(2011) 09 MP CK 0005

In the Madhya Pradesh High Court

Case No : Writ Petition No. 15331 of 2011

Aar Kay Agro Spring Industries APPELLANT

Vs

State of Madhya Pradesh and Others RESPONDENT

Date of Decision : 28-09-2011

Acts Referred:

Citation : (2013) 62 VST 197

Hon'ble Judges : Vimla Jain, J;Krishn Kumar Lahoti, J

Bench : Division Bench

Advocate : A.P. Shrivastava, with S. Usrethe, for the Appellant; Vivek Agrawal, Government Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

1. The petitioner has assailed the order dated March 14, 2011 (annexure P1) passed by the Additional Commissioner of Commercial Tax, Bhopal (respondent No. 2) in revision Case No. 91-92/Bhopal/10-11. A short contention of the petitioner is that though the petitioner had filed C forms before the authority for seeking exemption from payment of tax but C forms were defective. In the C form, the purchase order was not mentioned. It is submitted that the petitioner be permitted to file afresh correct C forms duly issued by the competent authority. It is submitted that to rectify the error in C form, the petitioner be allowed an opportunity to file fresh C form.

2. He has placed a reliance to an apex court judgment in State of H.P. and Others Vs. Gujarat Ambuja Cement Ltd. and Another, in support of his contention.

3. The learned counsel appearing for the State fairly submitted that on facts, the petitioner can be extended benefit of the judgment of State of H.P. and Others Vs. Gujarat Ambuja Cement Ltd. and Another, . The apex court in paras 37 to 39 (paras 40 to 42 in 142 STC 1) of the judgment held thus:

37. It was urged on behalf of the appellant-State that declaration forms under the Central Act were not filed within the time and/or were defective. That does

not in reality amount to non-compliance of a statutory provision. Respondent No. 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 extension 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 the 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 No. 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 Limited and Another Vs. Commercial Tax Officer and Others, 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 No. 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 respondent No. 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 No. 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 August 11, 1995 up to September 25, 1995. As noted above, respondent No. 1- Company''s stand is

that it had applied for extension of the validity period up to December 31, 1995 and absence of any order on the same has not been disputed. Let the concerned authority deal with the application within a period of 6 weeks after giving notice to respondent No. 1- Company. The revisional authority shall take note of the order to be passed thereon.

4. 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. With the aforesaid direction, this petition is finally disposed of, with no order as to costs.

