

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2421 OF 2006

M/S.MALAYAGIRI  
DISTILLERY

SANDALWOOD

OIL .. APPELLANT(S)

Versus

SPECIAL COMMISSIONER & COMMISSIONER OF .. RESPONDENT(S)  
COMMERCIAL TAXES & ORS.

WITH

Civil Appeal No. 962 of 2006

Civil Appeal No. 963 of 2006

Civil Appeal No. 968 of 2006

Civil Appeal No. 965 of 2006

Civil Appeal No. 967 of 2006

Civil Appeal No. 969 of 2006

Civil Appeal No. 970 of 2006

Civil Appeal No. 964 of 2006

Civil Appeal No. 971 of 2006

Civil Appeal No. 972 of 2006

Civil Appeal No. 973 of 2006

Civil Appeal No. 975 of 2006

Civil Appeal No. 976 of 2006

Civil Appeal No. 3936 of 2007

Civil Appeal No. 966 of 2006

Civil Appeal @ SLP(C) No. 478 of 2007

Civil Appeal @SLP(C) No.11148 of 2011

Civil Appeal Nos. 4013-4014 of 2011

AND WITH

Civil Appeal No. 974 of 2006

O R D E R

These matters are posted before us in view of the order of Reference made by the two learned Judges of this Court on 07.08.2007. The learned Judges are of the view that the judgment

in the case of *State of Orissa & Anr. vs. M/s. K.B. Saha & Sons Industries Pvt. Ltd. & Ors. etc.*, reported in (2007) 6 SCALE 284, needs reconsideration by a larger Bench.

CIVIL APPEAL NO.962 of 2006:

1. After arguing the matter for some time, Shri S.K. Bagaria, learned senior counsel for the appellant submits that at this stage, this Court need not answer the reference for the reason that the appellants wants to participate in the assessment proceedings. He would further submit that as and when the assessment of the District Forest Officer is taken up by the assessing authority, the appellants may be permitted to be a party to the proceeding and also be permitted to produce all the relevant documents and make reference to the case laws to demonstrate that the transaction in question is not intra-state sales but inter-state sales as envisaged under Section 3(a) of the Central Sales Act, 1956 ("the Act", for short).

2. Shri Venkataramani, learned senior counsel for the respondent(s) rightly does not have any objections to the request made by Shri Bagaria, learned senior counsel.

3. In view of the above, we permit the appellant along with the District Forest Officer to participate before the assessing authority and produce all such relevant documents and also the case laws on the point to demonstrate that the transactions were

completely inter-State sales and not intra-State sales. We further direct the assessing authority to consider the documents and also look into the decisions on which reliance is placed by the learned counsel to arrive at a proper conclusion.

4. We are informed that when demands were made by the assessing authorities and also the District Forest Officer for payment of tax under the Tamil Nadu General Sales Tax Act, 1959, (for short, "the Act"), the appellant-herein had furnished the bank guarantees. Shri Bagaria, on instructions, would submit that those bank guarantees are kept alive. If that is so, we now permit the assessing authorities of the State of Tamil Nadu to encash the bank guarantees towards the payment of tax dues by the appellant. If, for any reason, the appellant succeeds before the assessing authority, the excess amount paid by the appellants shall be refunded to them within the statutory period and if the same is not paid within the said period, the excess amount will carry the statutory interest.

5. Further, we clarify that the High Court in the impugned judgment and order has only declared the law insofar as what constitutes an intra-State sales and inter-State sales respectively. Accordingly, we direct the assessing authority to complete the assessment of the District Forest Officer after issuing notice to the appellants-herein if the assessments are not yet complete. If for any reason, the assessments are completed

against the District Forest Officer, the appellants are at liberty to file appeal(s) against the assessment order wherein the liability to pay tax is quantified by the assessing authority, within a month's time. If such appeal(s) are filed, we direct the appellate authority to consider the same on merits without reference to the period of limitation.

6. In view of the submissions made by both the learned counsels, we do not intend to answer the reference and the same is left open to be answered in an appropriate case.

7. With these observations, the Civil Appeal is disposed of.

I.A.No.4 of 2009 in Civil Appeal No.2421 of 2006:

Shri V.Giri, learned senior counsel appearing for the applicant in this application, on instructions, seeks leave of this Court to withdraw the application, in view of the orders passed by us in Civil Appeal No.962 of 2006.

Permission sought for is granted. I.A. No.4 of 2009 in C.A. No.2421 of 2006 is disposed of as withdrawn.

I.A. No.5 in Civil Appeal No.2421 of 2006 :

Shri P.N.Misra, learned senior counsel appearing for the applicant in this application, on instructions, seeks leave of this Court to withdraw the application, in view of the orders passed by us in Civil Appeal No.962 of 2006.

Permission sought for is granted. I.A. No. 5 in C.A. No. 2421 of 2006 is disposed of as withdrawn.

