

HIGH COURT OF MADHYA PRADESH AT JABALPUR**VATA No.43/2017**

PETITIONER : Udaipur Beverages

Vs.

RESPONDENT : The Commissioner of Commercial Tax
Madhya Pradesh

**Present : Hon'ble Shri Justice R.S. Jha,
Hon'ble Justice Smt. Nandita Dubey.**

For the petitioner : Shri (Dr.) K. K. Dubey, Advocate.

For the respondent : Shri Deepak Awasthi, Dy. Advocate
General.

Whether approved for reporting:**Law Laid Down:****Significant paragraph nos.:****ORDER**
(13/12/2017)**Per R. S. Jha, J.**

The appellant has filed this appeal being aggrieved by order dated 28.08.2017 passed by the M.P. Commercial Tax Appellate Board, Bhopal in Appeal No. A/413/CTAB/12 for the assessment period 01.04.2008 to 31.03.2009.

2. The issue before the Board, raised by the appellant, was as to whether the appellant was entitled to input tax rebate under Section 14 of the

Value Added Tax (hereinafter referred to as 'the Act') in respect of the refrigerator/chiller that the appellant had given to the retailers for the purposes of storing and selling the aerated water, pulp based fruit drinks (maaza) and water manufactured by the appellant. The Board by the impugned order has held that the appellant is a manufacturer of aerated water, pulp based fruit drinks (maaza) and water and in such circumstances the refrigerator/chiller that he has given to the persons running the retail outlets are not entitled to be considered for input for rebate under Section 14 (4) of the Act, as they do not fulfill the necessary requirements prescribed therein.

3. The learned counsel for the appellant submits that the aerated water and pulp based fruit drinks (maaza) manufactured by the appellant cannot be sold without refrigeration and in such circumstances the refrigerator/chiller becomes a necessary part of the plant and machinery requisite and required for manufacture of the aerated water and pulp based fruit drinks (maaza) and, therefore, the Board has erred in law in denying input tax rebate to the appellant. The learned counsel for the appellant further submits that the Board has also erred in law

in arriving at a finding that the refrigerator/chiller supplied by the appellant to the retailer is a 'gift' and, therefore, the appellant is not entitled to input tax rebate.

4. On the basis of the aforesaid submissions, the learned counsel for the appellant has submitted the following two substantial questions of law arising for adjudication of this appeal.

“1. Whether under the facts and in circumstances of the case, the Appellate Board is right in law and had valid material to hold that the appellant has purchased Refrigerator/Chiller for the purpose of sale and not as plant, machinery, equipments etc., '**for use**' in respect of Schedule II goods, in the light of the '**Certificate of Registration**' issued by the Commercial Tax Department ?

2. Whether under the facts and in circumstances of the case, the Appellate Board is right in law and had valid material to hold that right to use of Refrigerator/Chiller given by the appellant to the 'Retail Outlet', without any valuable consideration, would amount to '**Gift**' as per sub-section (6) of section 14 of VAT Act, in the light of the **Asset Bailment**

Agreement ?”

5. We have heard the learned counsel for the appellant at length. A bare perusal of the provisions of Section 14 of the Act, makes it clear that input tax rebate can be claimed or be allowed to a registered dealer in circumstances that have been enumerated thereunder. Sub-section 1(a)(4) of the aforesaid section which is relevant for adjudication of the issue involved in the present appeal is in the following terms:

"14 Rebate of Input tax

(1) Subject to the provisions of sub-section (5) and such restrictions and conditions as may be prescribed, a rebate of input tax as provided in this section shall be claimed by or be allowed to a registered dealer in the circumstances specified below-

(a) Where a registered dealer purchases any goods specified in Schedule II other than those specified in Part III of the said Schedule within the State of Madhya Pradesh from another such dealer after payment to him input tax for -

(1) sale within the State of Madhya Pradesh or in the course of inter-state trade or commerce or in the course of export out of the territory of India; or

(2) consumption or use for/in the

manufacture or processing or mining of goods specified in Schedule II for sale within the State of Madhya Pradesh or in the course of inter-state trade or commerce or in the course of export out of the territory of India; or

.....

(4) use as plant, machinery, equipment and parts thereof in respect of goods specified in Schedule II; or

.....

he shall claim or be allowed in such manner and within such period as may be prescribed, input tax rebate of the amount of such input tax -

(i) in case of goods referred to in sub-clauses (1), (2), (3), (4) and (5); and

(ii) in case of goods referred to in sub-clauses (5-a), (5-b) and (6), which is in excess of 4 percent of the purchase price, net of input tax, of such goods.

.....

(6) No input tax rebate under sub-section (1) shall be claimed or be allowed to a registered dealer,-

(i) In respect of any goods specified in Schedule II purchased by him from another such dealer for sale but given

away by way of free sample or gift or given to or received by him by way of replacement;

.....

(vi) In respect of plant, machinery, equipment and parts thereof, as may be notified by the State Government."

6. From a perusal of the aforesaid Section, it is apparent that a dealer is entitled to input tax rebate in circumstances where he uses the goods concerned as plant, machinery, equipment and parts thereof in respect of goods specified in Schedule II.

7. In the instant case, the registration certificate of the appellant, a copy of which has been filed by the appellant as (Annexure A/3) makes it abundantly clear that the appellant is registered as a dealer, who is involved in the manufacture and processing of aerated water, pulp based fruit drinks (maaza) and water and is not registered as a dealer involved in the business of sale of the aforesaid products or for that matter refrigerators or chillers. It is an admitted and undisputed fact that the refrigerator/chiller is not required for the purposes of manufacture of aerated water and pulp based fruit juice(maaza). In fact, the case of the appellant is that the refrigerator/chiller is only required for the

purposes of chilling the products manufactured by the appellant by the retailer to make them more marketable.

8. In view of the aforesaid undisputed facts, it is apparent that the refrigerator/chiller in respect of which the appellant has raised a grievance is not a plant, machinery, equipment or any part thereof which is required in the manufacture or use of the goods by the appellant. It is also apparent from the facts as stated by the appellant himself that the refrigerator/chiller is only provided to the retailer as an incentive for selling the products manufactured by the appellant. There is nothing on record to indicate that the refrigerator/chiller supplied by the appellant to the retailer is used exclusively for the purposes of sale of the appellant's good and that no other products or goods are stored or placed inside the refrigerator/chiller by the retailer. The appellant has also not pleaded or established that the products manufactured by him cannot be sold or are not marketable goods without chilling. In fact the goods manufactured and produced by the appellant are marketable as they are with or without chilling.

9. As the appellant is not involved in the sale of the goods in question and is registered only as a manufacturer and admittedly the refrigerator/chiller is not used either as a plant, machinery or equipment for the purposes of or in the process of manufacture of aerated water and pulp based fruit drinks, we are of the considered opinion that no fault can be found with the order passed by the Board. The substantial questions of law raised by the appellant are accordingly answered against him.

10. The appeal filed by the appellant being meritless is accordingly dismissed.

(R.S. Jha)
Judge

(Nandita Dubey)
Judge