



**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE GAJENDRA SINGH

ON THE 24TH OF APRIL, 2025

VALUE ADDED TAX APPEAL No. 18 of 2024

***M/S KATARIYA PACKAGING PVT. LTD. THROUGH ITS DIRECTOR
SIDDHARTH KUMAR KATARIA***

Versus

***THE COMMISSIONER OF COMMERCIAL TAX (NOW
COMMISSIONER OF STATE TAX)***

Appearance:

Shri P.M. Choudhary, learned Senior Counsel with Shri Anand Prabhawalkar – Advocate for the appellant.

Shri Bhuwan Gautam – Govt. Advocate for the respondent.

Reserved on	:	09/04/2025
Pronounced on	:	24/04/2025

ORDER

Per: Justice Vivek Rusia

Heard on the question of admission.

1. Present appeal is filed against the order dated 5.4.2024 passed by M.P. Commercial Tax Appellate Board, Bhopal, Bench at Indore whereby the appeal has been dismissed and the penalty imposed under Section 52 of M.P. VAT Act, 2002 has been affirmed. The appellant is a private limited



company registered under the Companies Act, 1956 (now Companies Act, 2013). The appellant is engaged in the business of manufacture and sale of corrugated boxes and corrugated sheets and waste paper emerging out of such manufacture.

2. The Commercial Tax Officer, Audit Wing-2, Indore concluded the original assessment proceedings under Section 20 of the M.P. Vat Act, 2002 by imposing the additional demand of Rs.40,86,861/- of the assessment year 1.4.2015 to 31.3.2016. The Assessing Officer denied the credit for payment of Rs.9,25,245/- due to non verification of Challan. Being aggrieved by the aforesaid order, the appellant preferred an appeal before the First Appellate Authority. Vide order dated 2.3.2019 the appellate authority set aside the assessment and remanded the matter back for passing fresh order after giving opportunity of hearing to appellant. After remand vide order dated 17.12.2020 the Commercial Tax Officer, i.e. Assessing Authority rejected the appellant's claim for Input Tax Rebate for the period from 28.10.2015 onwards due to cancellation of the registration from the said date. The said order resulted into in additional demand of Rs.28,81,357/- upon appellant. According to the appellant, in the said order i.e. 17.12.2020 there is an observation of initiation of proceedings under Section 52 of the M.P. VAT Act, 2002 by the Commissioner vide notice dated 31.3.2017.

3. The appellant preferred an appeal against the order dated 17.12.2020 before the First Appellate Authority. However, vide order dated 19.5.2022 the First Appeal was dismissed. Thereafter second appeal was preferred before the Board and same was also dismissed vide order dated 5.4.2024.



The issue of assessment and additional recovery of taxes of the assessment year 2015-16 has attained finality.

4. According to the appellant, after completion of the fresh assessment, the Commercial Tax Officer vide order dated 8.2.2021 imposed the penalty of Rs.29,76,757/- equal to 3.5 times of the tax alleged to be concealed. According to the appellant, the aforesaid order dated 8.2.2021 has been passed on the basis of the proceedings initiated under Section 52 of the M.P. Vat Act, 202 vide notice dated 31.3.2017 i.e. beyond the period of one year, hence, it is unsustainable. However, the appellant challenged the order dated 8.2.2021 by way of First Appeal before the First Appellate Authority, vide order dated 19.5.2022 the First Appeal was dismissed. Thereafter the appellant approached the M.P. Commercial Tax Appellate Board by way of second appeal and that too was dismissed vide order dated 5.4.2024.

5. Being aggrieved by order dated 5.4.2024, the appellant preferred a Writ Petition No.25474/2024 *inter-alia* on the ground that the issue of limitation was not raised before the First Appellate Authority and the Appellate Board, therefore, writ petition is maintainable. However, vide order dated 2.9.2024 writ petition was dismissed with liberty to file VAT Appeal before this Court. Hence, the appellant has filed this appeal before this Court.

6. Admittedly the issue of limitation has never been raised before the Assessing Officer, First Appellate Authority and M.P. Commercial Tax Appellate Board by the appellant.

