 in Schedule B

for the words appearing in earlier Entry 15 (natural gas), the words and figures 'natural gas, other than the natural gas specified in Entry 16' were substituted. After Entry 15, the portion set out in the notification and reproduced above has been added but this addition is conditional. Therefore, it is only if the conditions are satisfied that the concessional rate of tax of 3% would be chargeable and leviable. The natural gas has to be sold to a registered dealer and that is also subject to the conditions reproduced herein above. Thereafter, Proforma A also would read accordingly.

46. After that a Trade Circular was issued on 08.09.2017 and that refer to this amendment to the scheduled entry. It is stated that for better implementation of this scheduled entry, the Trade Circular was issued, copy of which is at Exhibit D to the petition.

47. Then, there is substantive notification dated 13th October 2017, a copy of which is at page 57 of the paper book which reads as under:

NOTIFICATION

Maharashtra Value Added Tax Act, 2002 No.VAT.1517/C.R.136(a)/Taxation In exercise of the powers conferred by sub-section (1) of section

9 of the Maharashtra Value Added Tax Act, 2002, (Mah.IX of 2005), the Government of Maharashtra hereby with effect from the 14th October

2017, amends Schedule 'B', appended to the said Act, namely :

In the Maharashtra Value Added Tax Act, 2002, in Schedule 'B', in entry 16,

(1) for clause 9i), the following clause shall be substituted, namely :

(i) A registered dealer who uses natural gas as a raw material or fuel in manufacture of goods;

(2) the existing Explanation shall be numbered as '(a)' thereof ; and after the said Explanation as so numbered, the following clauses shall be added,

namely :

(b) The goods referred to in this entry shall mean goods as defined under this Act and goods defined under the Maharashtra Goods and

Services Tax Act; 2017 (Mah. XLIII of 2017) (hereinafter, in this entry referred to as 'MGST Act');

(c) 'Registered dealer' referred to in this entry, shall also include 'taxable person' registered under the MGST Act; (d) Benefits of this entry shall not

be available to a registered taxable person, if it is a hotelier or a restaurant and

has opted to pay tax under section 10 of the MGST Act.â??

(3) in Proforma 'A',

(i) After the abbreviated words and sign â??TIN.....w.e.f.....â??the sign and abbreviated words â??/GSTIN.....w.e.f.....â?? shall be added;

(ii) for the words â??as defined under the Act or any other goods whatsoeverâ?? the words and figures â??as defined under this Act or goods defined

under the MGST Act, 2017â?? shall be substituted ;

(iii) after the words â??being issuedâ?? the abbreviated words and sign â??w.e.f.....â?? shall be added.

By order and in the name of Governor of Maharashtra R.D. Bhagat, Deputy Secretary to Government 48. A perusal of this notification reveals that

the same is also issued in terms of the powers conferred by Section 9(1) of the MVAT Act.Â The Government of Maharashtra w.e.f. 14.10.2017

amended scheduleÂB appended to the Act and now in that schedule in Entry 16 for Clause (I) a substitution has been made, namely, a registered

dealer who uses natural gas as a raw material or fuel in the manufacture of goods and then there is an addition.Â That addition is by inserting the

portion in ClauseÂII of this notification. That is inserted/added below the existing explanation.Â That will now stand numbered as explanation (a).Â

There, the goods referred to in the Entry shall mean goods as defined under the MVAT Act and goods defined under the MGST Act.Â 'Registered

dealer' referred to in the Entry shall also include taxable person registered under the MGST Act and then, as reproduced above, there are subsequent

amendments.

49. Hence, the only question that we have to consider is whether this concessional rate of duty could be availed of by the petitioner from 24.08.2017 to

13.10.2017.Â The intervening period where the taxable person under MGST Act does not continue to be registered under the MVAT Act would

result in denial of input tax credit or refund of tax paid on purchases of goods covered by MVAT Act.Â That is because under MGST Act any tax

paid under MVAT Act is not available to be claimed as input tax credit.Â Hence, in order to benefit the person under the MGST Act and in order to

ensure that the impact of tax on the dealers registered under both laws is same, the notification which we reproduced above, namely, ExhibitÂE page

57 of the paper book, has been issued.Â In the earlier notification of 24.08.2017

the parity between both dealers was not brought out or recognized.Â

Now it is recognized and w.e.f. 14.10.2017.Â We do not see how we can then rely upon any Trade Circulars and grant the benefit as claimed by the petitioners.

