

- Read : 1. Application dt.08.11.2011 from M/s. Bharat Milling Industries, holder of TIN27540016626.
2. Determination order No.DDQ-11-2008/Adm-3/21/B-3 dt.5.9.2011.
3. Rectification order dt.7.4.2012 to determination order dt.5.9.2011.
Heard : Shri C.B.Thakkar, Advocate attended the hearing.

PROCEEDING

(under section-56(2) of Maharashtra Value Added Tax Act, 2002)

No.DDQ-11/2011/Adm-3/27/B- 7

Mumbai, dt. 10/07/2013

An application is preferred by M/s.Bharat Milling Industries, having office address at Kela House, Kela Road, Panchavati, Nashik-422 003 requesting for grant of prospective effect to the determination order No.DDQ-11-2008/Adm-3/21/B-3 dt.5.9.2011 passed under section 56(1)(e) of the Maharashtra Value Added Tax Act,2002 [MVAT Act,2002] in the applicant's case.

02. FACTS OF THE CASE

The facts leading to the present proceedings are narrated hereunder in brief :

1. A determination order No.DDQ-11-2008/Adm-3/21/B-3 dt.5.9.2011 under section-56(1)(e) of the MVAT Act,2002 was passed in the case of the applicant whereby 'Heat Shrinkable PVC Preformed Cap Seals' and 'Heat Shrinkable PVC Sleeves Packing grade' were determined to be covered by schedule entry E-1 and C-54 of the MVAT Act,2002, thereby taxable @ 12.5% and 5% respectively.

2. Thereafter, a rectification application was filed by the applicant on dt.08.11.2011 on the following grounds :

- a. Incorrect mention of Central Excise Sub Heading 39295090 instead of 39235090.
- b. Incorrect mention of the words 'Heat Shrinkable PVC Performed Cap Seals' instead of the words 'Heat Shrinkable PVC Preformed Cap Seals'.
- c. Incorrect reliance on the clarification issued by the Central Board of Excise & Customs(CBEC) dt.09.03.1994. A fresh hearing was requested in the matter.

3. The rectification application was decided by the Order No.DDQ-10-2011/Adm-3/78/B-2 dt.07.04.2012 wherein it was held as follows :

- a. Typographical mistakes about Central Excise Sub Heading and product name were rectified.
- b. About the third point, it was held that there are two sets of views, one in the determination which held that the aforesaid Circular is applicable to the applicant's case and the other of the applicant who thinks otherwise, and such an issue does not call for rectification, not being a rectifiable mistake apparent on record.

4. An application has now been made requesting for prospective effect to the determination order dt.5.9.2011. While making this request, the applicant has, in the present application, submitted thus :

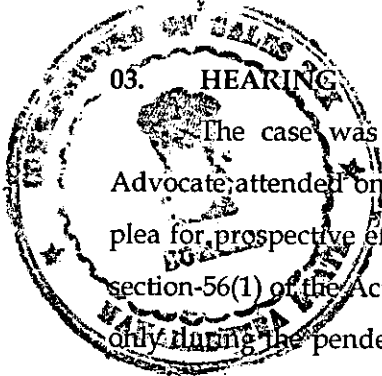
- a. It is a fact that the item 'Heat Shrinkable PVC Preformed Cap Seals' are cleared under Central Excise Chapter Heading 39235010 and therefore, are duly covered by the entry C-54 as industrial inputs and packing materials. They have charged tax @4/5% under the entry C-54.
- b. Reliance on the clarification issued by the CBEC dt.09.03.1994 is not justified. No explanation about clarification was sought from the applicant otherwise the difference would have been clarified and demonstrated that the said clarification was not applicable to their case.
- c. A table, as follows, is given to show the difference between the product involved in the determination order and the CBEC clarification :

	Product involved in DDQ i.e., 'Heat Shrinkable PVC Preformed Cap Seals'	Product involved in CBEC clarification i.e., LDPE Cap Seal for battery
Manufacturing process	Extrusion	Injection Moulding
Material	PVC	LDPE/HDPE
Purpose	Mere sealing	Sealing & Insulation
Machinery	Machinery is different	Machinery is different

In view of the above, it is contended that the item cannot be covered under the heading 3923.

- d. It is submitted that the Central Excise Department has certified that the item is classified under CETH 39235010. And hence, the applicant is justified in charging tax @4% under entry C-54. The applicant, therefore, pleads that prospective effect be granted to the determination order as it came to be passed due to difference in interpretation of chapter heading.

