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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION 369 OF 2021

Palette Hotels (India) Pvt. Ltd., a company incorporated under Companies Act, having its registered office at 601, 6th Floor, Dr. Ozler Forum, Vasco da Gama, Goa, (through its Director, Mr. Amit Narayan Bandekar, aged 45 years, businessman, 601, 6th Floor, Dr. Ozler Forum, Vasco da Gama, Goa.

... **Petitioner.**

Versus

1. Deputy Commissioner of State Tax, Vasco da Gama Ward, Department of State Taxes, 5th Floor, Karma Point, Near Vegetable Market, Vasco da Gama, Goa.

2. Assistant Commissioner of State Tax, Vasco da Gama Ward, Department of State Taxes, 5th Floor, Karma Point, Near Vegetable Market, Vasco da Gama, Goa.

... **Respondents**

Mr A. F. Diniz, Senior Advocate with **Mr Ryan Menezes, Mr Nigel Fernandes, Ms Gina Almeida** and **Ms Stephanie Alvares, Advocates** *for the Petitioner.*

Ms Maria Simone J. Correia, Additional Government Advocate *for the Respondent-State.*

CORAM : VALMIKI MENEZES, J.

Reserved on: 15.02.2024.

Pronounced on: 10.05.2024

JUDGMENT:

1. Rule. By consent of the learned Advocate for the parties, the matter has been finally heard.

2. By this Petition this Court's supervisory jurisdiction under Article 227 of the Constitution has been invoked to challenge an order dated 09.08.2021 passed by the Deputy Commissioner of State Tax, Vasco-da-Gama Ward refusing to admit an appeal filed under Section 55 of the Goa Value Added Tax Act, 2005 (VAT Act) after rejecting the Petitioner's application for condonation of delay in filing the appeal.

3. The brief facts leading to the institution of the Petition, as are seen from the record, are as under:-

a). For the Assessment Year 2014-15, an assessment order came to be passed against the Petitioner in terms of Section 29 of the VAT Act by the appropriate Assessing Authority, Vasco Ward on 13.03.2018 assessing the Petitioner to tax of Rs.13,61,192/- and penalty of Rs.1,200/- with interest for delay in payment of Rs.7,35,043/-. Along with the assessment order a demand notice

of the same date was raised on the Petitioner, which the Revenue, Respondent No.2 herein claims it served on the Petitioner on the same date.

b). The Petitioner claims that no such order of assessment was served on that day, for which reason it applied for certified copy of the order vide its letter dated 26.04.2018 before the Respondent No.2. It is the Petitioner's case that in terms of Rule 33(1) of the Goa Value Added Tax Rules, 2005 (VAT Rules), the memo of appeal challenging the assessment order is required to be accompanied by a certified copy of the order appealed against, for which reason the above application was made, but no intimation was given to the Petitioner as to the date when it was required to collect the certified copy or the date when such certified copy was ready.

c). The Respondent No.2 sent to the Petitioner a reminder to pay its dues by letter dated 13.08.2020. On receiving the reminder and since there was no communication from Respondent No.2 with regard to the certified copy, the Petitioner sent a communication dated 04.09.2020 without prejudice to its rights to file a formal reply to the demand reminding the Respondent No.2 to issue a certified copy or to treat this communication as a fresh application for a certified copy. A true copy of the assessment order was then furnished by the Respondent No.2 to the Petitioner on 15.09.2020 and an appeal was presented to the Appellate Authority, the Respondent No.1, on 22.09.2020 accompanied by an application for condonation of delay setting

out the reasons for delay as the Petitioner had received no communication from the Assessing Officer as to when the certified copy of the order was to be collected, which order was ultimately furnished to the Petitioner on 15.09.2020.

d) At paragraph 10 of the Petition the Petitioner has specifically pleaded that its Legal Officer took inspection of the file of the Assessment Officer on 23.09.2021 and found that the application made by it for a certified copy on 26.04.2018 was in the concerned file along with a certified copy bearing the date 14.09.2018 as the date when it was ready. In the same paragraph the Petitioner avers that no intimation was given to the Petitioner about this certified copy being ready or the date when it should collect the same.

e). The Appellate Authority, by the impugned order dated 09.08.2021 dismissed the application for condonation of delay refusing to accept the reasons cited by the Petitioner for such delay and consequently refused to "admit" the appeal. In other words, the Appellate Authority has held that the Petitioner had not shown any reasonable cause as required under Sub-Section 2 of Section 35 of the VAT Act and has refused condonation of delay and consequently refused to accept the appeal. The impugned order does not enter into the merit of the assessment nor does it amend, enhance or levy any tax or penalty or in any manner interfered with the assessment process.