50. A perusal of the affidavit in reply filed, the paragraphs which we have reproduced above, would reveal that until the Government intervened to

bring about the parity or equality, there could not have been any assumption or inference as is drawn by the petitioners before us.Â The petitioners

are not challenging the notifications.Â The Circulars, at best, are for internal guidance or clarification of queries of the Trade and officials, but their

language cannot control the substantive notifications.Â The notifications amending the schedule would enjoy the same status as that of the rules under

the Act.Â In the circumstances, we do not think that relying upon these circulars, the petitioners can claim the benefit in the intervening period, more

so, when both dealers were not included under the earlier notification.Â In the circumstances, we feel that the petitioners are not right in their

contentions based on which the reliefs have been claimed.Â The relief claimed is that we should quash the Trade Circular dated 16.01.2018.Â That

Trade Circular No.3T of 2018 is but clarifying the position resulting from issuance of these two notifications, namely, of August and October 2017.Â

We cannot see how we can hold that the State Government intended to grant the benefit by circular to a taxable person registered under the MGST

Act when he was not within the purview of the substantive law, MVAT.Â In other words, a taxable person registered under the MGST Act by virtue

of the amendment to the MVAT Act went out of the purview of the MVAT Act.Â That is how Section 16(6A) reads and that provides for deemed

cancellation of his registration.Â If any benefit has to accrue to such dealers, then, it is not disputed that issuance of the substantive notification or an

exercise similar to the same will have to be carried out.Â That was carried out by amending ScheduleÂB.Â Thus, Section 9 empowers the

Government to carry out an amendment to the Schedule appended to the MVAT Act.Â In the earlier amendment by notification dated 24.08.2017

the registered dealers were not defined to include taxable persons registered under the MGST Act.Â Further, the word 'goods' referred to in the

entry as defined under the Act did not take within their import the goods defined

under the MGST Act.Â Hence, merely because the 24.08.2017

notification employs the words â??or any other good's, whatsoeverâ? for the purposes of availing of the concessional rate of duty that is not

enough.Â By that we cannot infer that from 24.08.2017 itself both, the goods as definedÂ the MGST Act and the taxable persons contemplated

thereby, are included in the amendments to ScheduleÂB as the AugustÂ2017 notification at page 51 first time brings in a substitution in EntryÂ15 and

after EntryÂ15, inserts the portion as reproduced from the notification of 24.08.2017.Â Thus, the conditional relaxation from the rate of duty from

13.5% to 3% was a benefit not extended to taxable persons under the MGST Act as also to the goods defined under the MGST Act.

51. It is obvious from a reading of the subsequent notification dated 13th October 2017 that both the goods and taxable person under the MGST Act

have been brought within the purview of ScheduleÂB and EntryÂ16.Â In such circumstances by any interpretative process or by resorting to the

exercise suggested by the petitioners, we cannot bring in the goods as defined under the MGST Act and the taxable person registered under the

MGST Act in the ScheduleÂB as amended.Â As already held above, ScheduleÂB to the MVAT Act, 2002 has been amended and by resorting to

the power to amend conferred by Section 9(1) of the MVAT Act.Â It is entirely for the Maharashtra Government therefore, to bring a notification to

the Maharashtra Value Added Tax Act, 2002 to extend the concessional rate of duty or to enable availing of the concession by such persons who

were earlier not eligible and entitled to it.Â It is in these circumstances that we are of the opinion that Mr.Sonpal is right in his submission that this

Court cannot rely upon the language of the Trade Circular or the understanding of the Government as reflected from the Trade Circulars to grant any

benefits to the petitioners from an earlier date or an earlier period. The benefit will have to be granted only from the date from which it is extended,

namely, w.e.f. 14.10.2017.Â The explanation that is provided in paragraph 26 of the affidavit in reply filed in the Writ Petition of M/s.Deepak

Fertilizers (Writ Petition No.2424 of 2018) is, therefore, correct.

52. As a result of the above discussion, the contentions raised by Mr.Shridharan as also the other Senior Counsel cannot be accepted.Â Even the

brief written arguments as handed over are of no assistance in giving any other

meaning to the notifications.

