



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

SALES TAX REFERENCE NO. 81 OF 2010

M/s. Tata Motors Ltd. ... Applicant  
Versus  
The State of Maharashtra ... Respondent

AND

SALES TAX REFERENCE NO. 105 OF 2011

M/s. Tata Motors Ltd. ... Applicant  
Versus  
The State of Maharashtra ... Respondent

Mr. Tanishq Dube a/w R. P. Shinde i/b Khare Legal Chambers for Applicant.  
Ms. Jyoti Chavan Addl. GP a/w Mr. Himanshu Takke for Respondent-State.  
Mr. Atul Jasani, Amicus Curie.

CORAM: G. S. KULKARNI &  
AARTI SATHE, JJ.

DATE: 26 FEBRUARY 2026

Oral Order (Per :- G. S. Kulkarni, J.)

1. By an order dated 12 November 2009 passed by the Maharashtra Sales Tax Tribunal, at Mumbai in Reference Application No. 180-181 of 2009, the following questions of law are referred to this Court to be answered in the present reference under Section 61(1) of the Bombay Sales Tax Act, 1959 ("Bombay Act").

1) Whether vehicles affixed with trade mark which are sold, thereafter repurchased and resold to others on hire purchase without fixing any further trade mark, are not eligible to claim resale under clause (26) of Section 2 read with Section 8(ii) and the premium realized on hire-purchase would form part of taxable turnover under the Bombay Sales Tax Act, 1959 even though the same amount of hire purchase premium is subject to the levy of service tax under Chapter V and VA of the Finance Act, 1994?

2) Whether on the facts and circumstances of the case and evidence on record the Tribunal was justified in holding that hire premium charges recovered by the hirer of the vehicles forms part of sale price as defined

under section 2(29) of the B.S.T. Act, 1959, ignoring the fact that Parliament in exercise of its powers under entry 97 of list I to the Constitution of India had held such hire premium charges are taxable under Finance Act, 1994?

3) The Statement of facts and necessary copies of documents shall accompany the Reference Application.

2. The proceeding of this reference are also circulated at the instance of the Applicant seeking withdrawal of the reference. On behalf of the Applicant (Original Appellant before the Tribunal), it is contended that the Applicant is no more interested in the reference being answered as the Tribunal has already held in favour of the department in the Second Appeal. It is hence stated that obviously the revenue would also not be interested in the reference being answered.

3. Once a reference on a question of law is made by the Tribunal, normally the same needs to be answered. However, there are exceptions. In the circumstances when a party at whose behest, a reference was made by the Tribunal, itself is taking a position that the reference be not answered, as to what would be the course of action to be adopted by the courts, needs to be considered. We request Mr. Atul Jasani, learned Advocate to assist the Court on the legal position on such issue who has ably assisted the Court to place on record the relevant decisions which are discussed hereunder.

4. A Coordinate Bench of this Court in Sales Tax Reference, (L) No. 30 of 2007 (**The Commissioner of Sales Tax, Maharashtra State Vs. M/s. Trinity Engineers Limited**) in similar circumstances passed the following order :-

“4. When all of them were listed today, Mr. Upadhyaya appearing for the Applicants-Commissioner of Sales Tax in each of these matters stated that no useful purpose will be served by entertaining these Motions, granting them and thereafter proceeding with the Reference in accordance with law simply because the Commissioner is no longer interested in obtaining any opinion and answer on the questions of law from this Court. Since the References are registered at the instance of the Applicants/Commissioner of Sales Tax who approached the Tribunal and sought its intervention to

forward these questions, we accept Mr. Upadhyay's statement, made on instructions. We not only dispose off all these Notices of Motion but all the References, as well. We clarify that the questions of law forwarded are kept open for being answered in an appropriate case."

5. In **Gajadhar Prasad Nathu Lal Vs. Commissioner of Wealth-Tax, M.P CWT (1970) 76 ITR 615 (MP)**, before the Division Bench of the High Court of Madhya Pradesh, the assessee had filed an application for withdrawal of the reference and in such context, on a survey of the position by an elaborate order, the Court declined to answer the question referred in the case, on the premise that the assessee and the department were not interested in the reference being answered. The relevant extract of the said decision is required to be noted which read thus:

"Whether, under the Wealth-tax Act, the value of ancestral property is assessable in the hands of the sole surviving coparcener, whose family consists of wife and daughter, in the status of an individual?"

