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IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)

ON THE 11th OF JULY, 2022

VALUE ADDED TAX APPEAL No. 8 of 2022

Between:-

M/S AMRIT REFINED PRIVATE LIMITED,
DHANMANDI MANDSAUR, THROUGH ITS
DIRECTOR MR. MANOHAR LAL GARG S/O
RAMESH CHAND GARG, AGED ABOUT 54
YEARS, R/O WARD NO. 21 PURANI DHAMNADI
JANKIPURA, INDORE (MADHYA PRADESH)

.....APPLICANT

*(SHRI P.M.CHOUDHARY, SENIOR ADVOCATE ALONGWITH
ANAND PRABHAWALKAR, LEARNED COUNSEL FOR THE
PETITIONER)*

AND

THE COMMISSIONER OF COMMERCIAL TAX
MOTI BUNGLOW COMPOUND MG ROAD,
INDORE (MADHYA PRADESH)

.....RESPONDENT

(SHRI UMESH GAJANKUSH APPEARED FOR RESPONDENT.)

*This appeal coming on for order this day, JUSTICE VIVEK
RUSIA passed the following:*

ORDER

Heard on the question of admission.

The appellant has filed this appeal under Section 53(2)
(b) of the M.P. VAT Act, 2002 against the order dated
24.09.2021 passed by M.P. Commercial Tax Appellate Board,
Bhopal in Appeal No.A/211/CTAB/IND/17 (CST) for the

period from 01.04.2006 to 31.03.2007 (CST).

2. The appellant is a Private Limited Company Incorporated under the provisions of Companies Act, 1956 (now the Companies Act, 2013). The appellant is engaged in the business of manufacturing edible oil from crude oil. The appellant sales the edible oil inter-state mostly on 'C' form issued by purchasing dealers. During the period from 01.04.2006 to 31.03.2007, the petitioner sold the goods to the various dealers, who had sent the form 'C' to the appellant. The original assessment of the appellant under the Central Sales Tax Act, 1956 was completed by the assessing authority vide order dated 14.01.2009 by accepting 'C' form declaration produced by the appellant.

3. The assessment authority has reopened the aforesaid assessment in exercise of power under Section 21(1) of M.P. VAT Act, 2002 on the basis of some information about the non-verification of some of the form 'C' by the Anti Evasion Bureau of the Department. In the re-assessment proceedings, the legal representative of appellant appeared and demanded the non-verified form 'C' from the department in order to take action against the dealers. After completing the re-assessment proceedings, vide order dated 12.05.2015 the assessing authority has imposed the tax of Rs.3090240/- with the three times penalty Rs.9270720/- and issued a demand notice for recovery of Rs. 12360960/-

4. Being aggrieved by the aforesaid order, the appellant preferred an appeal before the Appellate Authority and Deputy Commissioner, Commercial Tax. Vide order dated 23.07.2016, the Appellate Authority has dismissed the appeal. Thereafter,

the appellant preferred an appeal before the Madhya Pradesh Commercial Tax Appellate Board, Indore Bench and vide common order dated 24.09.2021, the Board dismissed the appeal pertaining to the assessment year 01.04.2006 to 31.03.2007, 01.04.2007 to 31.03.2008 and 01.04.2009 to 31.03.2010, however, the appellant has filed only one appeal in respect of assessment year 01.04.2006 to 31.03.2007.

5. Learned P.M. Choudhary, learned senior counsel for the appellant submits that the learned Assessing Authority, Appellate Authority and Appellate Board, all have wrongly relied on non-verified form 'C' and imposed a heavy amount of tax liability as well as penalty. The appellant has bonafidly sold the goods on the form 'C' submitted by the dealers of other states. The appellant had no machinery to check the genuineness of those certificates. It is for the State to verify these certificates and ought to have produced the adverse material to the appellant before recording any finding. Shri Choudarhy learned senior advocate further submits that the number of forms 'C' have wrongly been rejected merely on account of non-verification through non-statutory websites like TINXYXS. It is further submitted that all the two authorities and the Tribunal have not recorded any finding about any collusion between the appellant and dealers, therefore, in absence of collusion the imposition of three times penalty is wholly unjustified, which is causing a heavy financial burden of the appellant.

6. In support of his contention, he has placed reliance upon the judgment passed by the High Court of Punjab and Haryana at Chandigarh in the case of ***Gheru Lal Bal Chand Vs. State of***

Haryana & another (2011) 608 (P&H) in which it has been held that the genuineness of the certificate and declaration may be examined by the taxing authority, but the onus cannot be put on the assessee to establish the correctness or the truthfulness of the statements recorded therein. The authorities can examine whether the Form VAT C-4 was bogus and was procured by the dealer in collusion with the selling dealer. In case of ***The State of Madras vs. Radio and Electricals Ltd and Another, 18 STC 222*** in which the Apex Court has held that indisputably the seller can have in these transactions no control over the purchaser. He has to rely upon the representations made to him. The only satisfaction is that the purchaser is a registered dealer and the goods purchased are specified in the certificate. In case of ***Chunni Lal Parshadi Lal vs Commissioner Of Sales Tax, U.P.*** the Apex Court has held that if the purchasing dealer misapplied the goods he incurred a penalty under Section 10 of that Act. That penalty was incurred by the purchasing dealer and could not be visited upon the selling dealer. The genuineness of the certificate and declaration may be examined by the taxing authority but not the correctness or the truthfulness of the statements. The Sales Tax Authorities can examine whether the certificate is "farzi" or not, or if there was any collusion on the part of the selling dealer but not beyond. In view of the above, Shri Choudhary learned senior advocate has suggested the following substantial question of law involved in this appeal:-

[1] Whether the order passed without confronting the appellant with the adverse material collected behind its back and without

affording opportunity to rebut the same are vitiated in law as being contrary to the principles of natural justice. ?

