THE HIGH COURT OF MADHYA PRADESH: JABALPUR

(Division Bench)

VATA No. 34/2019

Appellant : Itarsi Oils and Flours Private Limited

Versus

Respondents : State of Madhya Pradesh and others

Coram:

Hon'ble Shri Justice Ajay Kumar Mittal, Chief Justice

Hon'ble Shri Justice Vishnu Pratap Singh Chauhan, Judge

Appearance:

Shri Vijayesh Atre, Advocate for the appellant.

Shri Himanshu Mishra, Govt. Advocate for the respondents/State

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Whether approved for reporting: **Yes**

Law Laid Down:

- ✓ As the provision requiring filing of declaration forms along with the return is a directory provision and the appeal is a continuation of assessment proceedings, in a given case, declaration in "H" Form can also be accepted by the appellate Authority at the stage of appeal under Section 46 of the MP VAT Act, 2002, if it is satisfied that the assessee was prevented by reasonable and sufficient cause which disenabled him to file the forms in time. Such Form can also be accepted as additional evidence in support of the claim for deduction.

  The Supreme Court judgments in *(1985) 4 SCC 173 (Sahney Steel and Press Works Ltd. and Another v. Commercial Tax Officer and others); (2005) 6 SCC 499 (State of H.P. and others vs. Gujarat Ambuja Cement Ltd. and another);* and *Division Bench judgment in (2011) 19 STJ 566 (MP) (Aar Kay Agro Spring Industries, Jabalpur vs. State of M.P. and others)* – ***relied upon***.

Significant paragraphs: 7 & 8

O R D E R (Oral)
(27.11.2019)

Per: Ajay Kumar Mittal, CJ

Challenge in the present appeal preferred by the appellant under Section 53(1)(b) of the Madhya Pradesh VAT Act, 2002 (for short "the Act") is to an order dated 15.01.2019 passed by the M.P. Commercial Tax Appellate Board, Bhopal (in short "the Appellate Board") in Appeal No.A/673/CTAB/BPL/11 in relation to payment of tax for the assessment period from 01.04.2007 to 31.03.2008 (VAT), whereby the appeal filed by the appellant/assessee under Section 46 of the Act has been dismissed. The appellant has claimed the following two substantial questions of law:-

> "(1) Whether under the provisions of the MP VAT Act, 2002 an assessee can submit Form "H" only at the assessment stage?
> (2) Whether under the provisions of the MP VAT Act, 2002 an assessee can submit "H" Form at the stage of appeal under Section 46 of the MP VAT Act, 2002?"

2. Briefly stated, the facts leading to the present appeal are that the appellant is engaged in the business of processing of Soyabean for extraction and sale of Soya oil and Soya DOC (De-oiled cake) and also purchase, processing and sale of products from Sal seed, wheat and other products for which the appellant-Company is holding TIN No.23573805253. During the assessment year 01.04.2007 to 31.03.2008, the appellant undertook sale of Sal Oil to one of the traders at Raipur (Chhattisgarh) for an amount of Rs.4,31,62,600/- and claimed that the sale ultimately culminated into an export out of India and sought benefit under Section 36(1)(iii) of the Act but the Assessing Officer vide order dated 23.03.2010 (Exhibit A-2) considered

such sale as inter-state sale rather than export sale and rejected the claim on account of delay in securing declaration in “H” Form to substantiate the export transaction.

3. Feeling aggrieved by the order of the Assessing Officer, the appellant preferred an appeal under Section 46 of the Act before the Additional Commissioner of Commercial Taxes, Bhopal - the respondent No.2 herein, *inter alia* contending that the Assessing Officer has disallowed the claim for deduction without providing sufficient time and opportunity to the appellant for submission of “H” Form. However, the respondent No.2 vide order dated 27.07.2011 rejected the said appeal holding that since sufficient time was given for production of declaration in “H” Form, therefore, further time in this regard cannot be granted. Thereafter, the appellant moved the Appellate Board by filing a second appeal. It is noted that the appellant at the stage of appeal before the Appellate Board submitted declaration in “H” Form. The Appellate Board vide its order dated 15.01.2019 rejected the said claim with the further observation that the appellant has not complied with the provisions of Section 5(4) of the Central Sales Tax Act, 1956 as well as Rule 12(10)(a) of the Central Sales Tax (R&T) Rules, 1957 and the said provisions are to be construed strictly and since the appellant failed to produce “H” Form at the first assessment level, therefore, in absence of any provision to accept the declaration in “H” Form in support of export sale at that stage or any other stage, the appellant is not entitled to claim such relief.

4. Learned counsel for the appellant submitted that the Appellate Board misconstrued the doctrine of ‘strict construction’ and wrongly applied the said doctrine inasmuch as Section 5(4) of the Central Sales Tax Act does not provide for any time limit for submission of declaration in “H” Form. The

said provision does not restrict the appellant that declaration in "H" Form should have been filed only at the stage of assessment. The said document was already on record before passing of the impugned order.

5. On the other hand, learned counsel for the respondents/State argued in support of the impugned order and contended that since there are concurrent findings, therefore, there is no scope of interference with the order passed by the Appellate Board affirming the order passed by the Additional Commissioner.

6. We have heard learned counsel for the parties and are of the considered view that the present appeal deserves to be allowed.