4. By way of an affidavit-in-reply dated 03.01.2024 filed by Agnelo D'Souza, Assistant Commissioner of Commercial Taxes, Vasco-da-Gama Ward, the Respondents claimed that the Petitioner had received the original assessment order and demand notice on 31.03.2018 and further states that though an application for certified copy was inwarded by the Petitioner on 24.05.2018, the certified copy was in fact ready on 14.11.2018 at the office of Respondent No.2 but it could not be ascertained whether the Petitioner had collected the copy. There is no denial however to the fact that the Petitioner was never informed by any communication from the Respondent No.2 that the certified copy was in fact ready or the date when it was to be collected. There is no denial to the specific averment made by the Petitioner in paragraph 10 of the Petition that on inspection of the file on 23.09.2021, the Petitioner's original application for a certified copy dated 26.04.2018 was in the file along with the certified copy dated 14.11.2018. This statement by the Petitioner that there was however no intimation to the Petitioner to collect the same is also not denied nor is any communication produced along with the affidavit to state that the Petitioner was in fact intimated of the date when certified copy was to be collected.

The Respondents have raised a preliminary objection to the maintainability of the Petition contending that the impugned order dated 09.08.2021is an appealable order in terms of Section 36 (1) of the Goa VAT Act and the Petitioner not having availed of the alternate and efficacious remedy of an appeal, the present Petition is not maintainable.

The preliminary objections to the maintainability of this petition on grounds of availability of an alternate relief of appeal are therefore required to be decided first.

SUBMISSIONS ON PRELIMINARY OBJECTIONS:

5. Ms Maria Correia, learned Additional Government Advocate, submits that an order passed under Sub-section 2 of Section 35 of the GST Act refusing to condone delay in filing the appeal as a consequence of which there is refusal to accept the appeal, amounts to a decision, within the meaning assigned to the word in Section 36(1) of the Act and is therefore appealable. She further contends that even though such an order does not dispose of the appeal by actually deciding the correctness of the assessment ordered by the Assessment Officer, it has the effect of rejecting the appeal on merits and such an order is a decision in the appeal which is amenable to an appeal under Sub-section 1 of Section 36 before the Tribunal.

Reliance was placed on a judgment of the Supreme Court in ***Mela Ram and Sons vs. Commissioner of Income Tax, Punjab*** reported in **AIR 1956 SC 367** to contend that an order dismissing an application for condonation of delay holding the appeal to be barred by Limitation amounts to an order passed on the appeal, and it has the effect of rejecting the appeal. Further reliance is also placed on a judgment of the Supreme Court rendered on the interpretation of the provisions of Section 37 and

34 of the Arbitration and Conciliation Act, 1996 in ***Chintels India Limited vs. Bhayana Builders Private Limited*** reported in **(2021) 4 SCC 602**. Based on principles laid down in this judgment, it was contended that the effect of an order refusing to condone delay would amount to an order of rejection of the appeal on grounds of delay; That applying the "effect test" referred to by the Supreme Court in this judgment, to the appeal provision contained in Sub-section 6 of Section 35 and Sub-section 1 of Section 36 of the GST Act, the only interpretation to be given to the words "decision" and "appeal decision" referred therein would amount to rejection of the appeal, even though the order did not enter into the merits of the assessment.

6. In reply, learned Senior Advocate A.F. Diniz for the Petitioner contends that the words deployed in Sub-section 7 of Section 35 and in Sub-section 1 of Section 36 are "appeal decision" and "decision" which do not relate to an order of rejection of an application to condone delay under Sub-section 2 of Section 35; It was submitted that the word "decision" denotes something different from an order in its plain sense, since in Sub-section 7 of Section 35, the word "decision" relates to a decision on the appeal on the merits of the assessment, and the "reasons" to be set forth in the decision, as referred in this provision relate to the various acts stated in Sub-section 6 i.e. allowing the appeal in whole or part, or amending the assessment or enhancing the assessment or levying tax and/or penalty or remanding the matter for fresh assessment or dismissing the appeal. The

contention is that the "decision" contained in the order is one based upon reasons and is passed on the merits of the matter.

Reliance was placed on a judgment of this Court in ***Sushila Singhania and Others vs. Bharat Hari Singhania & Ors.*** reported in **2017 (4) Bom.C.R. 348** to contend that the word "decision" means the entire and final decision of the Court and not a part of the decision such as rejection only on a point of limitation.

CONSIDERATION OF SUBMISSIONS ON PRELIMINARY OBJECTIONS:

7. In order to consider the rival submissions on whether the impugned order rejecting an application for condonation of delay under Sub-section 2 of Section 36 of the GST Act amounts to "the appeal decision" used in Sub-section 7 of Section 35 or the words "the decision" used in Sub-section 1 of Section 37, it would be apposite to refer to certain provisions of the GST Act.

