Read : Application dt.31.03.2015 by M/s. Aras Metal Castings, holder of TIN 27110650030.
Heard : Sh. Anil Vakharia (Sales Tax Practitioner) and Sh. Sachin Bora (Manager).

PROCEEDINGS

(under section 56(1) (e) of the Maharashtra Value Added Tax Act, 2002)

No.DDQ 11/2015/Adm-6/4/ B- 6 **Mumbai, dt.** 30|3|2016

The applicant, M/s. Aras Metal Castings, having office at Flat No.1, 80/2, Uday Residency, Baner Road, Pune 411007, requests for determination as to whether the transaction effected for M/s. Godrej and Boyce Mfg. Co. Ltd. is liable to tax and if tax is payable, the sale price thereof and the rate of sales tax thereon.

02. FACTS & CONTENTION

The application is reproduced verbatim thus :

"Aras Metal Castings (Herein after referred to as the "Applicant") is a partnership firm registered under the MVAT Act and CST Act and its registered office is situated at Flat No.1, Uday Residency, Survey No 80/2, Baner Road, Pune 411007 and the Alluminium Foundry is situated at Shed No.2, Gat No.349, Krupa Industrial Estate, Village Bhare, Taluka Mulshi, District Pune – 412105.
Presently, the applicant is doing the job work of converting Alluminium Ingots into Alluminium Castings for M/s. Godrej and Boyce Mfg. Co. Ltd., Security Solutions division situated at Plant No.17, Vikroli, Mumbai.
Aras Metal Castings receives all the inputs from M/s. Godrej and Boyce Mfg. Co. Ltd. such as:

1. Alluminium Ingots, (F)
2. Alluminium Oxide Nuggets, (I)
3. Wire Meshes of different size, G)
4. Anchoring and Lifting brackets (H)

All the above inputs are received at the door delivery of Aras Metal Castings free of cost and the applicant converts the said raw material supplied by M/s. Godrej and Boyce Mfg. Co. Ltd. into Alluminium Slab Castings which are produced in the foundry of the applicant. These Alluminium Slab Castings are intermediate products which are non-marketable and are covered in Schedule Entry C-18 liable to tax at 5%.
The applicant uses certain consumables on the shop floor while manufacturing the Alluminium Slab Castings from the material supplied by M/s. Godrej and Boyce Mfg. Co. Ltd. The consumables used by the applicant do not form the part of the final product and there is no transfer of property in goods (consumables) during the process of manufacturing. The consumables get discarded but they do not impart any of their properties in the finished products.
In short, the consumables are aiding the process without contributing to the properties of the finished product. They are merely used as tools for the process of casting in the foundry.
The cast slabs are then finished and fettled, straightened on an hydraulic press and then inspected for various dimensions. The finished goods are then delivered to M/s. Godrej and Boyce Mfg. Co. Ltd. in loose manner without any use of packing material.
The consumables used by the applicant are as under:

1. Silicon Carbide Crucible - This is used for melting of Alluminium Ingots received for the customer. After melting, molten Alluminium is held in the crucible till it is tapped out. There is no transfer of property in Silicon Carbide Crucible to the customer. (Exhibit 1)
2. Diesel - used as fuel for furnace – Diesel gets consumed & the property in diesel does not pass to the customer. (Exhibit 2)
3. LPG - It is used for pre-heating of nuggets & moulds and the gas gets consumed and the property in gas does not pass to the customer. (Exhibit 3)
4. Coveral Flux & Mastic - Coveral Flux is used for removal of dross on drossing machine for separation of alluminium. And Mastic is used for repairing of Cement Ladles. The property in flux and Mastic does not pass to the customer. (Exhibit 4)
5. Thermotex Cement - It is used to prepare and repair ladles for carrying molten alluminium along with Mastic. (Exhibit 5)