7. Shri Choudhary, learned Senior Counsel for the appellant has placed reliance on Sub-section (2) of Section 52 of the M.P. VAT Act, which says



that the Commissioner or the Appellate Authority or the Appellate Board may initiate the separate proceeding for imposition of penalty by issuing notice in the prescribed form for giving the dealer an opportunity of hearing and on hearing the dealer, the Commissioner or the Appellate Authority or the Appellate Board as the case may be, shall pass an order not later than one calendar year from the date of initiation of such proceeding. Since in the present case the proceedings under Section 52 were initiated on 31.3.2017, therefore, the order ought to have been passed under Section 52(2) within one year and after expiry of one year the authority becomes *functus officio* to pass any order. Shri Choudhary, learned senior counsel further submits that although this issue of limitation has never been raised before the Assessment Officer, Appellate Authority and Appellate Board but this is a pure question of law, which can be raised in this VAT Appeal. The Commercial Tax Officer, Circle-1 who had initiated the proceeding vide notice dated 31.3.2017 was obliged to pass an order within one calendar year from the date of initiation of such proceeding i.e. on or before 31.12.2018. Hence, the order impugned dated 8.2.2021 is without authority and liable to be quashed. Since the Appellate Authority and Appellate Board did not consider this legal provision, hence the orders passed by the appellate authority and appellate board are liable to be quashed.

8. Shri Choudhary, learned senior counsel for the appellant has proposed the following sole substantial question of law involved in this appeal:-

“Whether on the facts & circumstances of the present case, the impugned penalty order dated 18.2.2021 [confirmed in Appeal by MPCTAB] passed by the Commercial Tax Officer, Audit Wing-2, Indore in consequence of the proceedings initiated by notice dated 31.3.2017 is without jurisdiction and constitutes nullity in the eye



of law as barred by limitation prescribed under Section 52(2) of the MP VAT Act, 2002?”

Appreciation & Conclusion:-

9. Shri Choudhary, learned senior counsel for the appellant submits that the proceedings under Section 52 of the M.P. VAT Act were initiated by the Ratlam Circle Office by issuing a notice dated 31.3.2017, therefore, under Section 52(2) the proceedings were liable to be completed within one year.

10. The aforesaid contention is not acceptable because as per the contents of the order dated 17.12.2020 passed under Section 20 of the M.P. VAT Act by the Commercial Tax Officer, Indore, the Ratlam Circle Office only proposed the initiation of proceedings under Section 52 of the M.P. VAT Act due to submission of false Challan of Rs.8,50,502/- by the appellant. After passing the final order dated 17.12.2020 a fresh notice was issued to the appellant-assessee and explanation was called. In compliance of the said notice, Shri Sanjay Patwa – Tax Consultant appeared and submitted an explanation on behalf of the appellant, which was not found satisfactory and order dated 8.2.2021 was passed by the Commercial Tax Officer under Section 52 of the M.P. VAT Act. Therefore, the assessment under Section 20 was completed on 17.12.2020 and in the said proceedings it came to the knowledge of the Commercial Tax officer about submission of false Challan of Rs.8,50,502/- and thereafter notice was issued under Section 52 for imposition of penalty. The Tax Consultant appearing on behalf of the appellant did not raise any objection about the limitation and submitted the explanation on merit, which was not found satisfactory and the final order under Section 52 of the M.P. VAT Act was passed on 8.2.2021. Against the



said order the appeal was preferred in which no one appeared to argue and the same was dismissed. Therefore, the actual proceedings under Section 52 of the M.P. VAT Act were initiated by issuing a notice after the order passed on 17.12.2020 for initiation of penalty. Before that only the Commissioner Commercial Tax issued an order dated 22.3.2017 proposing the penalty. After that the proceedings under Section 20 of the M.P. VAT Act were initiated, in which the final order was passed on 17.12.2020 and thereafter within one year the final order of penalty under Section 52 has been passed on 8.2.2021 by the Commissioner within one year. Therefore, we do not find any question of law involved in this appeal.

11. The appeal is accordingly dismissed.

(VIVEK RUSIA)
JUDGE

(GAJENDRA SINGH)
JUDGE