"Impact of Recent Judicial Ruling under MVAT Act & CST Act"
Judgments for discussion in
Seminar to be held on 16.4.2016 by WIRC of ICAI

C. B. THAKAR,
Advocate

1] UTI Mutual Fund (VAT SA 100 to 102 of 2014 dt.22.9.2015)

Rule 52 of MVAT Rules,2005 which prescribes eligibility to set off reads as under:

"**52. Claim and grant of set-off in respect of purchases made during any period commencing on or after the appointed day.**

(1) In assessing the amount of tax payable in respect of any period starting on or after the appointed day, by a registered dealer (hereinafter, in this rule, referred to as 'the claimant dealer') the Commissioner shall subject to the provisions of [rules 53,54,55 & 55B] in respect of the purchases of goods made by the claimant dealer on or after the appointed day, grant him a set-off of the aggregate of the following sums, that is to say,

(a) the sum collected separately from the claimant dealer by the other registered dealer by way of [tax] on the purchases made by the claimant dealer from the said registered dealer of goods being capital assets and [goods the purchases of which are debited to the profit and loss account or, as the case may be, the trading account],

(b) tax paid in respect of any entry made after the appointed day under the Maharashtra Tax on the Entry of Motor Vehicles into Local Areas Act, 1987, and

(c) the tax paid in respect of any entry made after the appointed day under the Maharashtra Tax on the Entry of Goods into Local Areas Act, 2003.

(d) the purchase tax paid by the claimant dealer under this Act."

Thus, to find out actual availability of set off reference is required to be made to Rules like Rules 53 & 54. Rule 53 prescribes reduction in set off whereas Rule 54 is about negative list.

Rule 53(6)(b)

One of the Rules prescribing reduction in set off is rule 53(6). In particular Rule 53(6)(b) is applicable to dealers in general. The said rule is reproduced below for ready reference.

"**53.** ***Reduction in set-off***. –

(6) If out of the gross receipts of a dealer in any year, receipts on account of sale are less than fifty per cent. of the total receipts, -

(a) ...

(b) in so far as the dealer is not a hotel or restaurant, the dealer shall be entitled to claim set-off only on those purchases effected in that year where the corresponding goods are sold or resold within six months of the date of purchase or are consigned within the said period, not by way of sale to another State, to oneself or one's agent or purchases of packing materials used for packing of such goods sold, resold or consigned:

Provided that for the purposes of clause (*b*), the dealer who is a manufacturer of goods not being a dealer principally engaged in doing job work or labour work shall be entitled to

claim set-off on his purchases of plant and machinery which are treated as capital assets and purchases of parts, components and accessories of the said capital assets, and on purchases of consumables, stores and packing materials in respect of a period of three years from the date of effect of the certificate of registration.

Explanation.- For the purposes of this sub-rule, "receipts" means the receipts pertaining to all activities including business activities carried out in the State but does not include the amount representing the value of the goods consigned not by way of sales to another State to oneself

or one's agent."

It can be seen that the rule provides for reduction or, in other words, restricted set off, when the receipts from sales are less than 50% of gross receipts.

The Explanation under rule 53(6)(b) also provides meaning of gross receipts. There are disputes about meaning of gross receipts and how to compute it.

It can also be noted that if receipts from sales are less than 50% of gross receipts then set off is eligible only in respect of purchases which are sold within six months from the date of purchase. Therefore, the goods which are not sold like, consumed, capital goods or goods which are not sold within six months are not eligible for set off.

Mutual Funds

Recently there was controversy in relation to set off to Mutual Funds. The Hon. M.S.T. Tribunal had an occasion to decide such issue in case of **UTI Mutual Fund (VAT SA 100 to 102 of 2014 dt.22.9.2015)**. The facts as narrated in the judgment are as under:

"The Appellant is a mutual fund registered with the Securities and Exchange Board of India (SEBI) and is regulated under the SEBI (Mutual Funds) Regulations, 1996. UTI Gold Exchange Traded Fund (UTI GETF) is one of the schemes of the Appellant and the same is also regulated by SEBI under the SEBI MF regulations.