The assessee has filed an application for being permitted to withdraw the reference saying that he is no longer interested in "prosecuting the reference". Shri Tankha, learned counsel appearing for the assessee, also prayed that the assessee be allowed to withdraw the reference. Shri Khirwadkar, learned counsel appearing for the department, stated that the department had no objection if the question referred for the decision is not answered because of the unwillingness of the assessee to proceed further in the reference made at his instance. The question, therefore, that arises for consideration is whether the assessee can be permitted to withdraw the reference.

Section 27 of the Act, which deals with the making of a reference to the High Court, does not say anything about the withdrawal of a reference before the case is fully heard and argued. It would, therefore, appear that in the absence of a provision in the Act permitting the party at whose instance the reference has been made by the Tribunal to withdraw it, the reference cannot be allowed to be withdrawn. A reference is no doubt made by the Appellate Tribunal at the instance of an assessee or the department, and in some cases at the instance of both. But the reference is not by one party or the other but by the Appellate Tribunal itself inviting the opinion of the High Court on question or questions of law stated in the reference. As a reference is made by the Tribunal and not by the party at whose instance the reference has been made by the Tribunal, the power of withdrawing a reference can only be with the Tribunal and cannot be claimed by the party at whose instance a reference has been made. In Section 27 of the Act, the Tribunal has not been given any power to withdraw a reference made by it to the High Court before it is fully heard and argued.

Though the party at whose instance the reference has been made cannot be permitted to withdraw it, yet if the party fails to appear at

the hearing of the reference or appears and says that it is not interested in the reference being answered or makes an application for withdrawing the reference, then this court is not bound to answer the question referred and can decline to answer the reference. This is clear from Sub-section (6) of Section 27, which says:

"The High Court, upon hearing any such case, shall decide the question of law raised therein....."

A question of law referred to the High Court can, therefore, be decided only after the hearing of the case stated. If, therefore, the party, at whose instance a reference has been made, fails to appear or appears and submits that it is not interested in the reference being answered or prays for withdrawing the reference and does not address any arguments and thus there is no hearing of the case, then the preliminary condition of subsection (6) of Section 27 is not satisfied, and consequently there is no obligation on this court of deciding the question of law raised in the reference and delivering a judgment thereon. It may make no practical difference to the party at whose instance the reference has been made and who seeks its withdrawal, whether it is allowed to withdraw the reference or the High Court declines to answer the reference when the party appears and states that it is not interested in the reference being answered. But it is one thing to say that a party, at whose instance a reference has been caused, is entitled as of right to withdraw it and quite different to hold that when the party causing a reference to be made chooses not to appear at the hearing or having entered an appearance only submits that it is not interested in the reference being answered, then the High Court is not bound to answer the reference and can decline to answer the question referred to it for decision.

There is ample authority in support of the view that when a party who has caused a reference to be made under Section 66 of the Indian Income-tax Act, 1922, does not appear at the hearing of the reference, the High Court is not bound to answer the question referred and should not do so. In *M. M. Ispahani Ltd. v. Commissioner of Excess Profits Tax*, [1955] 27 I.T.R. 188, 191 the question arose whether the High Court is bound to answer a reference under Section 66 if the assessee, at whose instance the reference was made, does not appear at the hearing of the reference. The learned Chief Justice of the Calcutta High Court, after referring to Section 66(5) of the Indian Income-tax Act, 1922, said ;

*It will be noticed that the section is expressed in mandatory language and deploys the word 'shall' throughout its many clauses. **Prima facie, therefore, it would seem that upon a reference being received it becomes an obligation of the High Court to answer the question referred and take the further steps mentioned in the section and it becomes equally the obligation of the Appellate Tribunal to adjust its order, if necessary, to the opinion which the High Court may express on the question concerned. It seems to me, however, in spite of the apparently mandatory language of the subsection, that its true import cannot be to***

require the High Court to answer the questions referred to it in all circumstances, irrespective of whether the parties appear before it or not. To take an extreme case, suppose instead of only the party who had caused the reference to be made being absent both the parties fail to appear would the court still be bound to deal with the reference and answer the question referred? I cannot imagine that the section purports to impose upon the court any such obligation. It seems to me that before the duty contemplated by the section to decide the question of law referred can arise, a hearing of the case must take place, because the section opens with the words : 'The High court upon the hearing of any such case', etc. Where the party, who has caused the reference to be made and who is in the position of a plaintiff, fails to appear, no hearing of the case can take place and in my view, since the preliminary condition of the sub-section is not satisfied in such a case, the consequent obligation of deciding the questions of law and delivering a judgment does not also arise."

