

HIGH COURT OF MADHYA PRADESH : AT JABALPUR

Writ Petition No : 6417 of 2015

M/s Laxmi Steels

- V/s -

State of MP and others.

Present : **Hon’ble Shri Justice Rajendra Menon,**
 Acting Chief justice; and,
 Hon’ble Shri Justice Anurag Shrivastava.

Shri G.N. Purohit, Senior Advocate, with Shri Abhishek
Oswal and Ms. Uma Parashar for the petitioner.

Shri Samdarshi Tiwari, Deputy Advocate General, for the
State/respondents.

Whether approved for reporting: **Yes / No.**

ORDER
/08/2016

In this petition filed under Article 226/227 of the Constitution of India, challenge is made to orders-dated 25.2.2015 passed by the Assistant Commissioner of Commercial Tax, Audit Wing, Bhopal, in the matter of denying benefit of ‘input-rebate’ to the petitioner for the period 1.4.2012 to 31.3.2013, in the matter of payment of entry tax/Value Added Tax under the MP Value Added Tax Act, 2002 (hereinafter referred to as ‘Act of 2002’).

2- Petitioner is a proprietary concern registered under the Commercial Tax Act with TIN No.23813600936, and deals in purchase and sale of Iron, Steel and Scrap material. It is stated that petitioner had been regularly complying with the requirement of the Act of 2002; quarterly returns are being filed as and when required under the Statute.

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It is said that for the period 1.4.2012 to 31.3.2013, quarterly reports were submitted by the petitioner within time and set off of 'input rebate' on account of material purchased from MP Power Generating Company by way of e-auction was claimed. For the year in question, in an e-auction conducted by the MP Power Generating Company, petitioner had purchased certain scraps in the form of sale, made of a coal handling plant, conveyor belt, track hopper, coal banker and coal crusher plant. The purchase was made in accordance to the terms and conditions stipulated in Annexure P/2, the tender and purchase agreement. It is said that in accordance to the terms and conditions of the Agreement, the purchase price i.e... the value of goods sold with taxes were to be deposited in installments. After payment of installments, the plant was dismantled. Annexure P/3 is a copy of the cash memo showing the sale wherein the sale price and the tax component have been separately indicated. On the basis of the payment of installments, the petitioner was permitted to dismantle the plant and thereafter lift the material as per the purchase agreement.

3- After the first installment was deposited, lifting of material was allowed only after the second installment was paid. For each lift, a gate pass and delivery memo was issued by the Power Generating Company. Copies of which are filed as Annexure P/4. According to the petitioner, as per the cash memo, the delivery memo and the gate-pass, the material as indicated therein were sold and lifted after payment of the cost of the goods and the tax component in the Financial Year 1.4.2012 to 31.3.2013; and, in the cash memo payment of VAT is clearly specified which according to the petitioner satisfies the requirement of Section 14 of the VAT Act read with Rule 9 of the MP VAT Rules.

4- However, for the period in question, set off of 'input rebate' under section 14 has been disallowed by the Assessing Officer only on account of the fact that the sale invoice was issued on 25.4.2013 and 3.6.2013 respectively i.e... after the Financial Year ended on 31.3.2013. It is alleged that only account of the sale invoice being issued after the Financial year, the 'input rebate' claimed is disallowed without taking

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note of the requirement of Section 14 read with Rule 9 and all other documents like gate pass, sale memo etc filed, which clearly show that the transaction had taken place within the Financial Year.

5- Shri G.N. Purohit, learned Senior Advocate, argues that under Rule 9 of the MP VAT Rules, providing for allowing of 'input rebate' under section 14, no specific provision is made for submitting a particular document in a specified form. Learned Senior Advocate argues that a complete reading of Rule 9 with the provisions of Section 14 would indicate that the question of grant of rebate has to be made based on the documents available and if the requirement of section 14 is satisfied showing the transaction during the Financial Year, the 'input rebate' can be allowed. In this case, in an arbitrary manner only because the sale invoice is issued after the Financial Year, the claim has been disallowed, even though Rule 9 does not prescribe for any particular proforma for issuance of the cash memo or invoice. According to Shri Purohit the liability for payment of tax arises on the date the sale is affected and actual payments are made in consideration for the sale and not on the date of the invoice.

6- In the present case, according to learned Senior Advocate the overwhelming documents clearly indicate that the sale consideration alongwith tax was paid during the Financial Year; the gate pass and the cash memo of the sale transaction show that the sale consideration and the tax liability thereof was paid during the Financial Year in question i.e....between 1.4.2012 and 31.3.2013, and merely because the final invoice is of a date subsequent to the Financial Year, that cannot be a ground for disallowing the benefit. Learned Senior Advocate submits that without taking note of these material facts, which are relevant, the action taken is unsustainable.

