

**Before the FIFTH BENCH of the
Maharashtra Sales Tax Tribunal
at Mumbai**

VAT APPEAL NOS. 87 To 89 OF 2017

M/s. Kwaliti Tobacco Products **Appellant**

v/s

The State of Maharashtra **Respondent**

Coram:

Shri. C.D. Gongle, Judicial Member

Shri. K.D. Patil, Member

Appearance:

Shri. C.B. Thakar, Learned Advocate for the Appellant

Shri. R.U. Avghade, Learned Assistant Commissioner of Sales Tax
(Legal) for the Respondent

Date: 18/10/2017

J U D G M E N T

(Per Shri. C.D. Gongle, Judicial Member)

Being aggrieved and dissatisfied with the order passed by the Deputy Commissioner of Sales Tax, Kolhapur; the Appellant preferred the present Appeal.

2. It is a case of the Appellant that he is a registered dealer under MVAT Act, 2002 and reseller of tobacco. The Assessing Authority i.e. Assistant Commissioner of Sales Tax, Kolhapur has passed assessment order and raised liability of tax and interest. It is further the case of the Appellant that basically the liability is raised by levying tax on unmanufactured tobacco by non-speaking order. The Appellant's sale of tobacco is exempted under Schedule Entry A-45. The Appellant preferred Appeal before Deputy Commissioner of Sales Tax, Kolhapur who passed the part payment order and fixed the heavy amount of part payment.

3. It is further the case of the Appellant that the lower authority has erred in fixing heavy amount of part payment on the facts and circumstances of the case. The demand is raised by levying illegal tax on tobacco and disallowing exemption claim. The Appellant is facing financial difficulties in view of recessionary market conditions. Once the Appeal is decided on merit, the dues will automatically get deleted.

4. The main sum and substance of the Appeal Memo is that the Appellant is reseller of tobacco of unmanufactured nature and it is not taxable and hence the order of the First Appellate Authority be set aside.

5. Heard the Appellant Advocate Shri. C.B. Thakar who argued that the Appellant is selling unmanufactured tobacco which is exempted as per the provisions of law and there is no any tax and even though the First Appellate Authority awarded the part payment amount which is illegal. He diverted attention towards the citation in **M/s. Amar Agencies v/s. The State of Maharashtra in Writ Petition No. 4944 of 2013 decided by Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad.**

On the other hand, the Respondent's legal representative argued that the First Appellate Authority rightly awarded the part payment and not committed any mistake. The Appellant is selling tobacco which is not unmanufactured as argued by the Appellant. The First Appellate Authority has not committed any mistake. Hence, Appeal be dismissed.

6. It is needless to say that the Appeal is the continuation of the original proceedings and we have to see whether the First Appellate Authority has committed any mistake or not. After gone through the whole records, it indicates that the Appellant is selling tobacco which is in nature of unmanufactured. The Appellant is a reseller of the tobacco. The said unmanufactured tobacco is exempted under Schedule Entry A-45. The said view is also taken by the Lordship in above supra case and hence we do agree with the Appellant Advocate. Hence, we pass the following order:-

ORDER

VAT Appeal Nos. 87 to 89 of 2017 are allowed.

There is Nil part payment.

Stay is granted till disposal of the Appeal.

No order as to costs.

(C.D. Gongle)
Member

(K.D. Patil)
Member

CDG/MMJ