Under the above circumstances, request for prospective effect is made as the applicant has charged tax @4/5% under entry C-54 and if tax is charged at higher rate for the past period, it would create great hardship to the applicant.



The case was kept for hearing on dt.15.01.2013 and dt.30.04.2013. Shri C.B.Thakar, Advocate, attended on behalf of the applicant. At the outset, it was brought to his notice that a plea for prospective effect would be entertained if such a plea is made in the application under section-56(1) of the Act or during hearing. Thus, it was emphasized that such plea could be made only during the pendency of an application for determination. It was brought to his notice that on a reference to the Hon. Bombay High Court on the very issue, the Hon. Court was pleased to have left the issue open for being considered in appropriate matter in other proceedings. In this regard, it was argued that an application for prospective effect can be entertained even if filed after passing of the determination order. For this line of argument, reliance was placed on the Hon. Maharashtra Sales Tax Tribunal's (MSTT) decision dt.21.08.2012 in the case of M/s. Parmatma Distributors in Reference Application No.15 of 2010 (in Appeal No.41 of 2009 decided on dt.12.01.2010). Reliance was also placed on the determination order dt.02.09.2009 in the case of M/s. Apsom Technologies (India) Pvt. Ltd. & Another to advance the line of argument that

prospective effect is granted in a situation wherein confusion as regards classification under Central Excise Tariff Act exists.

As regards the merit of the case, the contents in the application were reiterated. It was further informed that the merits of the case are being contested before the Hon. MSTT. A certificate by the Superintendent, Central Excise & Customs to the effect that Caps Closures for bottles is covered under CETH 39235010 is submitted. It was further submitted that there was no opportunity granted to refute the claim as made in the Determination Order that the product is covered by CETH 3926.

04. OBSERVATIONS

I have reproduced the facts of the case. The question before me is an application requesting for prospective effect to a determination passed earlier in the applicant's case. The crux of the issue is the maintainability of such an application which has been preferred after the determination has been passed. The applicant during hearing was apprised of the fact that such an application preferred after a determination order has been passed in the very case cannot be entertained. To appreciate this observation, I would reproduce the concerned sub-sections thus :

- (1) *If any question arises, otherwise than in a proceedings before a Court or the Tribunal under section 55, or before the Commissioner has commenced assessment of a dealer under section 23, whether, for the purposes of this Act,-*
- a. *any person, society, club or association or any firm or any branch or department of any firm, is a dealer, or*
 - b. *any particular person or dealer is required to be registered, or*
 - c. *any particular thing done to any goods amounts to or results in the manufacture of goods, within the meaning of that term, or*
- any transaction is a sale or purchase, or where it is a sale or purchase, the sale price or the purchase price, as the case may be, thereof, or*
- in the case of any person or dealer liable to pay tax, any tax is payable by such person or dealer in respect of any particular sale or purchase, or if tax is payable, the rate thereof, or*
- set-off can be claimed on any particular transaction of purchase and if it can be claimed, what are the conditions and restrictions subject to which such set-off can be claimed,*
- the Commissioner shall, subject to rules, make an order determining such question.*

Explanation.- For the purposes of this sub-section, the Commissioner shall be deemed to have commenced assessment of the dealer under section 23 when the dealer is served with any notice by the Commissioner under that section.

- (2) *The Commissioner may direct that the determination shall not affect the liability under this Act of the applicant or, if the circumstances so warrant, of any other person similarly situated, as respects any sale or purchase effected prior to the determination.*

From a perusal of the above wordings, one can see that the Commissioner's powers of granting prospective effect to an order are contained in sub-section (2). The powers under sub-section (2) cannot be exercised in isolation. While exercising his powers under sub-section (1), a determination order is passed in the case of an applicant. It is while passing of the determination