Civil Appeal No.2421/2006,  
Civil Appeal No.963/2006,  
Civil Appeal No.968/2006,  
Civil Appeal No.965/2006,  
Civil Appeal No.967/2006,  
Civil Appeal No.969/2006,  
Civil Appeal No.970/2006,  
Civil Appeal No.964/2006,  
Civil Appeal No.971/2006,  
Civil Appeal No.972/2006,  
Civil Appeal No.973/2006,  
Civil Appeal No.975/2006,  
Civil Appeal No.976/2006,  
Civil Appeal No.3936/2007,  
Civil Appeal No.966/2006,  
Civil Appeal @ SLP(C) No.478/2007,  
Civil Appeal @ SLP(C) No.11148/2011  
AND WITH Civil Appeal No.974/2006

1. Leave granted in all the Special Leave Petitions.

2. In view of the order passed in Civil Appeal No.962 of 2006, these appeals are also disposed of in the same terms, observations and directions.

Civil Appeal Nos. 4013-4014 of 2011:

Leave granted earlier is revoked and the Special Leave Petitions are dismissed.

Ordered accordingly.

.....J.  
[H.L. DATTU]

.....J  
[R.K. AGRAWAL]

.....J  
[ARUN MISHRA]

NEW DELHI,  
JULY 17, 2014.

ITEM NO.101

COURT NO.2

SECTION IIIA

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 2421/2006

M/S.MALAYAGIRI SANDALWOOD OIL DISTILLERY

Appellant(s)

VERSUS

SP.COMMNR.&amp; COMMNR.OF COMMERICAL TAX&amp;ORS

Respondent(s)

(with appln.(s) for intervention and intervention)

WITH

C.A. No. 962/2006

(With Office Report)

C.A. No. 963/2006

(With Office Report)

C.A. No. 968/2006

(With Office Report)

C.A. No. 965/2006

(With Office Report)

C.A. No. 967/2006

(With Office Report)

C.A. No. 969/2006

(With Office Report)

C.A. No. 970/2006

(With Office Report)

C.A. No. 964/2006

(With Office Report)

C.A. No. 971/2006

(With Office Report)

C.A. No. 972/2006

(With Office Report)

C.A. No. 973/2006

(With Office Report)

C.A. No. 975/2006

(With Office Report)

C.A. No. 976/2006  
(With Office Report)

C.A. No. 3936/2007  
(With Prayer for Interim Relief and Office Report)

C.A. No. 966/2006  
(With Office Report)

SLP(C) No. 478/2007  
(With Office Report)

SLP(C) No. 11148/2011  
(With Office Report)

C.A. No. 4013-4014/2011  
(With Office Report)

C.A. No. 974/2006  
(With Office Report)

Date : 17/07/2014 These appeals/petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE H.L. DATTU  
HON'BLE MR. JUSTICE R.K. AGRAWAL  
HON'BLE MR. JUSTICE ARUN MISHRA

For Appellant(s)

Mr.S.K.Bagaria, Sr.Adv.  
Mr.G.Prakash, Adv.  
Mr.Narendra Sharma, Adv.  
Ms.Beena Prakash, Adv.  
Mr. V. K. Sidharthan ,Adv.  
Mr.K.Ajit Singh,Adv.  
Mr.Shri Niwas,Adv.

Mr. K. Rajeev ,Adv.

Mr.Yashraj Singh Deora, Adv.  
for M/s Mitter & Mitter Co. ,Adv.

Mr.E.R.Kumar, Adv.  
Mr.Sumit Goel,Adv.  
Mr.Aditya Sharma, Adv.  
For M/s. Parekh & Co. ,Adv.

Mr.Gopal Jain, Sr.Adv.  
Ms.Chinmayee Chandra, Adv.  
Ms.Stephanie V.Sonawane, Adv.  
For Mrs Manik Karanjawala ,Adv.

For Respondent(s)      Mr.R.Venkataramani, Sr.Adv.  
                                  Mr.Subramonium Prasad, AAG  
                                  Mr. B. Balaji ,Adv.  
                                  Mr.R.Rakesh Sharma, Adv.  
                                  Mr.Yash Raj, Adv.  
                                  Ms.Neelam, Adv.  
                                  Mr.Rajeev Dalal, Adv.  
                                  Mr.Shodhan Babu, Adv.  
                                  Mr.S.Anand, Adv.

Applicant                      Mr.V.Giri, Sr.Adv.  
                                  Mr. P. V. Dinesh ,Adv.(NP)

                                 Mr. R. Nedumaran ,Adv.(NP)

                                 Mr. K. R. Sasiprabhu ,Adv.

                                 Mr. R. Sathish ,Adv.(NP)

                                 Mr. Sanjay R. Hegde ,Adv. (NP)

                                 Mr.V.N.Raghupathy, Adv.

Applicant                      Mr.P.N.Misra, Sr.Adv.  
                                  Mr.Kedar Nath Tripathy, Adv.

                                 Mr.Yashraj Singh Deora, Adv.  
                                  For M/s.Mitter & Mitter Co., Adv.

                                 M/s.K.L.Mehta & Co., Adv.

UPON hearing the counsel the Court made the following  
 O R D E R

I.A.Nos.4 & 5 in C.A.No.2421/2006 are disposed of as  
 withdrawn.

All the Civil Appeals are disposed of, except  
 C.A.Nos.4013-4014 of 2011.

Civil Appeal Nos.4013-4014 of 2011:

Leave granted earlier is revoked and the Special Leave  
 Petitions are dismissed.

(G.V.Ramana)  
 Court Master

(Signed order is placed on the file)

(Vinod Kulvi)  
 Asstt.Registrar