Section 29 of the Act deals with the process of assessment of tax under the Act. An assessment order passed under Sub-section 4 of Section 29 is appealable under Sub-section 1 of Section 35. Section 35 provides for filing of appeals objecting any order affecting a person, passed under the provisions of the Act and provides for a period of 60 days from the date of receipt of the order, as a limitation for filing such appeal. Section 35 reads as under:-

"*35. **APPEALS.**— (1) Any person objecting to an order affecting him passed under the provisions of this Act by an authority may appeal to Appellate Authority as may be prescribed within sixty days from the date of receipt of order by him.*

(2) Where the Appellate Authority is satisfied that the person has reasonable cause for not preferring an appeal within the time specified in sub-section (1), he may accept an appeal, provided it is made within one year, from the date of receipt of order by him.

(3) The appeal shall be in the prescribed form and shall specify in detail the grounds upon which it is made.

(4) No appeal under this section shall be entertained by the Appellate Authority, unless such appeal is accompanied by a satisfactory proof of the payment of whole of the undisputed amount of tax, interest and penalty and ten percent of the disputed amount of tax, interest and penalty, that may be due:

> *(4A) The provisions of sub-section (4) shall be applicable also to any appeal pending before the Appellate Authority on the date of coming into force of the Goa Value Added Tax (Ninth Amendment) Act, 2016 and the appellate shall make payment as aforesaid within a period of 120 days from such commencement, failing which, such appeal stand abated."*

(5) The appellant shall serve a copy of the appeal memo to the authority against whose order the appeal is filed.

(6) After considering the appeal and after affording an opportunity of hearing, the Appellate Authority may allow it in whole or part and amend the assessment or remand it for fresh disposal or dismiss the appeal or enhance the assessment or penalty or other amount:

Provided that before making an enhancement the appellant shall be given an opportunity of being heard on the proposal of enhancement.

(7) The Appellate Authority shall serve the appellant, with an order in writing, of the appeal decision, setting forth the reasons for the decision."

8. A person dissatisfied with the decision of an appellate authority may file a second appeal before the Tribunal under Sub-section 1 of Section 36, in which Sub-section 3 vests the Tribunal with powers to admit an appeal after the expiry of the limitation period of 60 days if it is satisfied that the appellant had sufficient reason for not filing the appeal within time specified under Sub-section 1. Note must be taken of the fact that the words used in Sub-section 7 of Section 35 and in Sub-section 1 of Section 36 are similar, that is to say what can be appealed against is not any order but the appeal is against the "appeal decision" or "decision of the appellate authority".

9. Sub-section 2 of Section 35 empowers the appellate authority to **accept** an appeal beyond the prescribed limitation if the appellate authority is satisfied that the person who has filed the appeal has shown reasonable cause for not preferring the appeal within the time specified under Sub-section 1. Appeals under this provision are against all "orders" passed under the Act and the provision does not refer to "decisions". On accepting an appeal by recording satisfaction that the reasons for preferring the appeal beyond limitation are proper, the Appellate Court would proceed to exercise jurisdiction under Sub-section 6 of Section 35, to

consider the appeal, and afford the parties an opportunity of a hearing on the question of whether the assessment made in the impugned order was proper. Thus, Sub-section 6 provides for a hearing of the appeal on its merits after the stage of "accepting the appeal" for reasons recording satisfaction under Sub-section 2.

The order recording satisfaction that there was reasonable cause under Sub-section 2 is therefore an order which culminates in the appellate authority "accepting" an appeal and rejection of the reasons constituting cause for delay amounts to a mere order of refusal to condone delay. No doubt it may in a sense, have the effect of refusing to decide the appeal on merits, but it cannot be equated to be a "decision" on the appeal itself, or a decision on the correctness of the assessment done by the Assessment Officer under Section 29.

10. Sub-section 7 of Section 35 requires the service on the appellant with an order containing the "appeal decision", setting forth the reasons for the appeal decision. Thus, clearly, a distinction is drawn between any kind of order under the Act and an appeal decision, which can only mean a decision with reasoning on the correctness of an assessment order.

Reading the provisions of Sub-section 1 of Section 36 conjointly with the provisions of Sub-section 7 of Section 35, a second appeal could be filed to the Tribunal only against the appeal decision of the appellate authority and not against any other order passed by the appellate authority.

