(2013) 12 MP CK 0205

In the Madhya Pradesh High Court

Case No : W.P. No. 9447 of 2012

Ruchi Soya Industries Ltd. APPELLANT

Vs

State of M.P. and Others RESPONDENT

Date of Decision : 05-12-2013

Acts Referred:

Citation : (2014) 70 VST 40

Hon'ble Judges : S.K. Gangele, J;G.D. Saxena, J

Bench : Division Bench

Judgement

1. Heard. The petitioner has filed this petition against the order dated March 31, 2012 (annexure P/1).

2. The petitioner is a private limited company. It is in the business of manufacture of edible oil. For the aforesaid purpose, it uses soya seeds and thereafter manufacture edible oil. In addition to the aforesaid product, by products de-oiled cake (DOC), sludge, etc., are also produced in the course of manufacturing process.

3. The dispute in this petition is in regard to assessment year April 1, 2009 to March 31, 2010. The petitioner submitted quarterly return as provided under the provisions of the M.P. VAT Act, 2002 (hereinafter referred to as "the VAT Act"), Central Sales Tax Act, 1956 and also M.P. entry tax law. It purchased raw material; soya seeds, mustard seeds and crude oil from registered dealers of M.P. The dealers charged tax (VAT) on sale invoices. They also issued tax deduction certificates. By the impugned order, an additional demand of Rs. 45,49,483 has been raised against the petitioner.

4. The main dispute is that the petitioner has not been granted the benefit of set-off as provided under the provisions of sections 14(1)(a), (2) and 26A(7) of the VAT Act. The petitioner purchased the goods, i.e., soya seeds, mustard seeds and crude oil. This goods have been consumed in manufacture of soya oil and DOC. The aforesaid product is a by-product. It is tax-free in accordance with entry No.

3 of Schedule I of the VAT Act. However, the edible oil and other by-products, such as, sludge and waste of sludge are taxable goods under entry No. 31 of Schedule II of the VAT Act. The taxing authority has opined that the petitioner used soya seeds in the manufacture of edible oil and DOC. The DOC, a by-product, is not taxable, hence, the petitioner is not entitled the benefit of set-off as provided under sections 14(1)(a), (2) and 26A(7) of the VAT Act and the petitioner is liable to pay tax at four per cent in accordance with the provisions of section 26A(5) of the VAT Act.

5. The question for consideration is that whether in such circumstances, the petitioner is entitled to the benefit of set-off as provided under sections 14(1)(a), (2) and 26A(7) of the VAT Act on entire purchase of soya seeds.

6. It is an admitted fact that soya oil and other by-products; sludge are taxable, however, there is no tax on DOC.

7. Section 14 of the VAT Act prescribes rebate on input tax subject to the provisions of sub-section (5). The aforesaid provision is as under:

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

(3) use as packing materials in packing of goods specified in Schedule II; or

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

(5) consumption or use for/in the manufacture or processing or packaging of goods declared tax-free u/s 16, for sale in the course of export out of the territory of India; or.

8. In accordance with the aforesaid provision, a rebate of tax shall be claimed or to be allowed to a registered dealer under certain circumstances subject to restrictions prescribed under sub-section (5). Sub-section (5) says that if it is consumed or used for/in the manufacture or processing or packaging of goods declared tax-free u/s 16.

9. Section 26A of the VAT Act, on which the respondents have placed heavy reliance is as under:

26A. Deduction of tax at source in respect of certain goods.--(1) Notwithstanding anything contained in any other provision of this Act, every registered dealer (the purchaser) who purchases such goods as may be notified by the State Government for sale or consumption from another registered dealer, shall deduct input tax from the amount payable by him to the selling registered dealer (the seller) for such purchase.

(2) On deduction of the amount under sub-section (1), the purchaser shall issue a certificate of deduction of tax to the seller in such form and manner as may be prescribed.

(3) The certificate of deduction of tax shall constitute a good and sufficient discharge of the liability of the seller to pay tax in respect of such transaction and the amount so deducted shall be adjusted by him in such manner as may be prescribed, and this certificate shall not be used for discharge of the liability of any other transaction.

(4) No input-tax rebate shall be claimed or be allowed in respect of the goods notified under sub-section (1).

(5) The purchaser shall deposit the amount deducted under sub-section (1) which is over and above the amount of input-tax rebate notionally admissible u/s 14 on such purchases.

(6) The provisions of sections 18, 20, 21, 24, 25 and 39 shall mutatis mutandis apply to the amount payable under sub-section (5).

(7) The purchaser shall retain as refund the amount deducted under sub-section (1) which is equal to the amount of input-tax rebate notionally admissible u/s 14 on such purchases.

