

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SALES TAX REFERENCE No. 6 of 1994**

**For Approval and Signature:**

**HON'BLE MR.JUSTICE B.J.SHETHNA**

**THE HON'BLE MR.JUSTICE M.C.PATEL**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
  - 2 To be referred to the Reporter or not ?
  - 3 Whether their Lordships wish to see the fair copy of the judgment ?
  - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
  - 5 Whether it is to be circulated to the civil judge ?
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**STATE OF GUJARAT - Petitioner(s)**

**Versus**

**ELECTRO PORCELAIN INDUSTRIES - Respondent(s)**

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**Appearance :**

MR SIRAJ GORI, AGP, for Petitioner No(s).: 1.

SERVED BY RPAD - (N) for Respondent No(s).: 1.

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**CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA  
THE HON'BLE MR.JUSTICE M.C.PATEL**

**Date : 30/06/2005**

**ORAL JUDGMENT**

**(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)**

1. Heard Shri Siraj Gori, learned AGP for the State of Gujarat. Though served no one appeared for the respondent.
2. M/s. Electro Porcelain Industries – present opponent was a registered dealer manufacturing and selling Porcelain articles for using them in manufacturing electric switches and other insulators. For the Assessment Year 1976-77 the Sales-Tax Officer (for short “STO”), by his order dated 30.4.1979, assessed it to tax at the rate of 7 % under entry 42 in Schedule II, Part-A of the Gujarat Sales Tax Act, 1969 (for short “the Act”) as it then stood. Thereafter, the present opponent had applied to the learned Commissioner of Sales-Tax u/s.62 of the Act for determining the tax payable by it in respect of porcelain and Insulator and other articles of porcelain sold by it. The Competent Authority i.e. Deputy Commissioner, Sales-Tax Department, u/s.62 of the Act, by his order dated 9.11.1981, held that the articles in question fell within the ambit of Entry 42, Schedule II, Part-A to the Act and that it was liable to pay tax at the rate of 7 % on the said articles.
3. It appears that after STO passed the assessment order on 30.4.1979 for the Assessment year 1976-77, the Office of the Accountant General raised audit objection regarding it and sent its audit note to the Sales-tax Department. On the basis of the said audit note STO issued notice in Form 45 to the assessee on 26.5.1980 calling upon it to appear with Accounts Books. Thereafter the record was transferred to the Assistant Commissioner of Sales-tax. The files were placed before the Assistant Commissioner, for the first time, on 14.11.1980 after a period of almost 3 years i.e on 12.10.1983 he issued notice in form No.49 to the assessee calling upon it to show cause as to why the assessment order dated 30.4.1979, passed by the STO should not be revised and why it should not be held that the said porcelain insulator were taxable under Entry 41 of Schedule II, Part-A of the Act. In response to the said Notice issued by the Assistant Commissioner, the assessee appeared before the Assistant Commissioner and raised two contentions, viz, (i) that the suo-motu revision was time barred, and (ii) that the

very applicant's application made to the Dy. Commissioner u/s. 62 of the Act for determination of the rate of tax payable on the articles in question were decided by the Dy. Commissioner of Sales-tax on 9.11.1981 and it was held that the articles in question was covered by Entry 42, Schedule – II, Part-A to the Act which relates to glassware, chinaware or articles made of porcelain and glazed earthenware. The said order dated 9.11.1981, passed by the competent Authority i.e Dy. Commissioner of Sales-tax was not set aside by any higher Authority, as it was not challenged further by the department. Thus, it has become final in the case of assessee. Therefore, now it is not open to the authority to take up its case in suo-motu review.

4. The Assistant Commissioner, however, held that suo-motu powers were exercised within a period of limitation of three years and also held that he was bound by the Judgment of the Gujarat Sales-tax Tribunal (for short “the Tribunal”) delivered in the case of M/s. CERAMIC INDUSTRIES v/s. THE STATE OF GUJARAT wherein the Tribunal held that Porcelain Insulator were covered by Entry 41, Schedule II, Part-A to the Act and, therefore, the tax was leviable at the rate of 10 % on the said articles. This order passed by the Assistant Commissioner, Sales-tax on 29.12.1981, was challenged in Revision Application No.34 of 1984 by the respondent assessee M/s. Electro Porcelain Industries before the learned Tribunal, which was allowed by the learned Tribunal by its Judgment and order dated 13.8.1987 and the order passed by the Assistant Sales-tax Commissioner, allowing suo-motu revision, was set aside and the original assessment order passed by the STO on 30.4.1979 was restored to the file as the learned Tribunal was of the considered opinion that once the decision between the party became final then it cannot be reviewed in suo-motu by the Authority though there may be subsequent decision of the Tribunal on the point in favour of the department.
5. Aggrieved of the Judgment and order dated 13.8.1986 passed by the learned Tribunal allowing the Revision Application filed by the assessee the State of Gujarat made

Reference Application No.14 of 1988 before the learned Tribunal for making reference to this Court in view of the important questions of law arising in the matter. Accordingly, the learned Tribunal by its Judgment dated 13.1.1994 made reference u/s.69 of the Act to this Court on two questions of law, which are as under :

(i) Whether on the facts and in the circumstances of the case, the Gujarat Sales Tax Tribunal is justified in holding that the learned Assistant Commissioner had no jurisdiction taking up the matter in suo motu revision and the exercise of the revision power under section 67 of the Gujarat Sales Tax Act, 1969, was contrary to the provisions of law in the instant case ?