3. As per the SEBI MF regulations, the balance sheet and revenue accounts of the each scheme are required to be prepared separately and audited separately and no consolidated balance sheet of various schemes of a Mutual Fund is prepared. Thus, each scheme has a separate entity including separate receipts, funds, assets liabilities etc.

4. As per the MVAT provisions, VAT is applicable on the turnover of sale of goods and the definition of goods specifically excludes securities. Therefore only UTI GETF is subject to VAT and not the other schemes of the Appellant as other schemes invested in securities and not in gold. The Appellant obtained VAT registration simultaneously with the launch of UTI GETF and not earlier despite the other schemes of the Appellant dealer being in operation much before that. Thus the Appellant is assumed the role of dealer only on the launch of UTI GETF scheme and only this scheme should be considered and not any other scheme of the Appellant."

From the judgment, it can be seen that the Mutual fund has receipts from various schemes like relating to securities, gold etc.. Over all, the sales receipts are from sale of gold whereas there are other receipts towards securities etc.. The main issue involved was whether the gross receipts should be computed considering receipts from all the schemes or only from gold scheme separately.

The further argument was that under MVAT Act, only sale of goods can be considered as receipts and not other receipts which do not involve goods like shares, securities etc..

Hon. Tribunal has dealt with the issue in following words.

"The Learned representative of revenue has relied on the judgment of this Tribunal reported in the case of **M/s. UTI Mutual Fund (present Appeal) v/s. State of Maharashtra reported in 2013 (ST1) GJX 0626 STMAH** wherein it is observed:-

"The set-off u/s 48(1)(a)(ii) of MVAT Act is circumscribed with limitations. The limitations are (i) circumstances, (ii) conditions (iii) restrictions, as may be specified in the Rules. Rule 53 prescribe reduction in set-off in full or part, particularly Rule 53(6)(b) MVAT Rules prescribe restriction. Restriction is in the nature of duration of purchase and its sale. The restriction is where the receipts on account of sale are less than 50% of the total receipts, the set-off is permissible only on those purchases effected in that year where corresponding goods sold or resold within six months from the date of purchases. The "receipts" are explained in explanation. "Receipts" means the receipts pertaining to all activities, including business activities carried out in the State."

On the plain reading of Section 48(1)(a)(ii) of MVAT Act r/w Rule 53(6)(b) and Explanation of MVAT Rules, it is clear that the receipts would include all activities of the dealer including business activities. Receipts which are concerning the activities not involving the sale of goods, are also included in "Total Receipts" in Rule 53(6) of MVAT Rules. The submission of Smt. N.R. Badheka does not have a legal base in law. Rule

53(6)(b) and explanation are within delegated powers conferred by section 48(1) of MVAT Act."

26. The Learned Advocate Smt. Badheka has strongly contended that UTI GETF is dealing in equity and therefore only the receipts pertaining to the activity of UTI GETF ought to have been considered for grant of set off u/r 53(6)(b) of MVAT rules. However, on going through the explanation attached to 53(6)(b), we find that the receipt means receipts pertaining to all activities including business activities carried out in the State and therefore in our considered opinion, the other activities of UTI Mutual Fund are also required to be taken into consideration while calculating the receipts for the purposes of set off as they are also business activities carried out in the State.

27. The basic rule of interpretation is laid down by the Hon'ble Apex Court in the case of **Union of India and Others v/s. Priyankan Sharan and Another (LIS/SC/2008/1228)** wherein it is observed:

"It is well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statutes is an edict of the Legislature. The language employed in a statute is the determinative factor of legislative intent".

28. It is well settled that in the matter of grant of set off or exemption, the relevant provisions are required to be construed strictly. No liberal interpretation is permissible in such matters. On going through the explanation attached to Rule 53(6(b) of MVAT Rules, it clearly appears that receipts for the purpose of said rules means the receipts pertaining to all the activities including business activities of the dealer carried out in the State. The contention of Learned Advocate Smt. Badheka that only the activities of UTI GETF should be taken into consideration for the purposes of grant of set off u/r 53(6)(b) is thus devoid of merit and cannot be accepted."