10. The honourable Supreme Court in Commissioner of Sales Tax, Bombay Vs. Bharat Petroleum Corporation Ltd., has considered the question of set-off and applicability of principle of apportionment in the event of raw material purchased by dealer be used in manufacture taxable goods and a by-product which is not taxable. The honourable Supreme Court has held that a refinery would be entitled to set-off to the entire tax paid by it on the purchase of raw material. The honourable Supreme Court has held as under (pages 231 and 232 in 85 STC):

17. Turning now to the main question, we are inclined to agree with respondents'' counsel that they are entitled to a set-off of the entire tax paid by them on the purchases of sulphuric acid and cotton, respectively. The only condition under the rule is that the goods purchased on payment of tax should have been used in the manufacture of taxable goods for sale. Their concurrent user for the manufacture of another item of goods which may or may not be

taxable is immaterial though we may point out that in the Bharat Petroleum case, the kerosene was also taxable for nine months in the year and in the case of Phulgaon Cotton Mills, yarn was also manufactured and it was subject to tax. Sri Dholakia contends for an implicit principle of apportionment on the basis of turnovers of various items of goods manufactured and restriction of the quantum of set-off to a proportion based on the turnover of taxable goods to the total turnover. He cited certain decisions under the income tax and Sales Tax Acts in support of this contention: The Anglo-French Textile Company Ltd. Vs. Commissioner of Income Tax, Madras, , Tata Iron and Steel Co. Ltd. Vs. The State of Bihar, and Commissioner of Income Tax, Madras Vs. Best and Co., . We do not think these cases are of assistance. The first two cases dealt with the question as to when profits and gains can be said to accrue or arise in a manufacturing business and the third held that when a receipt is a composite one of capital and revenue nature, it is open to the revenue to apportion the same and bring the latter to tax. These are situations in which the taxable element is severable. Under the rules presently under consideration also, situations are conceivable where such severance is implicit. For instance, suppose the cotton purchased is utilised partly for manufacture of cloth that is taxable and partly for manufacture of cloth that is not taxable or partly for the manufacture of yam which is taxable and is sold and partly for manufacture of cloth which is not taxable. In these instances, it is clear that only some of the cotton is utilised for the first purpose and some for the second purpose and so only the purchase tax paid in respect of the quantity utilised for the first purpose will be eligible for set-off to the type of user with which we are concerned is a composite one in which it is not possible to correlate any part of the purchased goods as having gone in for the purpose of manufacture of taxable goods. The position is picturesquely brought out in the case of Bharat Petroleum. The entire sulphuric acid purchased has no doubt been used in the manufacture of kerosene though perhaps not a drop of acid clings to the kerosene manufactured. Equally, the entire sulphuric acid has gone into the composition of the acid sludge. The 3048.760 MT of acid have dissolved the impurities in the crude oil and conglomerated with them to constitute 3541.485 MT of acid sludge. Having regard to the nature of the interactions here, it is incontrovertible that the entire sulphuric acid purchased has gone into the manufacture of the sludge. The rules do not require that the purchased goods must have been used only for the manufacture of taxable goods for sale. In this situation, it is not possible to cut down the quantum of relief clearly outlined in the rule on the basis of some general principle claimed to underlie the provision. As Sri Bobde rightly pointed out, the basis for the relief provided is not very clear cut. Various reliefs have been provided in a group of rules which come in for application in various situations. The relief may be based on the principle that the manufactured product is taxed either in the hands of the same assessee or in someone else''s hands, or that the manufactured goods are exported which may yield no tax but earn foreign exchange, or even that the purchases are utilised for manufacture of goods in the State thus contributing to the industrial development of the State. It is, therefore, difficult to read into the provision a quantitative correlation of the goods resulting in a taxable turnover and the purchases of raw materials on which tax has been paid. In this background, the straightforward answer to the question raised lies in the literal interpretation of the language of the rules without straining to discover some doubtful principle for denying relief.

11. The honourable Supreme Court in the aforesaid case interpreted rule 41A framed under the provisions of the Bombay Sales Tax Act, 1959. The relevant provision is as under (page 224 in 85 STC):

41A. Drawback, set-off, etc., of tax paid by a manufacturer in respect of purchases made on or after the 15th July 1962.-- (1) In assessing the amount of tax payable in respect of any period by a registered dealer who manufactures taxable goods for sale or export, (hereinafter in this rule referred to as ''the manufacturing dealer''), the Commissioner shall, in respect of the purchases made by such dealer on or after the 15th July 1962 of any goods specified in Schedules B, C, D or E and used by him within the State in the manufacture of taxable goods which have in fact been sold by him (and not given away as samples or otherwise) or which have been exported by him or used by him in the packing of goods so manufactured grant him a drawback, set-off or, as the case may be, a refund of the aggregate of the following sums, that is to say:

(a) a sum recovered from the manufacturing dealer by other registered dealers by way of sales tax, or general sales tax, as the case may be, both, on the purchase by him from such registered dealers, when the manufacturing dealer did not hold a recognition or when he held a recognition but effected the purchase otherwise than against a certificate u/s 11 of the Act...