7- Learned Senior Advocate invites our attention to a judgment of the Supreme Court, in the case of **Arun Electrics, Bombay Vs. Commissioner of Sales Tax, Maharashtra, (2010) 17 STJ 504 (SC)**, to canvass a contention that the question as to whether a transaction is liable to tax is required to be determined on the basis of the

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terms and conditions of the Contract and the actual transaction made and not on the basis of a mere invoice issued recording the transaction. Learned Senior Advocate also places reliance on a judgment rendered by the West Bengal Taxation Tribunal, in the case of **Shree Shyam Enterprises Vs. Joint Commissioner, Sales Tax, Bally Circle and Others, (2012) 49 VST 177 (WBTT)**, to say that in the matter of claiming 'input tax credit' under VAT, rejection of the claim under similar circumstances based on the invoice being issued subsequently has been rejected by the Tribunal. Learned Senior Advocate argues that the case in hand is identical to the case decided by the West Bengal Tribunal.

8- Accordingly, learned Senior Advocate argues that in view of the aforesaid, the learned Assessing Officer has committed a grave error in the matter and as the Assessing Officer has not considered the legal implications and the facts in its right perspective, the petition is liable to be allowed.

9- Shri Samdarshi Tiwari, learned Deputy Advocate General, refuted the aforesaid contentions and argued that against the order of assessment passed, statutory remedy of appeal is prescribed under section 46(1) of the VAT Act and, therefore, a petition directly before this Court, bypassing the remedy of appeal, is not maintainable. In support thereof, learned counsel invites our attention to a judgment of the Supreme Court in the case of **Zunaid Enterprises Vs. State of MP and others, 2012 (20) STJ 411 (SC)**, to say that the petition should not be entertained as efficacious remedy is available. Learned Deputy Advocate General further invites our attention to the requirement of section 9, of the VAT Rules, and Section 14 to say that the copies of the delivery challan even though they indicate the payment and receipt etc, but these cannot be treated as bill, invoice or cash memo as contemplated under Rule 9; and, as the invoice or cash memo are issued subsequent to the Financial Year, learned counsel argues that the Assessing Officer has not committed any error and, therefore, Shri Samdarshi Tiwari prays for dismissal of this writ petition.

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

11- Facts as are detailed hereinabove are not in dispute. Petitioner purchased the scrap material in an e-auction conducted and the agreement for sale was executed in accordance to the terms and conditions stipulated in the Agreement – Annexure P/2, that was entered into during the Financial Year in question. According to the terms and conditions of the agreement, the payment of consideration for the scrap has to be made in four installments and the method of payment of installments; action required to be taken for lifting of the material etc are contemplated in Clause 6.1 and 6.2 of the Agreement, in question. On deposit of the first installment, the first segment of the plant is permitted to be dismantled, but on payment of this installment lifting of the material is not permitted. On deposit of the second installment, dismantling of the second segment of the plant can be made and at that point of time, the dismantled material of the first segment can be lifted. Similarly on payment of the third installment, dismantling of the third segment is permissible and consequential lifting of the first and second segment can be made; and, when the fourth and balance installment is paid, the entire dismantling of the plant is permitted and the entire dismantled material can be lifted. Clause 6.3 further indicates that when installments are paid, they should include the installment for the material to be lifted alongwith applicable tax, duties and penalties. Clause 6.4 further contemplates that the transaction being a sale of goods, sales tax and VAT is applicable @ 13% has to be paid and Clause 6.4 further contemplates that the tax and duties payable for the transaction are to be paid at the time of delivery of goods by the purchaser in its actual.

12- From the aforesaid, it is clear that the payment has to be made in four installments as indicated hereinabove. Thereafter, dismantling and lifting of the material is permissible and the payment has to include the tax component payable by the purchaser. If the documents available on record namely – Ex.P/3 and P/4 are taken note of, it would be seen that Ex.P/3 are the sale invoices which are