6. Cement Ladle - This is used for repairing of ladles. The ladle is used as the conveyor for carrying the molten alluminium from the furnace to the mould. The property in cement ladle does not pass to the customer. (Exhibit 6)
7. Thermocouple Tips - This is used for measuring the temperature of molten Alluminium in ladle. The property in thermocouple tips does not pass to the customer as it is a measurement tool.
8. Silica sand - This is used for the sand moulds which are recyclable. The property in silica sand does not pass to the customer. (Exhibit 7)
9. Sodium Silicate - This is used as binder in sand and keeps the sand bounded. The property in Sodium Silicate does not pass to the customer. (Exhibit 8)
10. Graphite Powder - It is used on pattern surface as a parting agent of wooden patterns for making sand moulds. (Exhibit 9)
11. Bentonite Powder - This is used as binder in sand for the moulds. The property in bentonite powder does not pass to the customer. (Exhibit 10)
12. CO2 Gas - It is used as a catalyst for rapid hardening of one time use of sand cores (Exhibit 11)
13. Grinding Wheels - It is used for chipping, debarring & grinding of alluminium runners. (Exhibit 12)
14. Chisels & Hammers - It is used for straightening, chipping and harmmering of slab castings. (Exhibit 13).

The alluminium castings manufactured specifically for M/s. Godrej and Boyce Mfg Co. Ltd. from the alluminium ingots, alluminium oxide nuggets, wire-mesh & anchoring and lifting brackets, where the total raw material is supplied by M/s. Godrej and Boyce Mfg. Co. Ltd. free of cost amounts to the pure labour job-work & it neither amounts to works-contract nor amounts to taxable sales. The price received by the applicant is for the labour charges & the process of conversion which is a typical job & requires certain consumables. As a precautionary measures, the dealer has charged 5% tax on the finished goods sent to M/s. Godrej and Boyce Manufacturing Co. Ltd., though there is no sale of goods by the dealer.

M/s. Godrej and Boyce Manufacturing Co. Ltd. is reluctant to pay the 5% tax as the process done by us is purely labour job work and does not amount to sale of goods. Similarly, as stated earlier, there is no transfer of property in any goods used as consumables by the applicant to M/s. Godrej and Boyce Manufacturing Co. Ltd.

We are enclosing with this application Tax Invoice No. 1771 dated 15/02/2015 issued to M/s. Godrej and Boyce Manufacturing Co. Ltd. If your honour is satisfied that the transaction amounts to job-work & not a taxable sale under the MVAT Act, 2002 then your honour can decide the application without calling us for hearing.

In the event your honour wants further information & clarification, the application be fixed for hearing on an early date. We have requested Shri Anil B. Vakharia, Tax Consultant from Pune to appear before your honour & conduct the proceedings. Authority given in his favour is enclosed herewith. Necessary fees are paid by way of challan which is attached with the application. We request that the decision on the application be gien early."

04. HEARING

As per the applicant's request, the case was taken up for hearing on dt.22.07.2015. However, due to some unavoidable circumstances, the applicant was unable to attend the hearing. The hearing was, therefore, scheduled on dt.05.08.2015 when Sh. Anil Vakharia (Sales Tax Practitioner) and Sh. Sachin Bora (Manager) attended the hearing. The submission during hearing, alongwith the explaination of the activity is thus:

a. They receive order for making aluminium slabs from Godrej & Boyce on labour charges basis.
b. The basic raw material like aluminium ingots, brackets, aluminium oxide nuggets and wire mesh is supplied by Godrej with their tools i.e. wooden pattern.
c. On receipt of the above materials, the process is thus:
   i) Aluminium ingots are put into furnace for melting.
   ii) Melted aluminium is put into sand mould at 715 C with brackets and nuggets and wire nesh.
   iii) This sand mould is already kept ready by using our own recycled sand. Wooden pattern supplied by Godrej is kept in the mould. After removing the wodden pattern, melted aluminium is poured into the mould.
   iv) Aluminium slab casting is thus prepared which is given a finished form by grinding, chipping, deburring, straightening by using grinding wheels, chisel and hammer.

v) The finished product as above is despatched to Godrej without using any packing material.