7. A perusal of the impugned order shows that the claim of the appellant for grant of benefit under Section 36(1)(iii) of the Act was dismissed mainly on the ground of delay in submission of declaration in "H" Form which was required to be submitted to substantiate the export transaction. A similar issue arose for consideration before the Apex Court in the case of **State of H.P. and others vs. Gujarat Ambuja Cement Ltd. and another (2005) 6 SCC 499**, wherein the Court held as under:-

> "**37.** It was urged on behalf of the appellant State that declaration forms under the Central Act were not filed within time and/or were defective. That does not in reality amount to non-compliance with a statutory provision. Respondent 1 Company was claiming exemption and, therefore, had not filed the declaration forms. Some of the forms which were filed were treated to be defective. Undisputedly, before the Revisional Authority a prayer was made for grant of opportunity to rectify the defects, if any. That was turned down. It is to be noted that under Rule 12(7) of the Central Sales Tax (Registration and Turnover) Rules, 1957 (in short the `Registration Rules') the declaration form can be filed at a subsequent point of time and not necessarily along with returns. On an application being made before the assessing officer the exemption can be granted. The object of the rule is to ensure that the

assessee is not denied a benefit which is available to it under law on a technical plea. The assessing officer is empowered to grant time. That means that the provisions requiring filing of declaration forms along with the return is a directory provision and not a mandatory provision. In a given case even the declaration forms can be filed before the Appellate Authority as an appeal is continuation of the assessment proceedings. In a given case, if the Appellate Authority is satisfied that assessee was prevented by reasonable and sufficient cause which disenabled him to file the forms in time, it can be accepted. It can also be accepted as additional evidence in support of the claim for deduction. In the instant case, Respondent 1 Company made a specific request before the Revisional Authority which was turned down. Therefore, the question of any non-compliance with the relevant statutes does not arise. It was noted by this Court in ***Sahney Steel and Press Works Ltd. and Another v. Commercial Tax Officer and others, (1985) 4 SCC 173*** that even in a given case, an assessee can be given an opportunity to collect declaration forms and furnish them to the assessing authority if the challenge of the assessee to taxability of a particular transaction is turned down.

38. Respondent 1 Company's stand was that it was granted exemption from payment of sales tax and, therefore, there was no requirement of furnishing any ‘C’ form for certain periods relating to which there was a doubt about availability of the concession, the declaration forms were filed. Therefore, the assessing officer shall grant opportunity to the respondent 1 Company to cure the defects, if any in the declaration forms.

39. It was urged by learned counsel for the appellant State that Revision Notices Nos.7 to 10 were erroneously quashed by the High Court. Learned counsel for the respondents submitted that in the writ petition filed by it there was no prayer for quashing Revision Notices Nos. 7 to 10. It is stated that the High Court had not clearly quashed the said revision notices and the appellant State and its functionaries have not pursued the revision notices. Be that as it may, Respondent 1 Company is granted two months' time to respond to the said notices and indicate its stand. The Revisional Authority shall consider desirability of continuing the revision notices after considering the response of the respondents, if any, filed. The basic issue involved in these notices is to the effect of absence of provisional registration certificate after 11-8-1995 upto

> 25-9-1995. As noted above, Respondent 1 Company's stand is that it had applied for extension of the validity period upto 31-12-1995 and absence of any order on the same has not been disputed. Let the authority concerned deal with the application within a period of 6 weeks after giving notice to Respondent 1 Company. The Revisional Authority shall take note of the order to be passed thereon."

An analysis of the aforesaid decision in **Gujarat Ambuja Cement Ltd** (supra) shows that if the appellate authority is satisfied that assessee was prevented by reasonable and sufficient cause which disenabled him to file the forms in time, it can be accepted. It can also be accepted as additional evidence in support of the claim for deduction.

8. A Division Bench of this Court in **Aar Kay Agro Spring Industries, Jabalpur vs. State of M.P. and others, (2011) 19 STJ 566 (MP**), relying upon the judgments of the Apex Court in **Sahney Steel**'s case (supra) and **Gujarat Ambuja Cement**'s case (supra), has held that the provisions requiring filing of declaration forms along with the return is a directory provision and not a mandatory provision. In a given case the declaration Forms can be filed before the appellate authority, as an appeal is a continuation of assessment proceedings. If appellate authority is satisfied that the assessee was prevented by reasonable and sufficient cause to file the Forms in time, it can be accepted in appeal. It can also be accepted as additional evidence. The Division Bench observed as under:-

> "In view of the law laid down by the Apex Court, we find that the petitioner is entitled for an opportunity to produce due C Form before the revisional authority within a period of 30 days from the date of receipt of copy of this order, and if an application is filed by the petitioner along with due C Forms, the revisional authority shall restore the file of Revision Case No.92/Bhopal/10-11 Central, to its number and re-decide the matter in accordance with law expeditiously, provided that the C Forms are found in accordance with law."

9. In view of the aforesaid, the substantial questions of law, as claimed, are answered accordingly in favour of the appellant and the impugned order dated 15.01.2019 is set aside and the matter is remanded to the Appellate Board with a direction to take the declaration in "H" Form filed by the appellant in appeal on record and consider the case in accordance with law.

10. Accordingly, the present appeal stands **allowed** as indicated above.

(Ajay Kumar Mittal)
Chief Justice

(Vishnu Pratap Singh Chauhan)
Judge

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