The decision was followed by the Andhra Pradesh High Court in *Arisetty Butchanna v. Commissioner of Income-tax*, [1962] 46 I.T.R. 703 where a similar conclusion was reached. So also it has been held in *Commissioner of Income-tax v. Pothan Joseph and Sons*, A.I.R. 1957 T.C. 267 following the decision in *M.M. Ispahan Ltd. v. Commissioner of Excess Profits Tax*, that **when the party who has caused a reference to be made does not appear at the hearing, the court is not bound to answer the question and should not do so, and the position would be the same when the party does enter an appearance but only to submit that he is not interested in the reference being answered.**

*In Karnani Industrial Bank Ltd. v. Commissioner of Income-tax*, [1956] 30 I.T.R. 16 it has been held by the Calcutta High Court that there is no provision in the Income Tax Act under which the party who has caused a reference to be made can be allowed to withdraw it after the Tribunal has made a reference to the High Court; and that the reference must be decided by the High Court unless the party who has caused the reference to be made fails to appear and to take any interest in the matter. In that case, the assessee, at whose instance the reference was made, appeared and stated before the court that it did not want to pursue the reference any further and should be allowed to withdraw, it as the question referred had been finally concluded against it by an earlier decision of the Calcutta High Court affirmed by the Supreme Court, The Calcutta High Court answered the reference as there was a hearing of the case when the assessee appeared and stated before the court that the point had been concluded by a previous decision of the Calcutta High Court affirmed by the Supreme Court. This decision of the Calcutta High Court supports the view that once a reference is made by the Tribunal, the party at whose instance it has been made cannot be allowed to withdraw it.

**In view of the fact that the assessee does not want to pursue this reference and the department is also not interested in the reference**

being answered, the only course we can adopt is to decline to answer the question referred in this case. We, therefore, decline to answer the question referred to us for decision. As the Commissioner of Wealth-tax, Madhya Pradesh, has appeared and has incurred the usual expenses he shall have costs of this reference. Counsel's fee is fixed at Rs. 150.

(emphasis supplied)

6. Also, again before the High Court of Madhya Pradesh in **Gwalior Rayon Silk MFG. (WVG). Co. Ltd. Vs. Commissioner of Income Tax.**, the assessee stated that it was not interested in the reference being answered. It is in such context also considering the stand taken by the department, the Court declined to answer the questions referred to the Court by referring to the decision in **Gajadhar Prasad Nathu Lal Vs. Commissioner of Wealth-Tax, M.P.** (supra).

7. In the light of the aforesaid discussion, we cannot permit withdrawal of the reference, the same however would be required to be disposed of by declining to answer the reference, keeping the questions of law open.

8. Disposed of. No costs.

#### Sales Tax Reference No. 105 of 2011

1. Insofar as Sales Tax Reference No.105 of 2011 is concerned, by an order dated 17 March 2010 passed by the Maharashtra Sales Tax Tribunal, at Mumbai in Reference Application No. 198 of 2009, the following question of law is referred to this Court to be answered in the present reference under Section 61(1) of the Bombay Sales Tax Act, 1959 ("Bombay Act").

"Whether on the facts and circumstances of the case and evidence on record the Tribunal was justified in holding that hire premium charges recovered from the hirer of the vehicles forms part of sale price as defined under section 2(29) of the B.S.T. Act, 1959, ignoring the fact that Parliament in exercise of its powers under entry 97 of list I to the Constitution of INdia and held such hire premium charges are taxable under Service Tax Act, 1994."

The statement of facts shall accompany the Reference of Application.

2. The proceeding of this reference are also circulated at the instance of the Applicant seeking withdrawal of the reference. On behalf of the Applicant (Original Appellant before the Tribunal), it is contended that the Applicant is no more interested in the reference being answered.

3. Thus, this reference would also be required to be disposed of in terms of paragraph 7 of the aforesaid order. It is accordingly disposed of. No costs.

(AARTI SATHE, J.)

(G. S. KULKARNI, J.)