53. The reliance by Mr. Shridharan on several judgments of the Supreme Court and this Court is misplaced.

54. As far as the judgment relied upon by the petitioners are concerned, it is evident that the principle set out therein can have application provided the

position on facts is identical. In *Deepak Fertilizers Mr. Shridharan* relied upon the judgment of the Hon'ble Supreme Court in the case of *I.D.L.*

Chemicals Ltd V/s. Union of India 1996 (86) E.L.T. 182 (S.C.). There, an exemption notification was issued by the Central Government exempting

Ammonium Nitrate from the whole of excise duty leviable thereon if it was intended to be used in the manufacture, inter alia, of explosives, provided

the procedure set out in Chapter X of the Central Excise Rules, 1944, was followed. The Appellant before the Supreme Court enjoyed benefit of the

exemption notification. It was found that a show cause notice was issued to the appellant as to why ammonium nitrate should not be reclassified

under Tariff item No. 68. One of the authorities came to the conclusion that there was no need to reclassify ammonium nitrate. Later on, there

was some communication from the Central Board of Excise and Customs and the Ministry of Chemicals and Fertilizers. The reclassification would be

necessary because ammonium nitrate is accepted as a fertilizer and hence it was not falling within the Tariff item 14HH. With the result the

exemption notification could not have been availed of and the benefit thereof was sought to be denied. That is how there was a further show cause

notice, adjudication and the demand. After this controversy reached the Supreme Court, the Hon'ble Supreme Court relied on observations,

based on the contentions, noted from paras 9 to 12. The Supreme Court held that there was enough material to hold that the appellants suffered

adverse consequences. Therefore, the Writ Petition filed by the appellant should have been entertained. The High Court should have dealt with the

contention of the appellant that ammonium nitrate was exempt from excise duty by reason of exemption notification until 21st July 1979 after which it

was removed from the preview thereof.

55. We must at once clarify that we have not rested our conclusion in this judgment on the locus of the petitioners. We have dealt with the merits

and, therefore, this judgment will have no application.

56. Even the judgment in the case of Usha B. Agarwal (Supra) there as well the issue is of locus.Â We have not restricted our judgment and order

on the issue of petitioners' locus.

57. We do not see how any assistance can be derived from the judgment in the case of M/s.Ghodawat Energy Pvt Ltd. (Supra) as in that judgment

the specific issue falling for consideration has been crystallized and the finding is that even after Pan Masala was brought within the purview of the

Additional Duty of Excise, it was never declared by the Parliament to be one of the goods of special importance in inter State Trade and Commerce

covered by Sections 14 and 15 of the Central Excise Act, 1956.Â The Pan Masala is continuing to be known to the commercial world as different

from tobacco.Â We are not deciding any such controversy in the present case.

58. In Ranadey Micronutrients (Supra), the issue was with regard to a circular being issued by the revenue and an argument contrary to the same had

been canvased.Â A circular issued by the Officer of the Revenue Department bind the Revenue and they cannot ignore or repudiate it.

59. This is not an issue before us at all.Â It is not the petitioners case that a latter circular was wrongly issued, but a prior circular remains as it is

consistent with the legislature policy.Â The issue is when there are two different statues and merely because under one statue of the State legislature

there is a concessional rate of duty, but restricted to the dealers covered by that law, then, dealers under a distinct law, may be made by the very State

legislature can claim the benefit of the reduced rate or not.Â The issues decided in Ranadey and by the present judgment are not identical.Â Hence,

we do not see any reason to take assistance from paragraphs 13 to 16 of the judgment.

60. Even with regard to other judgments cited by Mr.Shridharan we have found that there is no question of the issue dealt with by those judgments

arising before us.Â This is not curative/clarificatory amendment which could be given retrospective effect but this is a question of interpretation of the

schedule entry and whether schedule entry under the MVAT Act prescribing concessional rate of duty could be relied on by dealers not registered

under the MVAT Act but termed as taxable persons under the MGST Act.Â Hence, the other judgments also are of no assistance.

61. In the view that we have taken, we do not think that we should refer to the

judgments cited by Shri.Sonpal.Â We are not deciding any large controversy based on the principle set out in these judgments.

62. Hence, we hold that these petitions are liable to be dismissed.Â They are accordingly, dismissed.Â Rule is discharged in each of them.Â There shall be no order as to costs.