12. From the aforesaid finding of the honourable Supreme Court, it is clear that manufacturer is eligible the benefit of set-off on the entire amount of tax paid on purchase of raw material and principle of apportionment could not be invoked. In the facts and circumstances of the present case, the judgment of the honourable Supreme Court is applicable because the DOC, by-product is tax-free and another by-product sludge and main product oil are taxable. Hence, the authority cannot apportion the tax liability after deducting the percentage of proportionate manufacture of DOC which has been done in the present case.

13. In the return the respondents have raised a ground of availability of alternative remedy, but in this case the Commissioner of income tax issued a circular to the effect that principle of proportionality would be applicable. In such circumstances, the appellate authority could not take different view against the circular issued by the superior authority.

14. The honourable Supreme Court in Filterco and Another Vs. Commissioner of Sales Tax, Madhya Pradesh and Another, , considered the same situation and held as under (pages 322 and 323 in 61 STC):

11. We are of opinion that the High Court should have examined the merits of

the case instead of dismissing the writ petition in limine in the manner it has done. The order passed by the Commissioner of Sales Tax was clearly binding on the assessing authority u/s 42B(2) and although technically it would have been open to the appellants to urge their contentions before the appellate authority, namely, the Appellate Assistant Commissioner, that would be a mere exercise in futility when a superior officer, namely, the Commissioner, has already passed a well-considered order in the exercise of his statutory jurisdiction under sub-section (1) of section 42B of the Act holding that 21 varieties of the compressed woollen felt manufactured by the appellants are not eligible for exemption under entry 6 of Schedule I of the Act. Further section 38(3) of the Act requires that a substantial portion of the tax has to be deposited before an appeal or revision can be filed. In such circumstances we consider that the High Court ought to have considered and pronounced upon the merits of the contentions raised by the parties and the summary dismissal of the writ petition was not justified. In such a situation, although we would have, ordinarily, set aside the judgment of the High Court and remitted the case to that court for fresh disposal, we consider that in the present case it would be in the interests of both sides to have the matter finally decided by this court at the present stage itself especially since we have had the benefit of elaborate and learned arguments addressed by the counsel appearing on both sides.

15. The honourable Supreme Court further in State of Tripura v. Manoranjan Chakraborty reported in [2001] 122 STC 594 (SC) : [2001] 10 SCC 740 considered the availability of alternative remedy in the matter of sales tax and held as under (page 597 in 122 STC):

3. As we see it, the point in issue is no longer res integra. This court in The Gujarat Agro Industries Co. Ltd. Vs. The Municipal Corporation of the City of Ahmedabad and Others Etc. Etc., dealing with an analogous provision, where discretion to waive pre-deposit was limited only to the extent of 25 per cent of the tax, was upheld by this court. To the same effect is the decision of this court in Shyam Kishore and others Vs. Municipal Corporation of Delhi and another, .

4. For the reasons contained in the said decisions, we hold that the impugned provisions are valid. It is, of course, clear that if gross injustice is done and it can be shown that for good reason the court should interfere, then notwithstanding the alternative remedy which may be available by way of an appeal u/s 20 or revision u/s 21, a writ court can in an appropriate case exercise its jurisdiction to do substantive justice. Normally of course the provisions of the Act would have to be complied with, but the availability of the writ jurisdiction should dispel any doubt which a citizen has against a high handed or palpable illegal order which may be passed by the assessing authority.

16. The honourable Supreme Court in Assistant Commr. (CT) LTU and Another Vs. Amara Raja Batteries Ltd., has also considered the availability of alternative remedy and held as under (paras 35 and 36, page 550 in 24 VST):

30. Mr. Venkatanarayanan also is not correct in contending that in a situation of this nature, the High Court should not have entertained the writ applications directly from the orders of assessment.

31. As the Tribunal had already expressed its view in the matter, it has rightly been contended that appeal to the appellate authority as also the Tribunal would have been an idle formality.

17. From the aforesaid judgments of the honourable Supreme Court, it is clear that if a view has been expressed by the higher authority and the appellate authority is subordinate to the higher authority, then availability of alternative remedy is no bar and it would be a futile exercise if a person is directed to avail of alternative remedy. Consequently, the petition is disposed of with the following directions:

(i) That it is held that the petitioner is eligible to get set-off on entire raw material purchased by it.

(ii) The impugned order dated March 31, 2012 (annexure P/1) is hereby quashed and the matter is remanded back to the assessing officer to pass an order of assessment on the basis of findings recorded by this court. No order as to costs.