Thus the interpretation lays down that the gross receipts should be computed considering receipts from all activities in Maharashtra. It will include receipts from

sale of goods as well as non sale activities also. Further Mutual fund is considered as one entity and cannot be considered scheme wise.

The ratio laid down above will also apply to other dealers. The dealers in Maharashtra are required to consider above interpretation while computing the setoff.

Impact

1. What are the activities in Maharashtra?
2. How to prove that activity is not in Maharashtra?
3. Examples of proprietary concerns.
4. Position of receipts towards sale of assets/shares, etc.

2] Raj Shipping (W.P.4552 of 2015 and others) dated 19.10.2015

"Sale within State"- Nexus

In earlier days there was issue about determining the 'situs of sale' i.e. the State where the sale has taken place and which state was eligible to levy tax on such sale. There was situation where on one sale, different states were contemplating levy of tax. The State from where goods moved used to claim tax, the State where actually delivery given was also claiming tax as well as other States, picking up some connection of sale transaction with their State like, receiving payment, raising of invoice and so on.

This was known as nexus theory.

To avoid above multiple claiming, the CST Act was amended. Section 4 was inserted in the Act to determine the 'situs' of sale. Section 4(2) is as under:

"**Section 4(2) in the Central Sales Tax Act, 1956**

(2) A sale or purchase of goods shall be deemed to take place inside a State, if the goods are within the State—

(a) in the case of specific or ascertained goods, at the time the contract of sale is made; and

(b) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale by the seller or by the buyer, whether assent of the other party is prior or subsequent to such appropriation.

Explanation.- Where there is a single contract of sale or purchase of goods situated at more places than one, the provisions of this sub-section shall apply as if there were separate contracts in respect of the goods at each of such places."

The attempt was to crystallize the state of sale. It is provided that the sale will be in the State where the goods are ascertained in relation to contract of sale.

Thus, the nexus theory was given go bye and only one State in which physically goods are ascertained in relation to contract of sale, is the State in which sale is to be deemed to have taken place.

Nexus Theory revisited

In the case of M/s. **Raj Shipping (W.P.4552 of 2015 and others) dated 19.10.2015**, Hon'ble Bombay High Court has dealt with the issue as under;-

Facts of Case

The short facts of the case before Hon. Bombay High Court can be noted as under:

"In the additional affidavit, that is filed, the Petitioner states that it is engaged in the business, namely, Bunker Supplies. Bunker supplies mainly consist of supply of petroleum products such as high speed diesel oil (HSD), light diesel oil (LDO) and furnace oil (FO) to various incoming and outgoing vessels within or beyond the port limits of Mumbai Port. These outgoing vessels, to which the supplies are made, are located beyond approximately 1.55 nautical miles from the coast of Mumbai and are anchored in various anchorage points within the territorial waters of the Union of India, off the coast of Maharashtra. It is stated that the outgoing shipping vessel places an inquiry for the required quantity of HSD with the Petitioner. Pursuant to the inquiry made by the customer, the Petitioner gave a quote for their supplies. In many cases, the Petitioner enters into a formal agreement with their customers for the purchase of HSD. At page 86

of the paper book is one of the illustrative copy of such an agreement. Pages 86 to 89 of the paper book read as under....

81) Thus, pursuant to such agreement or an approval of a quote by the customer, the shipping vessel places a purchase order/nomination with the Petitioner for the required quantity and the name of the vessel to which the supplies are to be made. The illustrative copy of the purchase order/nomination is also at page 90 of the paper book. It is on receipt of the purchase order/nomination from the shipping vessel that the Petitioner, in turn, places a purchase order

on any of the oil marketing companies such as M/s. Indian Oil Company Limited, M/s. Bharat Petroleum Corporation Limited etc. Thereafter, the further documents are prepared, including the shipping bill and once they are ready, the oil marketing company loads the required quantity of high speed diesel in the tank lorries, which then come to the barge loading point at Mallet Bunder along with the invoice copy of the oil marketing company.