11. The provisions may be also viewed from a different perspective. Sub-section 4 of Section 35 provides that no appeal under Section 35 shall be entertained by the appellate authority unless such appeal is accompanied by satisfactory proof of payment of the whole of the undisputed amount of tax, interest and penalty and 10% of the disputed amount of tax, interest and penalty. Non-compliance of this provision may result in dismissal of the appeal or if the appellate authority is not satisfied that the whole of the undisputed amount of tax was deposited, he is empowered to reject by order, the non-compliance of this provision. Such an order, in the light of the words used in Section 7 would also not be appealable under Sub-section 1 of Section 36 as this type of order would not amount to a "decision" on the appeal, that is on the assessment carried out under Section 29 and would not be an order which sets forth reasons for such a decision as contemplated under Sub-section 7 of Section 36. The very same words are contemplated in Sub-section 1 of Section 36 where an appeal would only lie against the decision of the appellate authority after being served with an order of this decision; Such a decision would be one which decides the legality of the assessment conducted by the Commissioner and must contain the reasons for accepting, amending, enhancing or rejecting the assessment, penalty or levy of tax.

12. Reference may also be made to the provisions of Rule 27 of the GST Rules under which the Commissioner makes an order of assessment of tax under Sub-rule 3 of Rule 27 against which an appeal would lie under Section 36 of the Act read with Rules 31, 32 and 33 of the GST Rules.

Rule 31 prescribes the authority to whom the first and second appeal lies. Rule 33 prescribes the form of the memorandum of appeal and the manner of presenting the same, which necessitates that the memo of appeal shall be accompanied by a certified copy of the order appealed against. Rule 31 covers the filing of both, first and second appeal.

13. Rule 34 empowers the appellate authority under Section 35 of the Act, pending final decision of an appeal filed under Sub-section 1 of Section 35 to grant a stay of the assessment order on certain terms. Sub-rule 3 of Rule 34 provides that the appeal may be rejected summarily after giving the appellant an opportunity to comply with the requirements of Rules 32 and 33 (which prescribes the Form of presenting a memorandum of appeal and its accompaniments), or also if the direction to furnish security pending hearing and taking a decision on the appeal is not complied with. Thus, even non-compliance with the provisions of Rules 32, 33 or refusal to furnish security or for any other sufficient reasons, may result in rejection of the appeal.

Rejection of the appeal on such grounds, by the very scheme of the Rules would not amount to the decision of the appellate authority under Sub-section 7 of Section 35 or Sub-section 1 of Section 36, as such order does not contain reasons for rejection of the appeal on its merits or on the legality of the assessment by the Commissioner.

14. The judgment of the Supreme Court in *Mela Ram* (supra) cited by the Revenue considered the provisions of Sections 30(1), 30(2) and

Section 31(3) of the Income Tax Act of 1922. Therein, the Supreme Court held that an order declining to condone delay, and dismissing the appeal as time barred amounts to an order under Section 31 of the 1922 Act and would be appealable under Section 33, as that provision confers a right of appeal against all orders passed under Section 31. It held therein that the jurisdiction of the Appellate Assistant Commissioner under Section 31 is not limited to the hearing of the appeal on merits of the assessment alone and a rejection of the appeal on grounds of being beyond limitation also amounted to the rejection of the appeal.

The provisions of Section 33 of the 1922 Act provide for an appeal against any order passed by an Appellate Assistant Commissioner under Section 28 and Section 31 of the Act and it is in that light that the above judgment holds that orders refusing the condone delay in filing of appeal have the force of an order passed under Section 31 by the appellate authority. Section 33 provides for appeals against all "orders" and not only against "decisions" which are contemplated under Sections 35 and 36 of the VAT Act. Unlike the 1922 Act, the VAT Act makes a distinction between all other orders and a "decision" under Sub-section 7 of Section 35 and Sub-section 1 of Section 26, the word "decision" being referred to as the order containing the reasoning for accepting or rejecting an order of assessment on its merits. In that view of the matter, the ratio laid down in *Mela Ram* (supra), being one on provisions which are schematically different from the ones contained in the Goa VAT Act, cannot be applied to the case in hand.

15. *Chintels India Limited* (supra) was a judgment rendered on the interpretation of Section 34 and Section 37 of the Arbitration Act holding that an appeal under Section 37(1)(c) of the Arbitration Act would be maintainable against an order refusing to condone delay in filing an application under Section 34 to set aside an award. The reasoning adopted there was on the "effect" principle, where the effect of rejecting an application to condone delay amounted to rejection of the appeal on merits.

One has to note the specific provisions of the Arbitration Act wherein Section 37 provides for an appeal against setting aside or refusing to set aside an arbitral award under Section 34. The words used in Section 34, whereby any order amounting to refusal to set aside an arbitral award, including on grounds of limitation would amount to an order which could be appealed under Section 37 of that Act. Clearly therefore, the wordings used in Section 37, unambiguously stating that all orders of refusal, for whatever reasons, including limitation, to set aside an arbitral award would be appealable, are quite different from the scheme of Sub-section 7 of Section 35 of the VAT Act. The VAT Act provides appeals only against a decision stating the reasons for interfering with an assessment and does not provide for appeals against all other orders which do not contain a decision on the assessment.