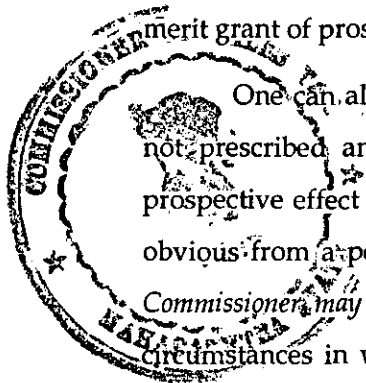


order that the Commissioner deliberates on the issue of prospective effect. Going by the wording of the section i.e 'Determination of a disputed question', one can observe that the applicant approaches the Commissioner in view of some apprehension or difference of opinion. It is in view of this dispute or difference of opinion that the section provides for a relief to the applicant by way of enabling the Commissioner to grant prospective effect in deserving circumstances. Deliberations on the disputed question and the circumstances surrounding the dispute would form a part of the same proceedings and cannot be considered as arising under separate proceedings. These circumstances such as a bonafide belief, statutory misguidance, ambiguity, etc. are the ones which are considered while deliberating on the applicant's request for prospective effect to the determination order in his case. What I have observed finds support when one looks at the rule prescribing the manner in which an application for determination is to be made. Sub-rule (2) of rule 64 states thus :

"(2) The application shall—

- (a) be in writing,*
- (b)*
- (c)*
- (d) contain a statement of relevant facts in detail along with supporting evidence, if any;*
- (e) contain a statement explaining the circumstances in which the dispute has arisen, and*
....."

It can be seen from the above that the application for determination itself is to be accompanied by *a statement explaining the circumstances in which the dispute has arisen*. As mentioned earlier, these are the very circumstances which are in consideration of the Commissioner while ascertaining whether the circumstances as shown existing were such as to merit grant of prospective effect.



One can also plainly notice that the sub-section enabling grant of prospective effect has not prescribed any time frame either for the Commissioner to decide any plea regarding prospective effect or for the applicant to make such plea before the Commissioner. This is very obvious from a perusal of the words which are used to begin the said sub-section (2) - "*The Commissioner may direct that the determination shall not affect.....*". These words indicate the circumstances in which the Commissioner exercises the powers granted to him and those are while the passing of the determination order. The Rules complement my observation when they call for a statement of dispute. There would be no point in calling for these details if it was not for the purpose of ascertaining whether a dispute truly existed with regard to the provisions prevailing then. These circumstances come in picture after a dispute has been resolved in interpretation of the provisions. Ignoring these provisions would not be possible as it has been held by the Hon. Courts that no provision in a statute is to be considered redundant. To ignore such binding provisions would render mandatory provisions of law superfluous and

meaningless. It is not open to give a different meaning by treating the words used as redundant or superfluous. As I observe this, I am very much aware of the fact that Rules cannot be relied upon to impugn the validity of an enactment. However, the present rule does not lay down any law but it only explains the manner in which an application is to be made. Therefore, this specific provision in the Rules is necessarily to add to the intent of the statute and aid the Commissioner in deciding on the grant of prospective effect.

Thus, the sub-section, by no means, contemplates an exercise of powers to grant prospective effect after the applicant gathers his wits on receipt of an adverse determination order in his case. One also needs to appreciate the fact that if such an exercise of powers to grant prospective effect is taken up after the passing of a determination order, it would amount to revisiting the determination proceedings. What comes up from the above discussion is that the sub-sections (1) and (2) do not operate in isolation but are a simultaneous exercise of powers. The necessary mandate coming up from a conjoint reading of the sections is that the request for prospective effect has to be made alongwith the application for determination or during a hearing before the Commissioner in the matter but not in any case after the decision on the determination application in terms of passing of the determination order.

I am supported in this view by the stand taken by the Department in M/s. Ashish Enterprises (Appeal No.85 of 1998 decided on dt.24.02.1999). Though the Hon. MSTT decided against the Revenue, there being a question of law on the issue, a Reference Application (No.21 of 1999 dt.07.07.2000) was subsequently allowed. Now, the position is such that the Hon. Bombay High Court, in its decision on 16th April 2010, has returned the question referred unanswered leaving it for being considered in the appropriate matter as and when occasion arises. It may be argued that these decisions are in respect of the provisions for prospective effect as appearing under the repealed Bombay Sales Tax Act,1959(BST Act). Hence let me reproduce these provisions to ascertain the similarity or differences, if any, in them.

BST Act

(2) The Commissioner may direct that the determination or, as the case may be, review shall not affect the liability of any person under this Act, as respects any sale or purchase effected prior to the determination or, as the case may be, review.

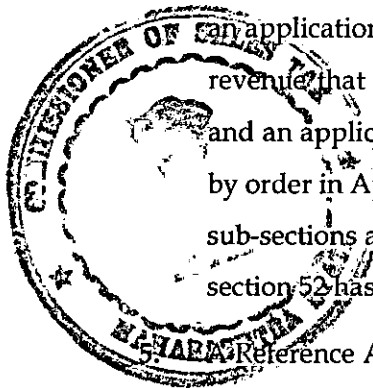
MVAT Act

(2) The Commissioner may direct that the determination shall not affect the liability under this Act of the applicants or, if the circumstances so warrant, of any other person similarly situated, as respects any sale or purchase effected prior to the determination.