82) The sister concern of the Petitioner owns self propelled barges having large cargo tanks (below deck) ranging from 40 thousand liters (40KL) to 200 thousand liters (200KL). The barges have pumps fitted on them with a flow meter in order to pump out the HSD to the vessel. These are similar to petrol pumps where petrol is sold to the regular customers. At the Mallet Bunder, the HSD supplied by the oil marketing company is decanted into the cargo tanks of the barges owned by the Petitioner. The entire activity of decanting is done under the supervision of a Customs Officer. After taking delivery of the HSD from the oil marketing company, the barges sail to the anchorage point of the nominated vessel.

83) Paras 12 to 15 at pages 82 and 83 of the paper book read as under:

12. After reaching the anchorage point of the nominated vessel, the HSD is pumped out of the barge into the fuel tank or bunker of the nominated vessel. Once the supply is complete, the Master or the Authorized Officer of the vessel acknowledges the receipt of

the ordered quantity of HSD on the Bunker Delivery Note (BDN) and the Shipping Bill. An illustrative copy of the Bunker Deliver Note (BDN) duly acknowledged by the officer of the vessel is marked and annexed as Exhibit "7".

13. The barges go beyond 1.54 Nautical Miles from the base line of the coast of Mumbai to deliver the HSD to the vessels anchored therein, in the territorial waters of the Union of India.

14. After the delivery of the HSD to the nominated vessel is complete, the Petitioner raises an invoice on the shipping line based on the BDN. An illustrative copy of the invoice raised by the

Petitioner is marked and annexed as Exhibit "8". The Petitioner invoices the shipping line for the quantity of HSD actually delivered, along with charges for transportation and hiring of the

barge belonging to its sister concern companies. These may be way of a lumpsum rate/KL previously agreed to by the Petitioner or the charges for sale of HSD and transportation may be

indicated separately in the invoice.

15) The sister concern of the Petitioner separately charges the Petitioner company for the hire of the barge by the Petitioner company for the purpose of the supplies to be made to various

customers. An illustrative copy of a credit note issued by the Petitioner in favour of its sister concern is marked and annexed as Exhibit "9"."

Arguments of Petitioner

Based on above facts the base argument of petitioner was that the sale cannot be said to be in State of Maharashtra. The territorial water was contended to be not part of State and hence State has no jurisdiction, when sale is taking place in territorial waters.

Alternatively it was contended that it can be liable under CST Act but not under MVAT Act. It was also contended that if at all it is liable in State then it will be exempt under Notification issued u/s.41(4) bearing no.VAT-1505/CR-135/Taxation-1 dated 30.11.2006 wherein sale of motor spirits by retail outlet is exempted from levy of VAT.

On behalf of Revenue the arguments were opposed stating that the State has power to deal with impugned sales.

Hon. Bombay High Court

After considering the facts, contentions & citations from both sides, Hon. High Court observed as under:

"95) If we apply this principle to the facts and circumstances of the present case, we do not have any hesitation in concluding that it is the goods which have been produced or manufactured or refined by the oil companies and which are drawn from their storage tanks in fixed quantity that are supplied on demand to the Petitioner. The manufacturers as also the refineries are very much within the State of Maharashtra viz. at Mumbai. The Petitioners are at Mumbai. Meaning thereby, their place of business is at Mumbai. It is from that place that the Petitioner requests the oil companies to supply to it the high speed diesel. It is received by the Petitioner from the oil companies at

Mumbai. It may be that the Petitioner treats this as a contract on which they paid the sales tax as a component of the price. However, it is that very high speed diesel and supplied to the Petitioner at Mumbai which is carried from Mumbai in furtherance of a contract with parties like M/s. Leighton, which contract is also placed and finalised from

Mumbai, through the barges of the Petitioner to the vessels of M/s. Leighton and which may be stationed in territorial waters. However, Leighton comes in the picture, as have been stated by them, for the purpose of fulfilling a contractual obligation of M/s. ONGC. It is for that obligation to be discharged that they have deployed the vessels. It is these vessels which require the bunker supplies and which supplies are met by the Petitioner.