16. *Sushila Singhania* (supra) was a decision by Division Bench of this Court which considered the scope of Section 13(1) of the Commercial

Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 which provides for filing of appeals to the Commercial Appellate Division of a High Court when a person is aggrieved by "the decision" of the Commercial Court or Commercial Division of a High Court. The word "decision" used in that Act was in context of a judgment or order of a Commercial Court;

17. Section13 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 reads as under:-

> 13. Appeals from decrees of Commercial Courts and Commercial Divisions. (1) Any person aggrieved by the **Decision** of the Commercial Court or Commercial Division of a High Court may appeal to the Commercial Appellate Division of that High Court within a period of sixty days from the date of judgment or order, as the case may be:
> Provided that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of the Code of Civil Procedure, 1908 (5 of 1908) as amended by this Act and section 37 of the Arbitration and Conciliation Act, 1996 (26 of 1996).
> (2) Notwithstanding anything contained in any other law for the time being in force or Letters Patent of a High Court, no appeal shall lie from any order or decree of a Commercial Division or Commercial Court otherwise than in accordance with the provisions of this Act."

18. Whilst examining the meaning of the word "decision", and whether it would include all orders which are otherwise not appealable this Court has answered, amongst various other issues, the following three issues:

> [1] Whether the word "decision" means a decree?
>
> [2] Whether a decision in the form of an order is appealable only under the conditions given in proviso to section 13(1) viz. that the order/decision is appealable only on the grounds mentioned in Section 37 or Section 104 or Order XLIII of the CPC
>
> [3] Whether the word "decision" which is found in Section 13(1) of the Commercial Courts Act includes a "decree" or an "order" which has the effect of having finality or final adjudication of rights of parties?

19. Answering these issues, this Court has held as under:-

> "44] Apart from reasons which we have given hereinabove, and in addition to that while deciding the question as to whether "decision" includes "judgment" and "decree", it will have to be considered whether the word "decision" has to be used in narrow sense or in a broad sense i.e. whether the word "decision" will have to be read only as a "decree" or wider meaning has to be given viz that of "decree", "judgment" and "order" which conclusively decides rights of the parties. Though the Letters Patent Act is not applicable as it has been expressly excluded under subsection (2), it will be necessary to briefly see how the word "judgment" has been interpreted by the Apex Court. The

word "judgment" is narrowly treated under Section 2 of the CPC. When the said question came up for consideration before the Supreme Court in Shah Babulal Khimji (supra), the Supreme Court in paras 112 and 113 of its judgment gave a wider meaning and held that those orders which conclusively decide right of parties could be held to be appealable under the Letters Patent Appeal, though the word "judgment" is narrowly construed in the CPC. The Apex Court in Shah Babulal Khimji (supra) did not give narrow meaning to the said word "judgment" and, therefore, held that the orders which conclusively decide right of parties, even if they are not appealable under Section 104 or Order XLIII, an appeal would lie under the Letters Patent.

45] The vexed question is whether similar meaning should be given to the word 'decision' as is found in subsection (1) of Section 13.

46] The question which fell for consideration before the Apex Court in Tirumalachetti Rajaram vs. Tirumalachetti Radhakrishnayya Chetty and Others1, was as under:

> "If the appellate decree passed by the High Court makes a variation in the decision of the trial court under appeal in favour of a party who intends to prefer an appeal against the said appellate decree, can the said decree be said to affirm the decision of the trial court or not under Article 133(1) of the Constitution?"

While deciding the said question, the Apex Court also considered the question as to what is the denotation of the word "decision". In para 7 of the said Judgment, the Apex Court has observed as under:

> "7. The next question to consider is: what is the denotation of the word "decision" used in the said clause. The argument for the respondent is that the word "decision" does not mean the whole of the decision but the decision on that part of the controversy between the parties which is brought to this Court in appeal. In support of the argument that the decision does not mean the entire decision of the trial court reliance is placed on the provisions of O. 20, Rules 4 and 5. Rule 4 of O. 20 deals with the judgments of Small Cause Courts and judgments of other Courts, and it provides that the judgments falling under the first clause need not contain more than the points for determination and decision thereon, whereas the judgments falling under the latter class should contain a concise statement of the case, the points for determination, the decision thereon and the reasons for such decision. There is not doubt that the decision in the context means the decision on the points for determination. That of course is the meaning of the word "decision", but whether or not the word "decision" means the decision on one point or the decision of whole suit comprising of all the points in dispute between the parties must inevitably depend upon the context, and the context is plainly inconsistent with the argument that the decision should mean the decision on a specific point. If the word "decree" in the first part of the relevant clause means not a part of the decree but the whole of the decree then it would be reasonable to hold that the word "decision" must likewise mean the entire decision of the trial court and not a part of it."