[2] Whether, on the facts and in the circumstances of the present case, the MP Commercial Tax Appellate Board is justified in law in upholding the rejection of C from declaration in question merely on account of their non verification at a non-statutory website like TINXYXS in absence of any suitable statutory provision to that effect under the Act ?

[3] Whether, in absence of finding regarding any collusion between the appellant and the purchasing dealer issuing the declaration in question, the appellant could be liable to pay the tax and whether the appellant could be subjected to levy of penalty under section 21(2) of the M.P VAT Act, 2002 ?

[4] Whether, on the facts and circumstances of this case and in absence of any collusion between the appellant and the purchasing dealers issuing the declaration in question, the reassessment can be said to be attributable to the appellant within the meaning of section 21(2) of the MP VAT Act, 2002 and whether levy of penalty and affirmation thereof against the appellant is justified in law ?

[5] Whether, on the facts and circumstances of this case, the imposition of penalty under section 21(2) of the MP VAT Act, 2002 without satisfaction of the essential conditions of that

section is correct and proper ?

7. Shri Gajankush, learned Additional Advocate General submitted that the authorities and Tribunal have recorded concurrent findings against the appellant, and no questions of law are involved in this appeal for its admission. That the Form 'C' certificate submitted by the appellant to the department, could not be verified by the Department. This facts had come to knowledge of the appellant in the year 2009 , but the appellant has not made any effort to contact the purchasing dealers for its verification. The appellant demanded the non-verified certificate from the department in order to take action against the dealers who issued these certificates. Still, the appellant has the liberty to recover the amount from the defaulter dealers. Hence, no inference is called for and the appeal is liable to be dismissed.

We have heard the learned counsel for the parties and perused the record.

8. The appellant in course of his business sold oil to the dealers of the other states. They purchased goods on Form 'C' which the appellant has produced to the department and took the benefit of rebate. The assessment was completed but Anti Evasion Bureau of the department examined and found that these certificates are not genuine or issued by unregistered dealer. Accordingly, the case of the appellant was taken up under Section 21 for reassessment. The appellant appeared before the authority and demanded the photocopy of Forms 'C' so that he can take action against the dealers. Till date the appellant has not taken any action against the dealer or conducted any enquiry to collect the evidence that these

certificates produced by him to the department are genuine certificates and he sold the goods to the registered dealer.

The appellant has contested the case before the learned authorities only on the ground that once he has produced the certificates, his liability is over and he cannot be questioned about the genuineness of the certificates. On the basis of the Form 'C', the appellant had availed the benefit, therefore, the burden is upon him to produce the evidence that these certificates are genuine.

9. So far as contention of Shri Choudhary learned senior advocate that the authorities have not recorded any finding about the collusion between appellant and the dealer hence the Forms C submitted by the appellant ought to have been accepted . The case of the appellant was not taken into reassessment on the ground of collusion. The certificates submitted by the appellant were verified by the concerned authorities of the other States and also through TINXYXS and it has been found that these certificates are not genuine certificates, therefore, was no need to give findings on the issue of collusion between appellant and purchasers.

10. The appellant cannot escape from its liability to pay tax merely by submitting that he received the certificate and produced before the department and he has no concern about its genuineness. Since 2015, the appellant has not taken any action against the dealer, who gave the certificate to the appellant. Similar issue came up for consideration before this Court in case *M/s. Adani Enterprises Limited) Versus Commissioner of Commercial Tax, Indore & another* (TR No.23/2016 decided on 30.07.2018) and after considering the

aforesaid judgment cited by Shri Choudhary, Division Bench of this Court has held that Form- C submitted by the purchaser have been found forged, which clearly shows that the purchasers are not registered dealer, therefore, the assessee is liable to pay tax and penalty as imposed by the Competent Authority and affirmed by the Appellate Board. It has also been held that The breach of civil obligation will immediately attract penalty irrespective of whether the contravention is with a guilty intention. The High Court of Chhatisgarh in case of *Avinash Traders Vs. Raigarh, (2019) 34 SPJ 54* has also taken the similar view that if a fake or a fraudulent Form-C is produced by an Assessee and if it is found to be so, it will be as good as non production of Form-C and no advantage thereof can be taken therefrom by trying to shift the onus on anybody else.

11. In view of above discussion, we do not found any question of law involved in this appeal, same is dismissed accordingly.

(VIVEK RUSIA)
JUDGE

(AMAR NATH (KESHARWANI)
JUDGE

praveen