d. During the process, the following activities are performed which requires the use of certain products which are stated to be consumables.:

i) Diesel fuel is used to heat the furnace wherein aluminium ingots are melted.
ii) Flux is used for removal of dross from the melted aluminium.
iii) The melted aluminium is taken into ladle as per requirement. This ladle is coated with Mastek (chemical) and cement to avoid sticking of the melted aluminium to the ladle.
iv) For measuring the temperature of the melted aluminium in the ladle, thermocouple is used.
v) For heating the sand mould, LPG is used. The heating is so done as to keep the mould in an unbroken form.
vi) For most of the times, sand cores are used in the sand mould for giving some shape. To keep the sand core in unbroken form, it is heated with CO_2 gas.
vii) To prepare the sand mould in which the melted aluminium is poured, silica sand, water and bentonite clay is used.
viii) To prepare the sand core, silica sand and sodium silicate are used.
ix) Before pouring the melted aluminium into the sand mould, graphite powder is applied on the sand mould so that the melted aluminium should not stick to the sand mould.
x) After removing the aluminium slab casting from the mould, it is finished with the help of grinding wheel, chisel and hammer.

e. In view of the above, it is contended that the entire activity is labour charges and no part of the consumables are transferred into the final product.

f. The applicant has charged tax in the invoice @ 5% on a safer side but the customer i.e. Godrej & Boyce is not willing to pay the tax due to the fact that it is a pure labour work. Presently too, the applicant is charging tax @ 5% on the product which it is submitted that the applicant should not be charging.

g. The applicant would be giving a written submission about the purchase order (schedule) and wooden pattern.

05. OBSERVATIONS

I have gone through the facts of the case. It is the claim of the applicant that the activity of preparing the job work of converting Aluminium Ingots into Aluminium Castings for M/s. Godrej and Boyce Mfg. Co. Ltd., Security Solutions division is a labour job involving no transfer of property in any material from the applicant to the client. It is, therefore, claimed that no tax is payable on the said transaction. The Deputy Commissioner (Legal Matters) was asked to visit the premises of the applicant to ascertain the claim of the applicant. It was reported thus :

i. The applicant informs that sales are effected to M/s. Godrej and Boyce Mfg. Co. Ltd. (GBMCL) only.

ii. GBMCL supplies the patterns, design, specifications based on which the aluninium castings are to be made.

iii. The goods made by the applicant are the side, front, top, bottom and back panels of the safe vaults or lockers of GBMCL.

iv. The applicant informs that the work done at the applicant's factory involves converting of aluminium ingots into aluminium castings, with reinforcements as provided by GBMCL, of the shapes at point (iii) above.

v. Wooden patterns of the shapes at point (iii) above for manufacturing of the casting slabs are sent by GBMCL. These are retained by the applicant for repeat production purpose.

vi. The process begins with the supply of the pattern and drawing of the slab to be manufactured by the applicant. The drawing has the details such as the places at which the slots, holes, mounting places, anchoring and lifting brackets etc. would appear and their specifications.

vii. The raw materials such as Aluminium ingots, Aluminium Oxide Nuggets, Lifting Brackets, Anchoring Brackets, Wire Mesh are continuously supplied by GBMCL.

viii. The actual process of manufacturing as seen at the site is thus :

a. The pattern i.e the shape to be prepared is placed on a base plate which is made of Mild Steel.

The base plate forms a part of the flooring at the applicant's premises. The pattern is kept on the said plate for having a uniform surface and for levelling purposes.

b. Then the appropriate Mould Box is selected.

A mould box is a see-through piece of rectangular size which consists of a bracketed frame on one side and is completely open on the other side just like a tray.

There is a mould box for each pattern and its use is to contain the sand within it. A mould comes in a set i.e there are two mould boxes (upper and lower) of the same size.

The thickness of the casting i.e. the product to be manufactured decides the height of the mould box i.e. the distance between the top bracketed portion and the wooden pattern.

The mould box is placed on the pattern such that the bracketed portion is on the top side.

The pattern is anchored to the mould box by use of ropes so that the pattern remains in its place and there is no displacement. For tying purposes, holes at appropriate places are available on the patterns.

c. It is through the see-through bracketed portion that sand is poured on to the mould on the face of the pattern. There is ramming of the mould so that the sand is placed firmly in the mould.

Sand is purchased by the applicant. The applicant informed that the sand is reusable and property in the same is not transferred to GBMCL.

The applicant has a Sand Muller Machine in which the moulding sand is prepared by adding water and Bentonite to the sand for adhesion and cohesion purposes.

d. Then the mould box along with the pattern is lifted and placed, upside down, at a different place. The plain back side of the pattern is now on the top.

e. Another mould box which is empty is now placed on the first mould box. This mould box is also placed such that the bracketed portion is on the top. Now, the following activities are performed :

i. Sprue cup n risers are placed on the pattern surface which is visible since the first mould box has been placed upside down.