Similarly in para 9 of the said judgment, the Apex Court has observed as under:

> "9. The question as to the meaning of the word "decision" in the corresponding provision of the Code of 1882 (s. 596) was considered by the Privy Council in Rajah Tasadduq Rasul Khan v. Manik Chand [(1902 03) 30 IA 35]. The question which arose for the decision of the Privy Council was whether the appellate decree in that case was one of affirmance or not. The appellate decree had confirmed the trial court's decision though on different grounds, and so it was urged that the appellate decree was not one of affirmance. In rejecting this argument the Privy Council stated that "the natural, obvious and prima facie meaning of the word "decision" is decision of the suit by the Court, and that that meaning should be given to it in the section" (s. 596). The Privy Council examined the definition of the word "judgment" in the Code of 1882 and came to the conclusion that the word "decision" meant the decision of the suit by the trial court and not the grounds stated in support of the said decision; in the result it was held that the appellate decree which confirmed the decision of the trial court though on different grounds was in law a decree of affirmance. It would thus be seen that this decision undoubtedly supports the conclusion that the word "decision" in Art. 133(1) should mean not a part of the decision or the grounds given for it but the decision of the suit as a whole; and if that be so, the clause could be harmoniously construed to mean that in determining the character of the appellate decree we have to look at the appellate decree as a whole, compare it with the decision of the trial court as a whole and decide whether the appellate decree is one of affirmance or not. In this enquiry the nature of the variation made whether it is in favour of the intending appellant or otherwise would not be relevant."

From the aforesaid judgment it is apparent that the word "decision" would mean the entire decision of the Trial Court and not part of it.

Secondly, in *Raja Tassaduq* Rashul Khan and another vs. *Manik Chand1, Privy Council*, while considering the definition of the word "decision" has observed as under:

> "Now there is no definition of the word 'decision' in the Civil Procedure Code, but there is a definition of the word 'decree'. It says 'decree' means the formal expression of a adjudication upon any right claimed or defence set up in a Civil Court when such adjudication, so far as regards the Court expressing it, decides the suit or appeal. Then, "judgment" is defined as meaning "the statement given by the Judge of the grounds of a decree or order." Therefore their Lordships have two things: they have a decree which decides the suit, and they have the word "judgment," meaning the statement of the grounds upon which the learned Judge or the Court proceeds to make the decree.
>
> Mr. DeGruther appears to wish to give the Word "decision" the same meaning as the word "judgment" and he says that it is necessary that the Appellate Court should not only affirm the decree made by the Court below but should also affirm the grounds of fact upon which that judgment was passed. Their Lordships cannot come to that conclusion. They think that the natural, obvious, and prima facie meaning of the word "decision" is decision of the suit by the Court, and that that meaning should be given to it in the section."

Similarly, the Apex Court in Diamond Sugar Mills Ltd. & Anr. vs. State of Uttar Pradesh and Anr.1, has considered the meaning of the term "decision" and in para 28 it has observed as under:

> "28. It is true that when words and phrases previously interpreted by the courts are used by the Legislature in later enactment replacing the previous statute, there is a presumption that the Legislature intended to convey by their use the same meaning which the courts had already given to them. This presumption can however only be used as an aid to the interpretation of the later statute and should not be considered to be conclusive. As Mr. Justice Frankfurter observed in Federal Com. Commission v. Columbia B. System [311 US p. 302] when considering this doctrine, the persuasion that lies behind the doctrine is merely one factor in the total effort to give fair meaning to language. The presumption will be strong where the words of the previous statute have received a settled meaning by a series of decisions in the different courts of the country; and particularly strong when such interpretation has been made or affirmed by the highest court in the land. We think it reasonable to say however that the presumption will naturally be much weaker when the interpretation was given in one solitary case and was not tested in appeal. After giving careful consideration to the view taken by the learned Judge of the Allahabad High Court in Emperor v. Munnalal [ILR 1942 p. 302] about the meaning of the words "local area" and proper weight to the rule of interpretation mentioned above, we are of the opinion that the Constitution makers did not use the words "local area" in the meaning which the learned Judge attached to it. We are of opinion that the proper meaning to be attached

> to the words "local area" in Entry 52 of the Constitution, (when the area is a part of the State imposing the law) is an area administered by a local body like a municipality, a district board, a local board, a union board, a Panchayat or the like. The premises of a factory is therefore not a "local area".

47] From the above decisions it can be seen that the words and phrases previously interpreted by the Courts have to be used in aid to interpretation of later statute. The word “decision” therefore in this context would mean a final decision in the entire suit and therefore a decree.

61] It has to be noted that the question which falls for consideration before this Court is : Whether, in an application for execution of an Award passed under the Arbitration Act, 1996, an order passed by the learned Single Judge is appealable under Section 13(1) of the Commercial Courts Act as if it is a decree? And we are called upon to decide the said question only.

