

(2024) 01 CHH CK 0076
In the Chhattisgarh High Court
Case No : Writ Petition (T) No. 4 Of 2024

Ultratech Cement Limited

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 19-01-2024

Acts Referred:

Constitution of India, 1950 — Article 226
Mines And Minerals (Development And Regulation) Act, 1957 — Section 9B, 9C, 9(2)
Central Goods and Services Tax Act, 2017 — Section 7, 67(1), 70, 73(5), 107, 168(1)
Madhya Pradesh Vat Act, 2002 — Section 46(1)

Citation : (2024) 01 CHH CK 0076

Hon'ble Judges : Narendra Kumar Vyas, J

Bench : Single Bench

Advocate : M.P. Devnath, Raja Sharma, Akanksha Jain, Maneesh Sharma

Final Decision : Disposed Of

Judgement

1. The present petition has been filed by petitioner under Article 226 of the Constitution of India challenging legality, validity and propriety of the order dated 26.09.2023 passed by the learned Additional Commissioner (CGST and Central Excise), Raipur in Original Order No. 10/ADC/GST/2023-24. By the impugned order the Additional Commissioner has confirmed the demand and ordered for recovery of Goods & Services Tax ("GST") of Rs. 14,35,54,944/-(CGST Rs.7,17,77,472/- + SGST Rs.7,17,77,472/-) (Rupees Fourteen Crore Thirty-Five Lakh Fifty-Four Thousand Nine Hundred and Forty-Four only) along with applicable interest and penalty on the Development Cess and Environment Cess to be paid under the Chhattisgarh (Adhosanrachna Vikas evam Paryavaran) Upkar Adhiniyam, 2005. The Additional Commissioner has also imposed penalty to the tune of Rs. 1,43,55,494/-. The petitioner has also challenged the demand notice dated 06 December 2023 issued by Assistant Commissioner, Raipur – 3, Division -1 (Annexure P/2). in which levy and collect Goods & Services Tax ("GST") of Rs. 14,35,54,944/- (CGST Rs.7,17,77,472/- + SGST Rs.7,17,77,472/-) (Rupees Fourteen Crore Thirty-Five Lakh Fifty-Four Thousand

Nine Hundred and Forty-Four only) along with applicable interest and penalty on the Development Cess and Environment Cess payable to the State of Chhattisgarh under the Chhattisgarh (Adhosanrachna Vikas evam Paryavaran) Upkar Adhiniyam, 2005.

2. Brief facts as projected by the petitioner are that the Petitioner is a Public Limited Company duly registered under the provisions of the Companies Act, 1956, having its Registered Office at B-Wing, 2nd floor, Ahura Center, Mahakali Caves Road, Andheri (E), Mumbai-400093. The Cement Plant of the Petitioner company is situated at Post Hirni, Tehsil, Simga, District Baloda Bazar, Bhatapara (Chhattisgarh) and is engaged in the manufacture and supply of Cement and Clinker. The Petitioner has its own Limestone (Cement Grade) Mines for captive use in the manufacture of cement situated at Paraswani, Baloda Bazar, Chhattisgarh. The Petitioner company has been granted mining leases (in short "ML") for extraction of mineral Limestone (Cement Grade) "Major Mineral" and also "Notified mineral" under Mines & Minerals (Development & Regulation) Act, 1957, as amended from time to time ("MMDR Act"). This mining lease has provided for all the payments that are required to be made to the State Government in relation to the aforesaid captive mining operation royalty, surface rent, dead rent, water charges. Therefore, against the receipt of mining rights, Petitioner pays a royalty to the State Government under Section 9 (2) of the MMDR Act. Additionally, in terms of Section 9B and 9C of the MMDR Act, the Petitioner also pays charges towards the District Mineral Foundation ('DMF') and National Mineral Exploration Trust ('NMET'), respectively.

3. It has also been contended that Legislature of the State of Chhattisgarh has enacted the Chhattisgarh (Adhosanrachna Vikas Evam Paryavaran) Upkar Adhiniyam, 2005 ('Chhattisgarh Cess Act') which provides for the levy of cess on land for raising funds to implement infrastructure development and environment improvement projects. The Chhattisgarh (Adhosanrachna Vikas Avam Paryavaran) Upkar Niyam, 2005 ('Chhattisgarh Cess Rules') has been framed under the provisions of the Chhattisgarh Cess Act. Sr. No. 01 to Schedule I and Schedule II prescribe that the cesses are payable on land covered under the Mining lease at the prescribed rate on each tonne of dispatch of mineral. The prescribed rate is Rupees 11.25 on each tonne of dispatch of mineral (w.e.f. 04.09.2019), i.e., in the present case, limestone. The Petitioner discharges the statutory levy of Infrastructure Development Cess and Environment Cess at the prescribed rate and pays the same to the Chhattisgarh State Government. The Petitioner has paid a total sum of Rs. 79,75,27,468/- towards the Cesses for the period from July 2017 to September 2021. Respondent No. 01 issued a Circular No. 164/20/2021-GST dated 06 October 2021 stating that the rate of GST on Royalty would be 18% with retrospective effect from July 2017 to December 2018. In the aforesaid facts and circumstances, proceedings were initiated by the inspection carried out on the Petitioner under Section 67(1) of the CGST Act on 27 August 2021. In furtherance of the same, inquiry was made on the Petitioner by summons dated 27.08.2021 issued by the learned Superintendent, Office of