A sprue cup is made of aluminium and is conical in shape. These are placed at equal distance intervals in a line in the centre of the pattern along its length. In casting, a sprue is the passage through which a molten material is introduced into a mould. A riser is a slender stick shape made of aluminium. It tells you when to stop pouring as well as enables the passing of gases so as to prevent sand blasts.

ii. Then sand is filled into the mould through the bracketed portion. It is rammed and levelled properly.

iii. Then the sprue cup and risers are removed. Slots or cavities are formed at the places where the sprue cups are kept.

f. The second mould box is now lifted and kept at a different place.

g. Now, the pattern, from the first mould box is removed. The sand in this mould box gets the shape of the pattern i.e with all the slots and hollows as were found in the pattern. The following activities are performed now :

i. Anchoring and lifting brackets are placed at the slots marked therefor as per the Drawing.

Anchoring brackets are made of Mild Steel and are inserted for the further use of the casting by the manufacturer. After pouring of the molten metal, these brackets stay firmly in the metal and are visible. The slots created by the shape and placing of the anchoring brackets are the places which would be used for further work on the castings such as welding.

Lifting brackets are also made of Mild Steel and are used for making slots such as would be useful for carrying or lifting once the castings once they are formed. These slots are also visible.

ii. Then Sand Cores are placed on the mould as per the Drawing.

The sand cores help to create holes or cavities. A core is a device used in casting and moulding processes to produce internal cavities. It is normally a disposable item that is destroyed to get it out of the piece.

In a Core Sand Mixer, silica sand is mixed with Sodium to obtain the sand for the sand core. Carbon dioxide gas is passed over the cores for hardening of the sand core.

iii. Then wire mesh, seived and sorted aluminium oxide Nuggets are put into the mould as per the drawing description.

h. After placing of the various ingredients as at point g above, now the second mould box is brought and kept over the first mould box. The second mould box has acquired slots formed by the sprue cups and risers.

i. Then both the mould boxes are clamped together by nuts bolts. Weights are also placed on the top so that both the mould boxes remain together.

j. Now, molten aluminium metal is poured into the mould through the holes created by the sprue cups.

Molten aluminium is prepared from the aluminium ingots supplied by GBMCL.

In a Diesel fired Furnace, the aluminium ingots are heated in the crucible to a temperature of 750^0 C. It is a requirement of the process that molten aluminum at a certain temperature i.e 750^0C is to be poured into the mould.

The molten metal from the furnace is taken to the mould with the help of ladles.

k. Then after a sufficient period of time say 15 to 20 minutes, the entire mould box set is lifted and the sand is knocked out to find the casting made of aluminium having the shape of the pattern with the slots and spaces formed at appropriate places as per the pattern.

l. The mould so obtained is taken to another section for finishing activities such as removal of sands, chipping, etc. using hammers & chisels.

m. There is finishing of the aluminium slabs using angle grinders.

n. Then there is straightening of the slabs on a Hydraulic Press for making the surface level uniform.

o. After final, dimensional & visual, inspection of the slabs castings, the product is ready for dispatch to GBMCL.

Having gone through the process as above, I find that the applicant has given details thus:

1. Purchase Order No.250/A1405M/327966 dt.18.03.2015 placing order of 10 quantity of Item Code: 82898477 LC TDR Slab 61 Ace SP Bk at the basic rate of Rs.5,644.5000/- price per piece. Production Order : 396385 Item Code SEAC61TDR/BKSP Refer DRG. No. 456-3072 Task 9706 LC TDR Slab 61 Ace SP Bk

2. Against the above purchase order, the applicant has raised a Tax Invoice No.14-15/1979 dt.25.03.2015 with details thus :
   - Drg. No. 456-3072 (Applicant has submitted a copy of the aforesaid Drawing)
   - Item Code : 61 ACE BB WITHOUT w.p.s
   - PO No: 327966 Prod Ord No:396385
   - Rate for 10 pieces at Rs.5,644.5000/-.
   - Material cost Rs.1,73,200/- Std. Wt. 172.90 Kg Total Wt. 1729.00 Kg.
   - Remarks : 1. Labour cost is inclusive of transport charge. 2. Aluminium sand casting with nuggets as per your order.