Thus, the provision as regards prospective effect remains the same. I have observed above that the powers of prospective effect under section 56(2) are not in isolation, but are to be exercised alongwith the powers under section 56(1) of the MVAT Act,2002. The initiation of proceeding under section 56 is by virtue of sub-section (1) and the proceedings are closed, when the order under sub-section (1) of section 56 is passed. Sub-section (2) of section 56 only provides

and empowers the Commissioner to direct the prospective effect of a determination order, which is passed under section 56(1). No independent proceedings and order is contemplated under section 56(2), and as such, power under this sub-section is required to be exercised, only while passing the order under sub-section (1) of section 56. Once the order under section 56(1) is passed, the proceeding under section 56(2) gets closed. In view of the same, an application for prospective effect which is, not made along with the original application for determination or at the time of hearing would not be maintainable. As observed above, this view has been allowed to be referred to the Hon. Bombay High Court by the Hon. MSTT in the case of M/s. Ashish Enterprises(cited supra). Let me apprise you, in brief, the legal verdict therein as follows :

1. The applicant, M/s. Ashish Enterprises, was carrying on the business of manufacturing 'tarpaulin cloth' by application of certain processes to gray cloth supplied by the customers. It was the belief of the applicant that the job of converting grey cloth into 'waterproofing cloth' may not be covered under the Works Contract Act. Hence, a determination application dt.01.10.1991 was preferred under section 9 of the Works Contract Act read with section 52 of the BST Act. A request for prospective effect to the determination order in case of an adverse decision was not made alongwith the application for determination.
2. The determination order was passed on dt.08.09.1993.
3. The applicant thereafter filed an application dt.09.01.1998 for prospective effect to the determination order dt.08.09.1993. However, the request for prospective effect was rejected being non-maintainable by order dt.06.07.1998.
4. An appeal was filed before the Hon. MSTT against the order dt.06.07.1998. The argument for the applicant therein was that sub-section (1) and (2) of section 52 are independent and an application seeking prospective effect could be made later whereas it was the case of the revenue that the proceeding was terminated with the passing of the determination order and an application thereafter for prospective effect cannot be entertained. The Hon. MSTT by order in Appeal No.85 of 1998 decided on dt.24.02.1999 held the view that the impugned sub-sections are totally independent sub-sections and the argument of the revenue that the section 52 has to be read as a whole was not accepted.



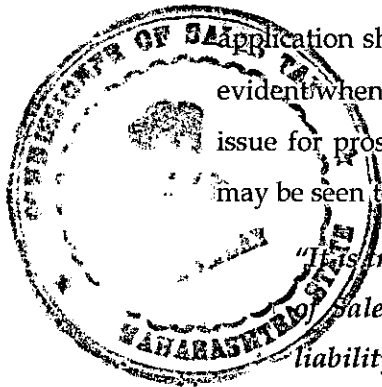
Reference Application (No.21 of 1999) was filed by the Revenue seeking reference of two questions to the Hon. Bombay High Court. The Hon. MSTT, in its order decided on dt.07.07.2000, was pleased to allow the second question to be referred to the Hon. Court. The question read thus : "*Whether on the facts and circumstances of the case and on a true and correct interpretation of sub-section (2) of section 52 of the Bombay Sales Tax Act,1959 was the Tribunal justified in holding that the application dt.09.01.1998 made by the respondent to the Additional Commissioner of Sales tax, Maharashtra State, Mumbai, seeking directions from him*

under the said sub-section after the passing of the determination order i.e. after 08.09.1993 in his own case was maintainable?"

6. The decision by the Hon. Bombay High Court in Sales Tax Reference No.3 of 2001 in Reference Application No.21 of 1999 was delivered on dt.16.04.2010. While delivering the decision, the conditions were such that the Government had granted administrative relief to textile processors, photo developers, printers including printers printing on metal, plastic etc. As a result financial liability arising due to denial of prospective effect to M/s.Ashish Enterprises did not subsist. It was, therefore, argued for the applicant that a Reference under section 61 of the BST Act can only survive if the order passed in appeal affects the liability of any person to pay tax or penalty or interest or results in forfeiture of any sum which affects the recovery from any person. It was further argued that as a result of grant of administrative relief the question referred would not survive and therefore, the High Court need not answer the question referred. In the given circumstances, the Hon. High Court also felt that the question of any liability standing against the respondent would not arise. Considering the text of the said section 61, the Hon. Court returned the question referred unanswered leaving it for being considered in the appropriate matter as and when occasion arises.