(ii) Whether on the facts and in the circumstances of the case, the sales of porcelain insulators were taxable under Entry 41 in Schedule II, Part-A to the Gujarat Sales Tax Act, 1969 or would fall under entry 42 in Schedule II, Part-A, to the said Act ?”

6. If the first question is decided in affirmative then there is no need for us to decide the second question.

7. We have already narrated the sequence of events taking place in the matter in brief, but at the cost of repetition, we would like to state that -

(i) For the assessment year starting from 14.1976 to 31.3.1977 STO passed assessment order on 30.4.1979 and taxed the unit at the rate of 7 %;

(ii) The very unit had made an Application before the learned Commissioner u/s.62 of the Act for determination of the rate of tax payable on the articles in question and the said application was decided by the learned Dy. Commissioner, Sales-tax by his order dated November 9, 1981, holding that articles in question were covered by entry 42 in Schedule II, Part-A to the Act which relates to glassware, chinaware or articles made or porcelain and glazed earthenware.

(iii) The aforesaid order passed by the Dy. Commissioner was neither challenged nor set aside by the higher Authority. Thus, it had become final between the parties i.e assessee and the department.

(iv) Admittedly, initially the assessment order dated 30.4.1979 passed by the STO was not challenged by the department by way of Appeal or in suo motu. It was only on the basis of the Audit Note or audit objection by the office of the Accountant General, the matter was later on taken up in suo motu jurisdiction only in 1983. Prior to that Notice was issued in form 45 to the applicant on 26.5.1980 by the STO.

- (v) The Assistant Commissioner, ignoring the order dated 9.11.1981 passed by the Dy. Commissioner which has become final, preferred to rely on the subsequent Judgment of the Tribunal delivered on 29.12.1981, wherein the tribunal took contrary view.
8. Under the circumstances, in our considered opinion, the learned tribunal rightly allowed the Revision Application filed by the respondent – assessee and quashed and set aside the order passed by the Assistant Sales-tax Commissioner in suo motu revision by holding that the purpose of the provisions contained in section 62 of the Act was to bring about the finality of the doubt concerning payment of tax by an assessee in respect of any sale or purchase of particular article.
9. Section 62(1) of the Act clearly provides that if any question arises, otherwise than in proceedings before a Court, or proceedings under section 41 or 44, whether for the purpose of the Act any tax is payable in respect of particular sale or purchase or if tax is payable in respect of particular sale or purchase or if tax is payable, the rate thereof, the Commissioner shall make and order determining such question. At the cost of repetition we may state that in the instant case the Dy. Commissioner has already taken final decision u/s.62 in 1981 in favour of the respondent. In spite of it, ignoring clear provision of Section 62(3) of the Act the Assistant Commissioner took the contrary view then the earlier view taken by the Deputy Commissioner of Sales-tax only on the ground that there was subsequent decision of the Tribunal and, therefore, he was bound by the decision of the Tribunal.
10. Bare reading of Section 62(3) of the Act makes it clear that if any question arises from any order already passed under the Act or any earlier law, no question shall be entertained for determination under this section, but such question may be raised in appeal against, or by way of revision of such order. Thus, there is clear mandate that once the decision becomes final, the same cannot be re-agitated. It can only be questioned either in Appeal or by way of Revision. In the instant case if the department was aggrieved then it could have filed Appeal u/s.65 (1) ( c ) before the learned Tribunal as the order was passed by the Dy. Commissioner against the

department on 9.11.1981. Admittedly no such Appeal was filed u/s.65(1)( c ) of the Act before the Tribunal. Where Appeal lies u/s.65 of the Act and no Appeal has been filed then no proceeding in revision u/s. 67 can be entertained upon an Application. However, proviso to Section 67(2) of the Act provides that proceeding in revision may be entertained upon an application where the applicant satisfies the Commissioner that he had sufficient cause for not preferring the Appeal against the order in respect of which the revision Application was made. Admittedly, in this case no such revision application was filed. Under the circumstances, the scope of suo-motu revision u/s.67(1) at the hands of the Assistant Commissioner was very narrow and limited. When finality is attached to the matter between the parties then final decision arrived at in favour of the assessee u/s.62 of the Act cannot be reviewed on the ground that there was subsequent order of the Tribunal in which Tribunal had taken different view of the matter.

11.In view of the above, we are of the considered opinion that the learned Tribunal rightly held that there was no valid ground available to the learned Assistant Commissioner for taking up the matter in revision in his suo-motu powers and to take different view in the matter than the view taken by the Deputy Commissioner of Sales-tax on 9.11.1981.

12.In view of the above discussion Question No.1 is answered in affirmative. As the question No.1 is decided in affirmative, therefore, question No.2 is not required to be answered.

13.Reference answered accordingly.

(B.J.SHETHNA, J.)

(M.C. PATEL, J.)

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