3. Under 57(J) Challan (For movement of Input or partially processed goods), aluminium ingots are sent to the applicant by GBMCL.

4. Under Challan for movement of returnable goods under rule 4(5)(a), lifting brackets, anchoring brackets and wiremesh are supplied to the applicant by GBMCL. The Finished Part Code description is given as "TDR BACK 61ACE60 : 40 single pc".

5. Under invoice raised on GBMCL by Carborundum Universal Limited, Kerala for supply of fused aluminium oxide (Cumisharp BFA Nuggets), delivery is shown to be given at the applicant's address at Pune.

6. Applicant has given copies of his purchase bills for articles such as :
   Silicon Carbide crucible, Silicon Crucible stand, Diesel, gas, mastic, flux, Thermotex cement, ladle, silica mineral sand, Sodium Silicate, Graphite powder, Bentonite powder, carbon dioxide gas, digital temperature indicator, thermocouple, hardware items such as hammer, grinding/cutting wheel, welding rod, handgloves, etc.

7. Copies of Excise challans for movement of returnable goods under rule 4(5)(a) showing receipt of wooden patterns for e.g., Door TDR Slab, Back TDR.

8. Copy of the Drawing No. 456-3072 has the following details :
   - Drawing of the rectangular slab showing the position of the positioning of the anchoring brackets, lifting brackets, wire mesh.
   - Written instructions and notes such as :
     – Symbol (e.g., 'o') denoting items to be placed in mould before casting alongwith mesh.
     – Nuggets should be equally distributed & properly embedded in aluminium.
     – Remove all aluminium & nugget projections & pop-ups after casting.
     – Anchoring bracket surface should be completely exposed & free from aluminium (for welding).
     – Threading of lifting bracket should be cleaned.
     – Slot of 55x55x8 deep added at Anch. Bkt. Location, Lifting Brcket position and orientation changed,.....

It is seen from the above that Aluminium ingots, Aluminium Oxide Nuggets, Lifting Brackets, Anchoring Brackets and Wire Mesh which go into the aluminium casting slab as manufactured by the applicant are supplied by M/s. Godrej and Boyce Mfg. Co. Ltd. The applicant also effects purchases for performing the above activity of manufacture of aluminum casting slab. But it is claimed that the activities performed using these purchases do not result into transfer of property in these purchases to M/s. Godrej and Boyce Mfg. Co. Ltd. The materials so purchased and the use to which they are put, as informed by the applicant, are thus :

1. **Silicon Carbide Crucible** is used for melting of Aluminium Ingots. After melting, molten aluminium is held in the crucible till it is tapped out.

2. **Diesel** is used as fuel to heat the furnace wherein aluminium ingots are melted.

3. **LPG** is used for pre-heating of nuggets and moulds.
4. **Coveral Flux** is used for removal of dross on drossing machine for separation of impurities from the aluminium.
5. **Mastic (chemical) and cement** is applied on the ladles to avoid sticking of the molten aluminium to the ladle. It has been informed that these are not applied for each of the time that the ladle is used to carry the molten aluminum. It is applied once after a month and allowed to dry.
6. **Thermotex cement** is used to prepare and repair the ladles used for carrying molten aluminium along with Mastic.
7. **Cement Ladle** is used for carrying the molten aluminium from the furnace to the mould.
8. **Thermocouple Tips** are used for measuring the temperature of the molten aluminium in the ladle.
9. **Silica sand** is used for the sand moulds. It is recyclable.
10. **Sodium Silicate** is used as a binder in the sand and keeps the sand bounded.
11. **Graphite Powder** is used on the pattern surface as a parting agent of wooden patterns for making sand moulds and between the two mould boxes and on the sides. It is informed that the same is used so as so that the melted aluminium should not stick to the sand mould and also to avoid the moulding sand from sticking to the pattern surface. It is sprinkled for use as a dry lubricant.
12. **Bentonite Powder** is used as a binder in the sand to be used for the moulds.
13. **Carbon dioxide gas** is used as a catalyst for rapid hardening of one time use of sand cores.
14. **Grinding Wheels** are used for chipping, debarring and grinding of aluminium runners.
15. **Chisels and Hammers** are used for straightening, chipping and hammering of slab castings.
16. **Hydraulic oil** is used for the Press Machine.
17. **Safety goggles, boots, gloves and hard hats** are used for carrying out the operations.