62] We therefore answer the questions framed in para 19 above as under:

QUESTIONS	ANSWERS
[1] Whether, in an application for execution of an Award passed under the Arbitration Act, 1996, an order passed by the learned Single Judge is appealable under Section 13(1)	No.

of the Commercial Courts Act as if it is a decree?	
[2] Whether the word "decision" means a decree?	Yes
[3] Whether a decision in the form of an order is appealable only under the conditions given in proviso to section 13(1) viz. that the order/decision is appealable only on the grounds mentioned in Section 37 or Section 104 or Order XLIII of the CPC?	Yes
[4] Whether the word "decision" which is found in Section 13(1) of the Commercial Courts Act includes a "decree" or an "order" which has the effect of having finality or final adjudication of rights of parties?	No
[5] Whether, the heading to Section 13 of the Commercial Courts Act governs Section 13(1) i.e. whether the word "decision" is to be taken as a "decree" on account of the heading of the Section?	Yes

[6] Whether ratio of the judgment in Jet Airways (India) Ltd. (supra) is applicable to the facts of the present case and is a binding precedent with reference to the facts arising in the present case?	Yes
[7] Whether ratio of the judgment in the case of Paramjeet Singh Patheja (supra) which has been relied upon in the case of Jet Airways (India) Ltd. (supra) is applicable to the facts of the present case?	Yes"

20. The reasoning followed in the above judgment would lead me to conclude that the word "decision", as found in Sections 35 (7) and 36(1) of the Goa VAT Act would mean a decision on the entire matter, or on the correctness of the assessment, and not any other decision which would conclude the case (such as on limitation or for non-compliance of the form of appeal); the words "decision" would have to be given an interpretation that would be in consonance with the purpose of the appeal provision, i.e. to arrive at a decision or bring finality to the process of assessment and its correctness, and therefore cannot be any order or even refusal to accept or admit the appeal or rejection of the same on technical grounds of limitation or a ground that the appeal is not in the correct form or the undisputed tax has not been deposited. Thus, it is only a decision meaning

thereby the reasons set forth for coming to the appeal decision and not any other order, that is appealable under Section 36 of the Act.

So also, under the scheme of the Act even a revision under Section 38 to the High Court is only against a "decision" of the Tribunal or Commissioner, that too on a question of law or erroneous decision or a failure to decide a question of fact. Any other orders which may be passed by the Tribunal are not appealable and it is only an order containing the reasoned decision on the merits of a second appeal on questions specified in Sub-Section 2 of Section 38 which are amenable to a Revision by the High Court. This, it appears is the scheme of Sections 35, 36 and 38 of the Act.

21. Having held that no appeal would lie against the impugned order, I proceed to record the rival submissions made on whether the impugned order has been correctly passed, holding that the petitioner had not shown reasonable cause for preferring the appeal beyond the period of limitation under Sub-Section 1 of Section 35 of the VAT Act.

SUBMISSIONS ON MERITS:

22. Learned Senior Advocate Shri Agnelo Diniz contends that the notice containing original order of assessment under Sub-Section 6 of Section 29 is an order to be retained by the assessee, and for the purpose of filing an appeal under Section 35, Rule 33 of the VAT Rules provides

that the appeal memo shall be accompanied by a **certified copy** of the impugned order. It is his submission that the certified copy was applied for on 26.04.2018 but no communication was received from the office of the Assistant Commissioner informing the Petitioners of the specific date when the certified copy was to be collected. Even reminders to that effect were not replied to after which, without prejudice, the petitioner applied for a fresh certified copy on 04.09.2020, since it was informed that the earlier application for certified copy could not be traced. He submitted that a certified copy was finally submitted on 15.09.2020 and within 9 days of receiving it, the appeal was filed on 24.09.2020.

23. It is further submitted by the learned Senior Counsel for the petitioner that inspection was taken of the file of the Commercial Tax Office to check whether the first certified copy application dated 26.04.2018 was in the file, and on inspection of the file on 23.09.2021, the original application for certified copy was very much in the file along with a certified copy of the assessment order bearing a date on which it was ready as 18.11.2018, though no intimation was given to the petitioner of the certified copy being ready. He submitted that these averments have been made in paragraph 6, 7 and 10 of the petition which have not been denied by the respondents in paragraph 7 and 8 of the affidavit-in-reply; in fact the contents of paragraph 10 of the petition wherein a specific averment is made that the date for collection of the certified coy was never intimated to the petitioner has not even been dealt with in the affidavit.

