

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8121 OF 2012

Marathi Bhandhkam Vyawsayik Association through duly authorized representative Mr. Rajendra Balkrishna Chaphalkar	...	Petitioner
Vs.		
State of Maharashtra through the Chief Secretary and others	...	Respondents

Mr. Navroz Seervai, Senior Advocate with Mr. Firdos Pooniwala and Mr. M. S. Bodhanwalla, Ms Rajlaxmi, Mr. Sheroy M. Bodhanwalla, Mr. Bhavik Lalan and Mr. Jagan Thappa i/b. Mr. Ashok B. Tajane and M. S. Bodhanwalla & Co. for the Petitioner in Writ Petition No.8121 of 2012.

Mr. D. J. Khambata, Advocate General with Mr. Venkatesh Dhond, Senior Advocate, Mr. A. B. Vagyani, AGP and Ms Naira Jejeebhoy for Respondents.

CORAM: DR. D.Y.CHANDRACHUD AND
R. G. KETKAR, JJ.

DATE : 30 OCTOBER, 2012

P.C.:

Though several reliefs have been claimed in the Petition, the learned Senior Counsel appearing on behalf of the Petitioner has, at the hearing, submitted that the Trade Circular dated 7 February 2007 issued by the Commissioner of Sales Tax is liable to be construed by the Assessing Officer as involving a mandate to him that a particular type of contract would necessarily involve an element of a works contract or be a works contract. Hence, it has been urged that the exercise of jurisdiction by the Assessing Officer cannot be precluded by the issuance of a Trade Circular and the Assessing Officer must independently decide as to whether a particular contract in a specific case constitutes a works contract or involves an element of a works

contract.

2. A Trade Circular issued by the Commissioner of Sales Tax cannot foreclose the quasi-judicial powers and / or functions of the Assessing Authorities. As a matter of fact, paragraph 5 of the Circular specifically provides that the circular cannot be made use of for legal interpretation of provisions of law, as it is clarificatory in nature.

3. We clarify that the issue as to whether a particular contract constitutes a works contract or involves an element of a works contract is a matter which shall be decided on the facts of the individual case if it is raised by the assessee in accordance with the provisions of the Maharashtra Value Added Tax Act, 2002. The learned Advocate General appearing on behalf of the State of Maharashtra has, on instructions, conceded to this position. Moreover, it would not be either appropriate or proper for the Court to make a generalized determination without having regard to the facts of the particular case.

4. In view of the clarification issued above, no further reliefs are sought or pressed at this stage. All the rights and contentions are kept open to be determined by the Assessing Authorities.

5. The Petition is accordingly disposed of. There shall be no order as to costs.

(DR. D. Y. CHANDRACHUD, J.)

(R. G. KETKAR, J.)