In respect of all the above articles, it is contended that no property in the said materials is transferred in the aluminium slab casting made at the applicant's premises. It is also informed that no packing material is used by the applicant while delivering the said castings to M/s.Godrej and Boyce Mfg. Co. Ltd. Except as regards the Coveral Flux and Graphite powder, a look at the above materials used in the process of preparing the slab castings reveals that there seems to be no transfer of property in these materials. About Coverall flux, it is informed that the same does not get dissolved in the molten aluminium and can be removed from the molten metal along with the layer of impurities. About graphite powder, it is informed that the property in the same also does not pass as the same is used as a partition between the sand and the pattern and the molten aluminium.

With regard to the facts at hand, I would invite the attention of the applicant to the decision in Commissioner of Sales Tax vs. Matushree Textile Limited (132 STC 539 BOM) wherein it was observed that what is relevant for the applicability of the Works Contracts Act is the passing of the property in goods and not the quantity of goods that passes. The definition of a 'works contract' sale under consideration therein is similar to the deemed sale clause for works contract under the Maharashtra Value Added Tax Act, 2002 (MVAT Act,2002). The latter, in fact, is far wider after the amendment of 2006. The observations of the Hon. Bombay High Court are worth a mention herein thus :

"When the term "sale" in the Works Contracts Act has been defined to include by a deemed fiction, the transfer of property in goods in any form, there is no reason to restrict the definition to cover only those transactions which involve transfer of goods in some physical form and not in some chemical form. In our opinion, the words "some other form" used in the definition of "sale" in the Works Contracts Act apply to the transfer of property in goods in its every form, i.e., physical form or any other form, including the chemical form. In other words, transfer of property in goods used in the execution of a works contract, either in its physical form or any other form including the chemical form constitutes sale under the Works Contracts Act.

The definition of "sale" under the Sale of Goods Act and under the BST Act is materially different from the definition given under the Works Contracts Act. In other words, to constitute sale under the Works Contracts Act, the only criteria required to be fulfilled is the transfer of property in goods used in the execution of works contract either in its original form or in some other form and not the criteria laid down under the Sale of Goods Act or under the BST Act.

The contention of Mr. Joshi that even after the Forty-sixth Amendment to the Constitution, the ratio laid down by the apex Court in the case of Gannon Dunkerley & Co. (Madras) Ltd. [1958] 9 STC 353 still holds good and that the transfer which is incidental to the contract of service cannot be taxed, is without any merit. The very foundation of the Forty-sixth Amendment to the Constitution was to bring to tax the transfer of the materials (in any form) used in the execution of a works contract. ***Therefore, once it is held that there is transfer of goods used in the execution of a works contract either in its original form or in some other form, then, even if there is a composite works contract, it is deemed to be bifurcated and the provisions of the Works Contracts Act would apply to the materials used in the execution of such composite works contract.*** *This is exactly what the three-Judge Bench decision of the apex Court has held in the case of Associated Cement Companies Ltd. [2001] 124 STC 59. As stated hereinabove, the three-Judge Bench decision of the apex Court in the case of Associated Cement Companies Ltd. [2001] 124 STC 59 has clearly held that even if the dominant intention of the contract is the rendering of service, it will amount to works contract and after the Forty-sixth Amendment, the States would be empowered to levy sales tax on transfer of the materials (in any form), used in the execution of a works contract.*

