

**HIGH COURT OF MADHYA PRADESH:**  
**MAIN SEAT AT JABALPUR**

(DIVISION BENCH: HON. SHRI S.K. SETH AND  
HON. SMT. ANJULI PALO, JJ)

**Writ Petition NO.7536/2014**

Petitioner : Goldie Glass Industries

V E R S U S

Respondents : State of M.P. and others

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Shri G.N.Purohit, Senior Advocate  
with Shri Abhishek Oswal, Advocate for  
the petitioner.

Shri Samdarshi Tiwari, Dy. Advocate  
General for respondents.

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**O R D E R**  
**(18.08.2017)**

**Per Seth, J.**

Is the order passed by the Dy.  
Commissioner of Commercial Tax Appeal  
amenable to *suo-motu* revision by the  
Additional Commercial Commissioner under  
Section 47 (2) of the M.P. Value Added  
Tax Act (for short, 'VAT Act')?

2. This question falls for our  
consideration on the following facts.  
Petitioner, a proprietary concern, is a  
registered dealer and engaged in the  
manufacture of High Glass Putty; Frosted  
Designs on Glass and Plastic Aluminium  
Composite, Laminated Panel Sheets. For  
the assessment year 2008-2009, it was  
assessed to VAT @ 4% as per Entry 36A of  
Part-II of Schedule-II on Aluminium

Composite Panel. The said assessment was reopened under Section 21(1) of the VAT Act on the ground of short levy of Tax on Aluminium Composite Panel, which was liable to be taxed under residuary entry @ 12.5%. Accordingly, reassessment was framed raising an additional demand of Rs. 5,81,234/- on account of difference in the rate of tax. The matter was carried in appeal to Dy. Commissioner (Appeal) who deleted the levy of additional tax vide order dated 14.9.2011.

**3.** Respondent No. 3 i.e. Additional Commissioner of Commercial Tax under Section 47(2) of the VAT Act issued notice dated 09.01.2014 to the petitioner to show cause against the exercise of the *suo-motu* power of revision against the order passed by Dy. Commissioner of Commercial Tax (Appeal). In response, petitioner submitted that the order passed by the Dy. Commissioner of Commercial Tax (Appeal) was not amenable to *suo-motu* revision under Section 47 (2) of the VAT Act. This objection was, however, overruled vide impugned order, hence this petition.

**4.** We have heard the rival submissions and perused the material available on record. But before we advert to the question, it is relevant to notice certain provisions of the VAT Act, which have a direct bearing on the controversy. For ready reference

relevant provisions are reproduced herein below:-

**"3. Taxing Authorities and other Officers**

(1) There may be appointed a person to be the Commissioner of Commercial Tax and the following category of officers to assist him, namely:

(a) Additional Commissioner of Commercial Tax;

\* (b)

(c) Deputy Commissioner or Additional Deputy Commissioner of Commercial Tax;

(d) Assistant Commissioner or Additional Assistant Commissioner of Commercial Tax;

(e) Commercial Tax Officer or Additional Commercial Tax Officer;

(f) Assistant Commercial Tax Officer; and

(g) Inspector of Commercial Tax.

\* Deleted vide MP Vat (Amendment) Act, 2006 (No.12 of 2006)-w.e.f. the 31st March, 2006

**\*3A. Appellate Authority**

The State Government may, by order, appoint any officer not below Deputy Commissioner of Commercial Tax as Appellate Authority.

\* Inserted vide MP Vat (Amendment) Act, 2006 (No.12 of 2006)-w.e.f. the 31st March, 2006

46 : **Appeal** (1) Any dealer or person aggrieved by an order passed under this Act, by any officer specified in clause (c) to (f)\* of sub-section (1) of section 3 may, in the prescribed manner, appeal against such order to the Appellate Authority:

\*clause (b) omitted vide MP Vat (Amendment) Act, 2006 (No.12 of 2006)- w.e.f. the 31st March, 2006

47 : **Power of revision by Commissioner**

(1) The Commissioner on his own motion may call for the record of the proceeding in which any order was passed by any officer specified in clauses (c) to (f)\* of sub-section (1) of section 3 and on receipt of the record may make such enquiry or cause such enquiry to be made, as he considers necessary and subject to the provisions of this Act, after giving the dealer an opportunity of being heard, may, pass such order thereon, not being an order prejudicial to the dealer or person, as he thinks fit within six months from the date of initiation of proceedings :

\*clause (b) omitted vide MP Vat (Amendment) Act, 2006 (No.12 of 2006)- w.e.f. the 31st March, 2006."

5. Bare perusal of provisions quoted above would reveal that Section 3 deals with appointment of the Commissioner and officers to assist him

as taxing authority. Prior to M.P. VAT (Amendment) Act, 2006, clause (b) of Section 3 dealt with the Dy. Commissioner of Commercial Tax (Appeal) as one of the Officer to assist the Commissioner, but after the amendment, it ceased to exist in Section 3 of the Act. Simultaneously, Section 3A was inserted in the Statute to provide for appointment of Appellate Authority by the State Government not below the rank of Deputy Commissioner of Commercial Tax. It is further clear from Sections 46 and 47 that from the order of Dy. Commissioner of Commercial Tax (Appeal), no further appeal or revision lies. In other words, the order passed by the Dy. Commissioner of Commercial Tax (Appeal) is final and is not amenable to *suo-motu* revisional powers conferred by Section 47 of the Act.

**6.** In view of the foregoing discussion, in the back drop of statutory provisions, we have no hesitation to answer the question in favour of the petitioner and against the revenue. Even otherwise, it is well established that every taxing statute must be read according to the natural construction of its words. It is now well established that if a person sought to be taxed comes within the letter of the law, he must be taxed. On the other hand, if the revenue is to recover tax, cannot bring the subject within the

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letter of law, the subject is free, however apparently within the spirit of law the case might otherwise appear to be.

7. The up shot of whole discussion is that the impugned show cause notice dated 09.01.2014 (Annexure-P/7) and the order impugned dated 30.04.2014 (Annexure-P/9) are hereby quashed. Writ Petition is **allowed** with cost of Rs. 10,000/-.

8. Ordered accordingly.

(S.K. SETH)  
J U D G E

(SMT. ANJULI PALO)  
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