The subject matter of the contract with M/s. Leighton is this high speed diesel or motor spirit which is taken and carried from Mumbai. Therefore, there is sufficient territorial nexus for the Maharashtra Value Added Tax Act to apply and to be invoked to the later sale by the Petitioner of the same goods to M/s. Leighton and other entities similarly placed. We do not see how the Petitioner can escape compliance with this legislation and by contending that the contract of M/s. Leighton being a distinct contract, the sale taking place in territorial waters that the sales tax legislation or the VAT legislation of the Maharashtra State would be applicable. Its applicability has to be tested by applying the above principles and particularly the nexus theory. After having found sufficient territorial connection, namely, between the back to back transaction and the taxing authority that we are not in a position to agree with Mr. Sridharan that MVAT Act is inapplicable."

Thus, Hon. Bombay High Court observes that tax applicable can be decided on nexus theory.

Observing as above, Hon. Bombay High Court has remanded matte back to authorities under State Act for deciding the correction position.

In other words, there is no finality of issue and it is left to appellate authorities to decide the taxability including under MVAT / CST and exemption under section 41(4).

Impacts

1. How to apply Nexus Theory?
2. Whether ascertainment of goods will decide the place of sale though the transaction is by works contract and works contract takes place outside India like Bombay high?
3. Whether judgment is final or still leaves open ends?

3] Technocraft Engineers (VAT SA No.237 of 2014 dt.3.11.2015)

VAT on Service Tax collected separately

Though there was certainty about non attraction of VAT on Service tax when the method for discharge of tax on Works Contract is statutory method like rule 58, there is debate about its applicability when the method for discharge is composition method.

The issue has been resolved by Hon'ble Tribunal vide judgment in case of **Technocraft Engineers (VAT SA No.237 of 2014 dt.3.11.2015)**. In this case, the issue was same. VAT was levied on the Service Tax collected separately on the works contract and the dealer was discharging liability under composition scheme.

Hon'ble Tribunal has referred to arguments from both the sides. There was also earlier judgment in case of **Nikhil Comforts (SA No.30 of 2010 dated 31.3.2012)** in which contrary view is taken.

However, in this judgment, Hon'ble Tribunal has held that no VAT can be levied on Service Tax collected separately, even if the tax is discharged under composition scheme. The reasoning of learned Tribunal is noted as under;

"(iii) In the impugned matter, assessment order for the year was passed on 26/12/2012, for the interior designing the appellant had received total amount of Rs.4,35,43,472/- on which 8% composition amount was charged and with interest under section 30(2) and 30(3) of the MVAT Act total demand was raised at rs.27,10,949/-. Appellant challenged the said order on the ground of incorrect determination of turnover, levy of tax on service tax and set-off claim and on interest. The First Appellate Authority confirmed the levy of tax on service tax amount saying that, it is part of contract price but he allowed other grounds hence VAT payable amount is changed from Rs.27,10,949/- to Rs.2,24,831/- with part payment made in appeal, the appellant got refund of rs.1,82,109/- on which no interest under section 52 of the MVAT Act was calculated. In total consideration, the service charges amount will become the part of total receipt by

the Contractor but service tax amount on service charges will not become part of total receipt, because appellant contractor wants to pay the said amount to the Central Excise Department. Although, the definition of sale price is later on amended with effect from 01/04/2015, and the separate Explanation IA is added clarifying that, service tax levied and collected separately shall not be included in sale price. It is the revenue's contention that, the said amendment is not retrospective, and it has effect from 01/04/2015. So upto 31/03/2015 total receipt should be considered including service tax. However, we made it clear that, in the definition of sale price under section 2(25) service tax was not incorporated as deemed sale price. In the instant case, sale means a valuable consideration of the goods involved in the works contract, the consideration must be received by the contractor. Even though he had collected service tax separately he has to deposit it with the Central Government. Therefore, it will not become part of his receipt. The revenue had cited most of the case laws on agreement for composition. Appellant is not denying that, he had not agreed for composition. He is ready to pay 8% tax on the valuable consideration received by him which he can utilize in his business, and the tax amount against service charges incurred by him, he cannot keep with him as consideration for receipt of works contract. In total contract receipt, the sale price of the goods, service charges shown etc. are includible. In Sub –clause (a) and (b) of sub – section (3) of Section 42, the wording is used "equal to 5% , of total contract value of the works contract in case of construction contract and 8% of total contract value of work contract of any other case." Here the meaning of total contract value is to be determined appropriately. By way of allotment of any works if assessee is receiving some amount against the property transferred in the goods and against the labour charges utilized in the said work, it will become a contract value. The various taxes levied separately, and those are to be deposited with the Govt. authorities will not constitute the total receipt against the said contract value hence element of service tax will not be a part of sale prices before amendment also. One can understand total

expenses required to be paid f or any particular work in which amount of taxes are also to be in total turnover but when a turnover for levy of tax is to be taken into consideration, the element shown separately in sale invoice It may be against sales tax VAT tax and service tax which cannot be included."