Mr. Joshi strongly contended that the transfer of property in the form of coloured shade/print is on the theory of accretion or accession which is incidental to the contract and not by way of transfer of the materials used in the execution of a works contract. As pointed out by the apex Court in the case of Gannon Dunkerley & Co. [1993] 88 STC 204 at 213, the mischief or the defect in the expression "sale" pointed out by judicial decision led to the Forty-sixth Amendment to the Constitution. Once the mischief or the defect is remedied by bringing in the concept of deemed sale in a works contract, then the only criteria relevant for deemed sale is the passing of the property in goods (in any form). ***In other words, to constitute sale under the Works Contracts Act, the test is, whether the materials used in the execution of a works contract pass to the contractee either in its original form or in some other form? If it passes, then there is deemed sale of the materials used in the execution of the works contract even if there is no specific agreement between the parties for sale of materials, even if the price for such sale is not agreed between the parties and even though the materials are not delivered as materials.*** *In the present case, due to the chemical reaction of colours, chemicals and dyes, the inherent property in those goods are passed on to the fabrics. The fact that after the inherent property in those goods is transferred to the fabrics the remaining solution is thrown out as waste or affluent, does not in any way affect the taxability on transfer of the property in goods already effected on the fabrics. Admittedly, after dyeing, the solution made of colours, chemicals and dyes is thrown as waste, because, on transfer of the property in the form of coloured shade, the said solution becomes worthless. Therefore,* ***the Legislature has sought to tax the property in goods which passes and not the remnants or the affluent that remains after the passing of the inherent property in those goods.***

As rightly contended by the counsel for the Revenue, under the Works Contract Act, what is relevant is the passing of property in goods used in the execution of the works contract and not the quantity of the material that passes. ..... As stated hereinabove, ***what is relevant for the applicability of the Works Contracts Act is the passing of the property in goods and not the quantity of goods that passes."***

My exercise to refer to the above case is so as to observe that wherever the materials and activity would be such as would result in the transfer of property in the same, then to the extent of the transfer, there is a works contract which would be taxable. In the present case, the appli-

cant has stated that the aluminium slab casting is made from the materials supplied by M/s.Godrej and Boyce Mfg. Co. Ltd. and further that while manufacturing the said castings, there is no transfer of property in the materials which the applicant purchases and uses for the works contract. From the materials enlisted above, I have to observe that what the applicant claims appears to be correct.

However, I have to be quick to observe that any use of materials in which there is transfer of property in the materials, whether as goods or in some other form, in howsoever small quantity it may be, would be taxable, being a deemed sale i.e., a works contract, under the provisions of the MVAT Act,2002. These facts, therefore, would have to be ascertained by the Departmental authorities dealing with the assessment, audit, inspection, etc. of the applicant. The present determination order is, therefore, subject to facts as contrary, if found.

Since the impugned activity is such that there involves no transfer of property in the goods as enlisted hereinabove as informed to be purchased by the applicant, the applicant's attention is invited to the provision contained in clause (d) of rule 54 of the Maharashtra Value Added Tax Rules, 2005 which provides that no set-off under any rule shall be admissible in respect of :

"any purchase of consumables or of goods treated as capital assets by the claimant dealer where the dealer is principally engaged in doing job work or labour work and is not engaged in the business of manufacturing of goods for sale by him and incidental to the business of job work or labour work any waste or scrap goods are obtained and are sold;"

It is seen that the applicant has charged tax @5% on the impugned activity in the bill presented for determination. Further, it is also informed that tax @5% is being presently charged for the current transactions, too. In view thereof, the present determination would operate prospectively and for such transactions wherein tax has not been collected separately.

05. In the circumstances, it is determined thus -

ORDER

(under section 56(1) (e) of the Maharashtra Value Added Tax Act, 2002)

No.DDQ 11/2015/Adm-6/4/ B- 6 **Mumbai, dt.** 30|3|2016

1. *The transaction of manufacture of aluminium castings from Aluminium ingots, Aluminium Oxide Nuggets, Lifting Brackets, Anchoring Brackets, Wire Mesh as supplied by the client of the applicant is a labour job as there is no transfer of property in the materials, enlisted in the body of the order, as purchased and used by the applicant in the manufacture of the said aluminium castings.*

2. *As and when there is use of any materials in which there is transfer of property in the materials, whether as goods or in some other form, in howsoever small quantity it may be, the transaction would be a deemed sale, a works contract and would be taxable under the provisions of the Maharashtra Value Added Tax Act, 2002 to the extent of the transfer of property in the goods.*

3. *The applicant has charged tax @5% on the impugned activity in the bill presented for determination and is also charging tax @5% in respect of the current transactions. This determination order would, therefore, operate prospectively and for such transactions wherein tax has not been collected separately.*

(RAJIV JALOTA)

COMMISSIONER OF SALES TAX,
MAHARASHTRA STATE, MUMBAI