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admittedly issued on 25.4.2013, 3.6.2013, 21.11.2013 and 22.11.2013 i.e... much after the Financial year, and it is only because of these dates with regard to issuance of the invoice that the claim for set-off on 'input rebate' is disallowed. However, Annexure P/4 collectively filed from page No.63 to page No.96 are the Delivery Challans and Gate Passes, which clearly indicates that the dismantling of the plant and removal of the scrap has been undertaken mostly during the Financial Year i.e... 1.4.2012 to 31.3.2013. The scrap has been dismantled and removed as per the conditions stipulated in Clause 6.3 and 6.4 of the Agreement, the installments have been paid before dismantling and removal of the scrap and the payment made includes the tax component. The Delivery Challan, Gate Passes filed as Annexure P/4 is, therefore, a proof of the fact that the transactions which included the payment of installments, taxes, for dismantling of the plant and its removal from the site took place during the period between 17.12.2012 to 29.1.2013. However, the memo of sale invoice – Annexure P/3, as already indicated hereinabove, has been issued on 25.4.2013, 3.6.2013, 21.11.2013 and 22.11.2013 respectively. However, if we peruse these invoices, we find that the invoices have been issued on the dates contained therein in favour of the assessee – M/s Laxmi Steels, Plot No.22, F Sector, Industrial Area, Govindpura, Bhopal bearing TIN No.23813600936. The sale order for which the invoice is issued is shown as order-dated 6.9.2012. The Delivery Note is shown to have been issued on 21.9.2012 and the dispatch is shown to have been made through motor vehicle. The buyer is shown as the assessee herein and the first installment is shown to have been paid as per the Agreement on 6.9.2012. Thereafter, the dismantling/disposal of the scrap is indicated; the amount of the first installment is also indicated as Rs.7,75,25,001=00; and, the VAT @ 13% is shown to have been paid as Rs.1,00,78,250=00. The total amount of payment made under this invoice dated 25.4.2013 is Rs.8,84,79,284=00, which includes the VAT paid. Even though this invoice is issued on 25.4.2013, the entire installment is shown to have been paid on 6.9.2012, and based on the payment made, the entire

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material was removed in Truck No.MP20-HB-2052, on 17.12.2012, as is evident from Annexure P/4. The gate pass and the delivery memo – Annexure P/4 clearly show that the delivery was made in pursuance to the first installment paid on 6.9.2012; and, the particulars of the receipt issued for payment of this installment is the one indicated in the invoice – Annexure P/3. A complete reading of Annexures P/3 and P/4 indicates the following facts:-

- (a) This transaction shows action taken in pursuance to the agreement for sale;
- (b) Payment of first installment on 26.9.2012; delivery of the material, issuance of delivery memo on 17.12.2012 vide Gate Pass and its removal from the site by a motor vehicle through Delivery Note on 21.9.2012.

It is, therefore, clear that the first installment alongwith VAT tax was paid within the Financial Year and the material was also removed from the site before 31.3.2013.

13- Similarly, the second invoice dated 3.6.2013 also indicates payment of second installment on 15.12.2012, payment of tax as per this invoice and issuance of the Delivery Note and removal of the material from the site by motor vehicle on 15.12.2012. The third invoice even though dated 21.11.2013, like the earlier two, indicates payment of the third installment on 2.3.2013, and issuance of the Delivery Note and other documents immediately thereto for removal of scrap by motor vehicle. This also shows payment of 13% VAT, on 2.3.2013.

14- From the aforesaid, it is clear that the transactions took place in the Financial Year 1.4.2012 to 31.3.2013; the installments for removal of scrap were paid during the period and the material was also lifted in accordance to the same after payment of duty. Merely because the three invoices are issued on 25.4.2013, 3.6.2013 or 21.11.2013, the benefit is denied to the petitioner even though the transactions had taken place during the Financial Year.

15- The question, therefore, would be as to whether based on the ground that invoices were issued after the Financial Year, can the

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benefit be denied to the petitioner when the transaction did take place during the Financial Year i.e... period between 1.4.2012 to 31.3.2013.

16- Section 14 of the VAT Rules contemplates a provision for rebate of 'input taxes'. This section contemplates that when a registered dealer purchases any good specified in Schedule III from another such dealer after payment of his 'input tax', then he is entitled to rebate of 'input tax'. The method of claiming and allowing the 'input tax rebate' as provided under section 14 is contemplated under Rule 9, and this Rule contemplates that any claim in respect of a tax rebate may be made by the registered dealer under sub-section (1) of Section 14 on the basis of its quantification by a bill, invoice or a cash memo issued by the selling registered dealer indicating therein separately the amount of tax paid under section 9 and collected. In the memo in question, as detailed hereinabove i.e.... in the memo dated 25.4.2013 – Annexure P/3, the transaction is shown to have been made in the following manner:- buyer's order – 6.9.2012; and, first installment paid on 6.9.2012. Similarly, in the second memo dated 3.6.2013, the buyer's order is shown as 6.9.2012; and, the second installment paid on 15.12.2012, i.e... well within the Financial Year. The actual payment of the installment and the tax component is in the Financial Year and if the actual payment of duty or tax is in the Financial Year, merely because the invoice is issued on a subsequent date, may be after the Financial Year, the question would be as to whether the benefit can be denied to the petitioner.

17- In the case of **Arun Electrics** (supra) and while considering somewhat similar circumstances, the Hon'ble Supreme Court holds that "the invoice merely sets out the amount chargeable to the customer for 'supplying and affixing' certain electric fittings and equipment, and would not throw light on the nature of the contract". It has been held by the Supreme Court in the aforesaid case that the question as to whether in respect of a transaction, sales tax is exigible has to be determined on the basis of the terms of the contract and the actual transaction that takes place and not merely on the basis of the invoice issued by a person

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entitled to receive the money as per the terms of the contract. It is held by the Supreme Court that the invoice did not represent any transaction nor did it evidence a contract of work for sale of goods. The principle laid down by the Supreme Court goes to show that the question as to whether a transaction is liable to tax is to be determined on the basis of the terms of the contract and the actual transaction that takes place in furtherance to the Contract and not on the basis of the invoice issued.