24. Ms Maria Correia for the Respondents, supporting the impugned order does not contest the position that no intimation of the date to collect certified copy was given or that the certified copy was in fact in the file. She however submits that in terms of Rule 33, the appeal could be filed within limitation even annexing the original copy as the limitation starts from the date such copy is served on the petitioner. She further submits that in any event, one year having elapsed from the date of receipt of the order by the petitioner, and in terms of Sub-Section 2 of Section 35, the Appellate Authority would have no jurisdiction to proceed in condoning delay beyond the period of one year, hence the impugned order has been correctly passed.

CONSIDERATION OF SUBMISSIONS ON MERITS:

25. The procedure to file an appeal is provided in Rule 33 of the VAT Rules which requires the memorandum of appeal to be accompanied by a certified copy of the order appealed against, whether in the case of a first appeal or a second appeal before the Tribunal. Sub-Section 1 of Section 35 however states that the appeal may be filed to the Appellate Authority prescribed under the Act within 60 days from the receipt of order. Reading the provisions of the Act, providing for filing of an appeal and of Rule 33 which provides for the procedure for filing the appeal, which is to be accompanied by a certified copy of the decision appealed against, it stands to reason that the original order served on the petitioner during assessment

is to be retained by him, as his copy, and only if the person aggrieved and wanting to object to the whole or part of the decision desires to file an appeal, such appeal is required to be accompanied by a certified copy of the decision.

Though the provisions of Act and Rules do not specify in detail the manner in which certified copies are to be obtained, it stands to reason that when an application for certified copy is made, the Authority receiving it would have a duty to endorse the application, and inform the applicant in writing of the date when such certified copy would be ready for collection, as the appellant would be entitled to deduction of time spent by the Authority to issue the certified copy, while reckoning the period of limitation. In the present case, it appears that there was no such intimation given to the Petitioner of the specific date when the certified copy would be ready, nor has the Petitioner given any intimation on or after 14.11.2018 (the date endorsed on the certified copy to the office file, when the copy was ready) as to when it was required to collect the certified copy.

26. It appears to be a practice in many Government offices that parties are not informed specifically the date when they are required to collect certified copies of documents and the parties are expected to make several trips to Government offices to inquire whether certified copies are ready or not. This attitude is reflected in the affidavit of Agnelo D'Souza, Assistant Commissioner of Commercial Tax who claims that certified copy

was in fact ready on 14.11.2018 but expects the dealer to collect the same without being intimated by his office. In matters where limitations are prescribed by provisions of law, and where certified copies have been applied for, it would be more incumbent upon such authorities dealing with applications for certified copies to intimate the date for collection of such certified copies with accuracy, more so in the fact of provisions of the nature of Section 35 of the VAT Act which prescribes an outer limit of one year for condoning delay in filing an appeal.

Clearly from the facts of the case, the Appellate Authority was duty bound to examine all these aspects of the matter and to approach the question of limitation with a broader perspective. Instead, without examining whether the petitioner was intimated the date of collection of the certified copy or not, the Appellate Authority has, in a cursory manner and without even adverting to the provision of Rule 33 of the VAT Rules or for that matter considered the circumstances which were clearly set out in the application for condonation of delay dated 22.09.2020. Nothing prevented the Appellate Authority from enquiring into the circumstances in which no intimation was given to the Petitioner of the first certified copy and why such certified copy had not been issued to the Petitioner the first time and a different true copy had to be issued to him on 15.09.2022. The Appellate Authority has therefore failed to exercised jurisdiction vested in it by law and has wrongly passed the impugned order refusing to condone delay in filing the petitioner's appeal.

Consequently, the impugned order dated 09.08.2021 would have to be quashed and set aside, the delay in filing the appeal stands condoned for reasons stated above, and the application for condonation of delay dated 22.09.2020 stands allowed.

CONCLUSIONS:

27. For the reasons stated above, I hold that the order dated 09.08.2021 passed by the Assistant Commissioner of Commercial Taxes, Vasco-da-Gama Ward (Respondent No.1) refusing to condone the delay in filing the Petitioner's appeal and refusing to admit the appeal is not a "decision" for the purpose of Sub-Section 7 of Section 35 and sub-Section 1 of Section 36 and is therefore not amenable to challenge in an appeal under Section 36 of the VAT Act;

28. Further, and for the reasons stated above the impugned order dated 09.08.2021 passed by the Respondent No.1 refusing to condone delay in filing the appeal by the Petitioner under Section 35 of the VAT Act is quashed and set aside and the delay in filing the appeal stands condoned.

29. The Assistant Commissioner of Commercial Taxes, Vasco-da-Gama Ward shall accept the appeal and proceed to decide the appeal dated 24.09.2020 bearing No.ACCT/VAT/App-15 of 2020-21/2021-22/793 in

terms of Sub-Section 6 of Section 35 of the Goa VAT Act, preferably within a period of 4 months from the receipt of this order.

Rule is made absolute in the above terms. No order as to costs.

VALMIKI MENEZES, J.