Thus, Hon'ble Tribunal has decided a controversial issue. For long dealer have not collected VAT on Service Tax collected separately and hence the above judgment will be big relief.

Impacts

To avoid future contingency by way of litigation, it is expected that the department will bring out one more circular to support the above judgment. The finality to the subject is important, so that dealers can predict their liability correctly and there is no any existence of contingency.

Whether the judgment can be said to be final?

Whether the judgment is subject to any different interpretation before Hon'ble High Court?

What the dealers should do at present?

Whether the judgment has effect on other schemes like for Hoteliers etc.?

4] Larsen & Tourbo Limited (2015-VIL-411-AP) dated 14.09.2015 AP High Court

Nature of Works Contract and Exempted Sales :-

This is elaborate judgment dealing with various issues about Works Contract taxation.

1. Though supply and installation are separate contracts whether they can be clubbed together?
2. Whether exempted sale as per section 6(2) is possible in Works Contract?
3. Nature of interstate sales under Section 3 (a) of the CST Act and taxability?
4. Sale in course of import and Works Contract transaction.

5] <u>F forms necessary for Inter State Transfer for Job work.</u>

Johnsons Matthey Chemicals India Pvt. Ltd. vs. The Deputy Commissioner of Sales Tax (W.P.No.7400 of 2015 dt.15.2.2016)

Recently Hon. Bombay High Court has decided important issue under CST Act by above judgment. It is held that even for inter-state transfers for job work , F forms will be required. This may create difficulties in cases where the respective parties are not registered, being only doing labour jobs or smallness of the volume etc.

6] <u>Hawala Transaction, burden on the sales tax department</u>

There are number of judgments wherein it is held that if the authorities are relying upon outside materials to declare any transaction as bogus/hawala or non genuine then the buyer party should be granted opportunity of cross examination. Without such process the disallowance of transaction is incorrect.

(i) Shree Bhairav Metal Corporation vs. State of Gujarat (Special Civil App. no.2149 of 2015 dated 26.3.2015)(Guj) 82 VST 324.

(ii) Brilliant Metals Pvt. Ltd. W.P.(C) 6656/2015 & CM 12140/2015, 13505/2015 dated 3.2.2016 (Delhi High Court).

7] Commissioner of Commercial Taxes, Thiruvananthapuram, Kerala Versus M/s K.T.C. Automobiles (Civil Appeal No.2446 of 2007 dated 29.1.2016)

This is one more recent judgment having great effect particularly on sale of motor vehicles. Hon. Supreme Court was dealing with a case wherein the booking of the vehicle was done in Kerala. However, the vehicle was registered in the name of buyer in Pondicherry. The local tax was paid by the seller of vehicle in Pondicherry. Kerala Authority were objecting to such arrangement and claiming tax in Kerala.

Hon. Supreme Court discussed about ascertainment of vehicle to the particular sale to buyer. Hon. Supreme Court has arrived at the conclusion that in case of motor vehicle, the vehicle gets ascertained to the contract of sale only when it is approved

by the Registration Authority under Motor Vehicles Act and that happens at the office of the registration authority. Therefore, Hon. Supreme Court has held that the place of sale of motor vehicle is such State of registration of vehicle.

This may have effect upon inter state nature of motor vehicle. Due to above interpretation that the ascertainment towards sale of motor vehicle takes place at the place of registration authority, it is possible to say that when the vehicle is sold to individual customer, which is liable for registration in its name, there will not be inter state sale even if such vehicle is dispatched from another State. The sale will be local sale in the State of registration of vehicle in the name of buyer.

The relevant observations of Hon. Supreme Court are reproduced below for ready reference.