18- As canvassed by Shri G.N. Purohit, learned Senior Advocate, Rule 9 only contemplates that the benefit of 'input rebate' can be claimed based on the cash memo or the invoices available. The Rule only contemplates that the benefit can be quantified by a bill, invoice or cash memo issued by the selling registered dealer. It does not contemplate a particular proforma. What is recorded in the invoice with regard to the transaction, should, in our considered view be determined not on the basis of the date of issuance of the invoice, but based on the facts indicated in the invoice evidencing the nature and particulars of the transaction as per the terms and conditions of the contract/agreement for sale. If the bills dated 25.4.2013 and 6.9.2013 are analysed, it would be seen, as already indicated hereinabove, that even though they are issued on 25.4.2013 and 3.6.2013 respectively, they evidence the transaction made on 6.9.2012, the payment made on the day i.e... the first and second installments; 13% tax; issue of the delivery note on 21.9.2012 and 15.12.2012; and, removal of the scrap by motor vehicle after issuance of the delivery note on 21.9.2012 and 6.12.2012 respectively.

19- It is, therefore, clear that even if the invoice is of a particular date, may be after the Financial Year, but the invoice did evidence payment of duty and conclusion of the transaction as per the contract during the Financial Year. That being the factual position, there is no reason as to why 'input rebate' cannot be granted, when the transaction has infact occurred during the Financial Year and the duty or tax paid during the Financial Year, which is admissible to a set off or input rebate.

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20- The West Bengal Taxation Tribunal also considered somewhat similar situation and allowed 'input rebate credit' based on verification of the documents. Finding that it was a bonafide transaction made, we find no reason to take a different view in this case. Merely because the two invoices are issued by the Power Generating Company on 25.4.2013 and 3.6.2013 respectively, it would not mean that the entire transaction, including payment of duty/tax, took place after the Financial Year, when the overwhelming documents available on record, particularly the delivery memo, gate pass etc shows the transaction to have taken place during the Financial Year and when the tax was also paid during the Financial Year, the act of the Assessing Officer in denying the benefit of 'input rebate' in our considered view cannot be accepted or approved by us.

21- That being the factual and legal position, we are of the considered view that in disallowing the claim, the learned Assessing Officer has committed grave error.

22- Having so held, we are also required to consider the question of the preliminary objection raised by Shri Samdarshi Tiwari to say that in view of the law laid down by the Supreme Court in the case of **Zunaid Enterprises** (supra), where a writ petition directly before this Court was maintainable.

23- Normally when a statutory remedy of appeal under section 46(1) of the VAT Act was available, discretionary jurisdiction in a petition under Article 226 of the Constitution is not normally exercised. However, there are exceptions to this Rule and there are large numbers of cases where jurisdiction under Article 226 has been exercised when it is found that the action of a statutory authority is arbitrary, unreasonable, contrary to law and when serious disputes on facts are not to be adjudicated.

24- In the case of **Paradip Port Trust Vs. Sales Tax Officer and Others, (1998) 4 SCC 90**, the Hon'ble Supreme Court has considered somewhat similar circumstances and held that if the question

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can be decided by interpretation of a statutory provision, interference can be made.

25- In the case of **Bharat Sanchar Nigam Limited and Another Vs. Union of India and others, (2006) 3 SCC 1** also, the Hon'ble Supreme Court has laid down similar principle in the matter of exercising jurisdiction even when a statutory remedy is available. All these questions have been considered by a Coordinate Bench of this Court in the case of **Commercial Engineers & Body Building Company Limited Vs. Divisional Deputy Commissioner, Commercial Tax Office & Another, (2015) 27 STJ (MP)**, and similar arguments rejected.

26- In this case also, the facts are not in dispute. The only question is with regard to exercise of the statutory powers by the Assessing Officer and when the act of the Assessing Officer on the admitted facts in making the assessment is found to be unsustainable, being in contravention to all the norms of statutory requirement, exercise of our extra ordinary jurisdiction can be resorted to and, therefore, we find no reason to uphold the aforesaid objection.

27- In that view of the matter, finding no ground the preliminary objection raised is rejected.

28- Accordingly, the writ petition stands allowed. Impugned orders of assessment stand quashed, and the Assessing Officer is directed to grant 'input rebate' for the transaction, which infact had taken place during the Assessment Year in question.

(RAJENDRA MENON)
ACTING CHIEF JUSTICE

(ANURAG SHRIVASTAVA)
J U D G E

Aks/-