In view of the above, it can be seen that even the Hon. MSTT felt that there arises a question of law on the issue of grant of prospective effect. The issue as to when a request for prospective effect is to be made was pursued by the Department in the case of M/s.Ashish Enterprises. Since a question of law was arising in the matter, the Hon. MSTT was pleased to refer the disputed issue for decision by the Hon. Bombay High Court. With regard to the stand for the applicant therein that the application seeking prospective effect could be made later, the Hon. MSTT was not in complete disagreement of the stand of the Revenue that such an application should be made alongwith the determination application or during hearing. This is evident when the Hon. MSTT invited attention to the point that the Commissioner can decide the issue for prospective effect even without an application. The precise words of the Hon. MSTT may be seen to bring out the point that I am trying to make:

"It is true that Section 52(2) suggests that it is the prerogative of Commissioner of Sales Tax that he may direct that the determination shall not effect the liability of any person under the Bombay Act as respects any transaction effected prior to the determination. The reading of this sub-section may also suggest that, in fact, no prayer whatsoever may be made by the dealer and still the Commissioner of Sales Tax can decide the time till which the dealer would be exempt from such liability. It is also true that Section and Rules do not specifically mention about making the prayer for giving prospective effect alongwith the Application



filed for determination under Section 52(1) of the Bombay Act. However, at the same time, it is necessary to be borne in mind that sub-section (2) is silent about the time within which separate Application, if any, is required to be filed after Determination Order for giving prospective effect. Had there been any intention in the mind of Legislature that the request for giving prospective effect can be made only by filing separate Application after Determination Order, then in all probability the limitation would have been prescribed for such filing of separate Application. Non-mention of time limit suggests that such prayer should be made alongwith the Application for determination itself. This interpretation of sub-section (2) of Section 52 cannot be totally ruled out."

The observations of the Hon. MSTT while allowing the Reference are worth referring :

".....In such an event, it may not be erroneous to hold that prayer for giving prospective effect has got to be made alongwith the Application for determination itself and separate Application for such prospective effect may not be maintainable."

The issue would have attained finality if the Hon. Bombay High Court could have had an opportunity to dwell on the issue. However in view of there being no liability, the Reference Application had to be disposed and therefore, the issue still remains undecided. Since the Hon. MSTT has allowed the Reference on the issue which is the very same issue that I am dwelling with, in the present proceedings, the question of law remains the same and the Hon. Bombay High Court has allowed to take up the issue in the appropriate proceedings. The issue being left open, I would follow the stand of the Department which was taken while arguing the issue before the Hon. MSTT in both Appeal and Reference proceedings in the case of M/s. Ashish Enterprises and because of those arguments the Hon. MSTT considered it appropriate to refer the question of law for a finality on the issue to the Hon. Bombay High Court. Therefore, I am convinced that the present application for prospective effect made after passing of the determination order is not maintainable.

Having seen thus, I would not deal with any of the arguments as regards the merits of the case for allowing or, as the case may be, disallowing the request for prospective effect. However, I would refer to the arguments as regards the maintainability of the application. Reliance has been placed by the applicant on the Hon. MSTT decision in the case of M/s.Parmatma Distributors (cited supra). I have perused this decision and it is seen that the same was delivered after the decision of the Hon. MSTT in the Reference Application in M/s.Ashish Enterprises

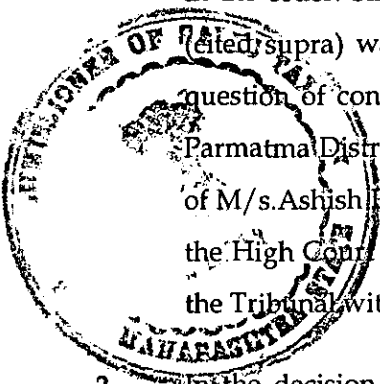
(cited supra) but before the decision of the Hon. Bombay High Court in the very case of M/s.Ashish Enterprises. The issue in M/s. Parmatma Distributors case could be seen thus :