"15. Article 286(2) of the Constitution of India empowers the Parliament to formulate by making law, the principles for determining when a sale or purchase of goods takes place in the context of clause (1). As per Section 4(2) of the Central Sales Tax Act, in the case of specific or ascertained goods the sale or

purchase is deemed to have taken place inside the State where the goods happened to be at the time of making a contract of sale. However, in the case of unascertained or future goods, the sale or purchase shall be deemed to have taken place in a State where the goods happened to be at the time of their

appropriation by the seller or buyer, as the case may be. Although on behalf of the respondent, it has been vehemently urged that motor vehicles remain unascertained goods till their engine number or chassis number is entered in the certificate of registration, this proposition does not merit acceptance because the sale invoice itself must disclose such particulars as engine number and chassis number so that as an owner, the purchaser may apply for registration of a specific vehicle in his name.

But as discussed earlier, on account of statutory provisions governing motor vehicles, the intending owner or buyer of a
motor vehicle cannot ascertain the particulars of the vehicle for appropriating it to the contract of sale till its possession is handed over to him after observing the requirement of Motor Vehicles Act and Rules. Such possession can be given only at the registering office immediately preceding the registration. Thereafter only the goods can stand ascertained when the owner can actually verify the engine number and chassis number of the vehicle of which he gets possession. Then he can fill up those particulars claiming them to be true to his knowledge and seek registration of the vehicle in his name in accordance with law.

Because of such legal position, prior to getting possession of a motor vehicle, the intending purchaser/owner does not have claim over any ascertained motor vehicle. Apropos the above, there can be no difficulty in holding that a motor vehicle remains in the category of unascertained or future goods till its appropriation to the contact of sale by the seller is occasioned by handing over its possession at or near the office of registration authority in a deliverable and registrable state. Only after getting certificate of registration the owner becomes entitled to enjoy the benefits of possession and can obtain required certificate of insurance in his name and meet other requirements of law to use the motor vehicle at any public place.

16. In the light of legal formulations discussed and noticed above, we find that in law, the motor vehicles in question could come into the category of ascertained goods and could get appropriated to the contract of sale at the registration office at Mahe where admittedly all were registered in accordance with Motor Vehicles Act and Rules. The aforesaid view, in the context of motor vehicles gets support from sub-section (4) of Section 4 of

the Sale of Goods Act. It contemplates that an agreement to sell fructifies and becomes a sale when the conditions are
fulfilled subject to which the properties of the goods is to be transferred. In case of motor vehicles the possession can be handed over, as noticed earlier, only at or near the office of registering authority, normally at the time of registration. In
case there is a major accident when the dealer is taking the motor vehicle to the registration office and vehicle can no longer be ascertained or declared fit for registration, clearly the conditions for transfer of property in the goods do not get
satisfied or fulfilled. Section 18 of the Sale of Goods Act postulates that when a contract for sale is in respect of unascertained goods no property in the goods is transferred to the buyer unless and until the goods are ascertained. Even
when the contract for sale is in respect of specific or ascertained goods, the property in such goods is transferred to the buyer only at such time as the parties intend. The intention of the parties in this regard is to be gathered from the terms of the contract, the conduct of the parties and the circumstances of the case. Even if the motor vehicles were to be treated as specific and ascertained goods at the time when the sale invoice with all the specific particulars may be issued, according to Section 21 of the Sale of Goods Act, in case of such a contract for sale also, when the seller is bound to do something to the goods for the
purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof. In the light of circumstances governing motor vehicles which may safely be gathered even from the Motor Vehicles Act and the Rules, it is obvious that the seller or the manufacturer/ dealer is bound to transport the

motor vehicle to the office of registering authority and only when it reaches there safe and sound, in accordance with the statutory provisions governing motor vehicles it can be said to be in a deliverable state and only then the property in such a motor vehicle can pass to the buyer once he has been given notice that the motor vehicle is fit and ready for his lawful possession and registration."

Conclusion

There are always developments in the taxation laws. All concerned like professionals, business men are required to be abreast of the developments by amendment and by impact of judgments. Therefore such conferences are important and I hope that the deliberations in this conference will be useful in day to day practice.