- a. An application for prospective effect to the determination order dt.11.01.2005 was rejected by the then Commissioner in his order dt.05.11.2005, the reason being the application was non-maintainable. Hence, the applicant preferred an appeal before the Hon. MSTT.
- b. The Hon. MSTT by order in Appeal No.41 of 2009 decided on dt.12.01.2010 set aside the determination order and restored the matter to the file of the Commissioner.
- c. A Reference Application (No.15 of 2010) was filed by the Revenue seeking reference of the following question to the Hon. Bombay High Court - *"Whether on the facts and in the circumstances of the case and on the true and correct interpretation of sub-section (2) of section 52 of the Bombay Sales Tax Act,1959 was the Tribunal justified in holding that the application dt.28.02.2005 made by the respondent to the Commissioner of Sales tax, Maharashtra State, Mumbai, seeking directions from him under the said sub-section after the passing of the determination order i.e. after 11.01.2005 in his own case was maintainable?"*
- d. The Hon. MSTT by order dt.21.08.2012 dismissed the Reference on merits considering the facts that the Commissioner of Sales Tax had entertained such type of applications for prospective effect under the BST Act.

I have gone through the above judgments of the Hon. MSTT. I would deal with each of the two decisions thus :

1. In the decision dt.12.01.2010 rejecting the appeal in M/s. Parmatma Distributors(cited supra), it is seen that the Hon. MSTT has discussed the order in appeal in the case of M/s.Ashish Enterprises(cited supra) and extracts from the said decision are reproduced in the order. Since the Hon. Bombay High Court judgment in M/s. Ashish Enterprises (cited supra) was not delivered (dt.16.04.2010) at the time of deciding the appeal, the question of considering the same does not arise. Thus, the decision in appeal in M/s. Parmatma Distributors(cited supra) was entirely based on the order in appeal in the case of M/s.Ashish Enterprises(cited supra). The judgment allowing a question of reference to the High Court on the very issue was not before the Tribunal and hence, the decision of the Tribunal without cognizance of the said judgment would not be a correct law.

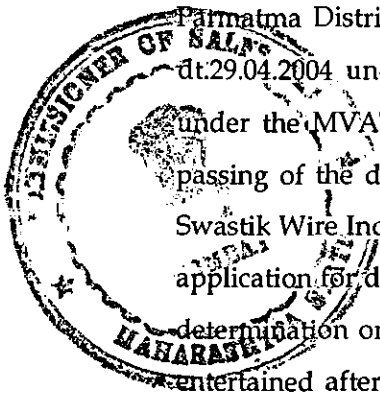
2. In the decision dt.21.08.2012 dismissing the Reference Application in M/s. Parmatma Distributors, the decision in Reference Application in M/s.Ashish Enterprises(cited supra) was not taken into consideration. Further, even the Hon. Bombay High Court decision dt.16.04.2010 in the case of M/s.Ashish Enterprises(cited supra) which was delivered then was not taken into consideration. The decision of the Hon. MSTT allowing



the Reference in the case of M/s.Ashish Enterprises(cited supra) was a significant decision as it recognized that the issue needed clarity and therefore, thought it proper to refer the matter to the Hon. High Court for a final decision on the issue. Even the Hon. High Court while taking into consideration the impossibility of a decision on the issue due to constraints of no liability, felt it proper to leave the question unanswered for being taken up in the appropriate matter as and when occasion arises. Here again there was failure to appreciate a judgment of the very Tribunal which allowed a question of reference to the High Court on the very issue. Since the Reference Application in M/s.Ashish Enterprises(cited supra) was not taken into consideration, the decision in Reference Application in M/s. Parmatma Distributors would not be a correct appreciation of the law.

From the above it is seen that the fact that the Hon. MSTT had expressed some agreement with the stand of the Revenue while allowing the Reference Application M/s.Ashish Enterprises(cited supra) was not considered in both the above judgments in M/s. Parmatma Distributors. Thus, I would conclude that the decisions in M/s. Parmatma Distributors (cited supra) when seen in the light of the decision in Reference Application in M/s.Ashish Enterprises(cited supra) by the very Tribunal do not present a correct appreciation of the facts. Hence, reliance on the decisions in M/s. Parmatma Distributors(cited supra) would not be a proper appreciation of the law.

As I am on the decision in M/s. Parmatma Distributors(cited supra), I would also deal with the issue that the Reference therein was rejected due to the fact that the Commissioner of Sales Tax had entertained such type of applications for prospective effect under the BST Act. During deliberations on the issue, it was pointed out to the Hon. MSTT on behalf of M/s. Parmatma Distributors that in the cases of M/s. Swastik Wire Industries (determination order dt.29.04.2004 under the BST Act,1959) and M/s. R.K.Rim (determination order dt.30.08.2011 under the MVAT Act,2002), the proceedings for prospective effect were entertained after the passing of the determination order. In this regard, I have to observe that in the case of M/s. Swastik Wire Industries (cited supra), the request for prospective effect was made in the original application for determination itself but the same remained to be considered while passing of the determination order. Therefore, it is not the case that an application for prospective effect was entertained after passing of a determination order. As regards M/s.R.K.Rim (cited supra), the determination order was entertained owing to a consideration of only the order in appeal in M/s. Ashish Enterprises(cited supra) and non-cognizance of the order in Reference Application in the very case. However, other than M/s.R.K.Rim (cited supra), I have come across no other case in which an application for prospective effect was entertained after passing of a determination order. Further, it has been the stand of the Revenue since the allowing of the



Reference Application in M/s.Ashish Enterprises(cited supra) as not to consider such requests for prospective effect made after passing of a determination order. And hence, the same stand was being taken in the appeal and Reference application in M/s. Parmatma Distributors(cited supra). It is also seen that as in the case of M/s. R.K.Rim (cited supra), the order in Reference Application in M/s.Ashish Enterprises(cited supra) was not considered while deliberating on the issue in both the Appeal and Reference application in M/s. Parmatma Distributors(cited supra). The decision in Reference Application in M/s.Ashish Enterprises was not brought before the Hon. MSTT by both the applicant as well as the Revenue. Though the Revenue did not cite the decision in Reference Application in M/s.Ashish Enterprises, it should be appreciated that the stand of the Revenue remained the same. Thus, this consistent stand of the Revenue should not escape attention. Now, a decision given without considering such a crucial judgment would not be good law. And it is equally true that such an incidence of non-cognizance of a crucial decision will not reverse the law which has been laid down after careful consideration. The Hon. Bombay High Court decision has, by implication, rendered Tribunal decision in M/s. Parmatma Distributors(cited supra) ineffective. Hence, it is felt that reliance of the applicant in the case of M/s. Parmatma Distributors(cited supra) is misplaced.

The applicant has placed reliance on yet another decision and that is the determination order dt.02.09.2009 in the case of M/s. Apsom Technologies (India) Pvt. Ltd. & Another. However, it is seen that the facts of the present case and the aforementioned case differ on the fundamental ground that in the said case, the request for prospective effect was made in the application for determination itself. Therefore, reliance on this case will not be of any help.

Since, the Hon. Bombay High Court has allowed the matter to be taken up in appropriate proceedings as and when the occasion arises, I am of the opinion that the same should be followed in the present proceedings. The disputed issue about whether an application for grant of prospective effect can be filed at any point of time is yet to be decided.

In view of the above discussion, I have to observe that the issue whether a separate application for grant of prospective effect after conclusion of determination proceedings is maintainable or not is still open and through exercise of powers vested in me by virtue of section 56(2) of the Maharashtra Value Added Tax Act, 2002, I am inclined to follow the stand as taken in the Appeal and Reference proceedings in the case of M/s.Ashish Enterprises (cited supra) and with regard to which the Hon. MSTT was pleased to refer a question of law to the Hon. Bombay High Court for its consideration.

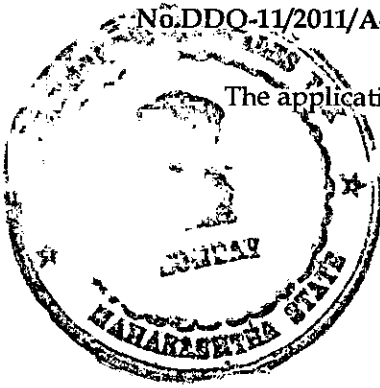
05. In view of the detailed deliberations as at above, I pass an order as follows :

ORDER

(under section-56(2) of Maharashtra Value Added Tax Act, 2002)

No.DDO-11/2011/Adm-3/27/B-4

Mumbai, dt. 10/7/2013



The application for grant of prospective effect is rejected, being non maintainable.


(DR. NITIN KAREER)

COMMISSIONER OF SALES TAX,
MAHARASHTRA STATE, MUMBAI.