the Principal Commissioner, CGST & Central Excise, Raipur, Chhattisgarh (Ld. Superintendent) under Section 70 of the CGST Act alleging evasion of CGST due to non-payment of GST on Infrastructure Development Cess and Environment Cess.

4. It has also been contended that to clarify the factual matrix the petitioner demanded certain documents and also filed an application for extension of time on 27.08.2021. The respondent issued summons dated 07 September 2021, 30 September 2021, and 26 October 2021 and put certain queries. The petitioner submitted reply on 08 October 2021 mentioning the details of the payment of Infrastructure Development Cess and Environment Cess during the period of July 2017 to September 2021. The Petitioner received a letter dated 10 February 2022 from the Learned Deputy Commissioner (Prev.), office of the Principal Commissioner CGST & Central Excise, Raipur, Chhattisgarh ('Ld. Deputy Commissioner') stating that GST amounting to Rs. 14,35,54,944/- is payable by the Petitioner under reverse charge basis on Infrastructure Development Cess and Environment Cess. In response to this letter dated 10th February 2022, the Petitioner made a detailed submission by its letter dated 28th February 2022 denying tax liability. The respondent issued form GST DRC-01A dated 21st November 2022 to the Petitioner intimating him about the tax payable under Section 73(5) of the GST Act alleging that the Petitioner had not paid GST under Reverse Charge basis on the Infrastructure Development Cess and Environment Cess for the period of July 2017 to September 2021 at the rate of 18% along with the applicable interest. Thereafter, the Petitioner was served with a Show Cause Notice dated 30 December 2022 issued by the Superintendent (Preventive) alleging that the petitioner has not paid tax under Reverse Charge mechanism for mining and exploration right granted to the petitioner. It has also been alleged that the petitioner has paid Chhattisgarh Infrastructure and Environmental Cess but has not paid GST liability under the Reverse Charge mechanism and directed the petitioner to submit reply to the show cause notice within 30 days failing which the case will be decided ex-parte on the basis of evidence on record. The petitioner submitted reply to the show cause notice mainly contending that the issuing authority has committed illegality in holding that cesses are payable as consideration for mining rights. In the present case the nexus test under Section 7 of the GST is not fulfilled as there is no element of consideration or supply is available to attract GST. It has also been contended that in the present the State of Chhattisgarh is undertaking infrastructure projects and environment projects for benefits of its citizens and is not specifically beneficial to the noticee, as such prays for dropping of the proceedings. The respondents vide impugned order dated 26.09.2023 (Annexure P/1) has assessed the GST liability against the petitioner and vide Form No. GST DRC -07 dated 06.12.2023 (Annexure P/2) has issued demand notice which are assailed in this petition.

5. Learned counsel for the petitioner would submit that the assessment order is bad-in-law as no supply or element of consideration exists to attract the

provisions of GST, as such the impugned orders are illegal and deserve to be quashed by this Court.

6. Learned counsel for the Revenue would submit that the petitioner has alternate remedy of filing of appeal against the order of additional Commissioner as provided under Chapter XVIII of the GST Act, 2017 thus, the writ petition is not maintainable.

7. This was vehemently objected by the learned counsel for the petitioner. He would submit that the Revenue Authorities are bound by the Circular issued by the department as per Section 168 (1) of the GST Act. As such the decision taken by the appellate authority, if the petitioner is directed to file an appeal, will be prejudiced decision and it will be against the Principle of Natural Justice. He would further submit that if the petitioner is re-delegated to file an appeal it will be simple formality and no fruitful purpose will be achieved. To substantiate his submission the learned counsel for the petitioner has referred to the judgment of Hon'ble Supreme Court in case of M/s Filterco and Another vs Commissioner of Sales Tax, Madhyapradesh and Another reported in 1986(2) SCC 103 wherein Hon'ble Supreme Court has held in paragraph 11 as under:-

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 of the assessing authority under Section 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 42-B 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.

8. He would further submit that the Hon'ble Supreme Court again considered regarding maintainability of writ petition even if alternate remedy is available in case of M/s Godrej Sara Lee Ltd. vs. The Excise and Taxation Officer-cum-Assessing Authority and Others {(2023) 3 SCR 871} the Hon'ble Supreme Court has held as under :-..

11. We have reasons to believe, considering the nature of objection raised by the respondents as recorded by the High Court in the impugned order, that the High Court had mistakenly referred to Titagarh Paper Mills (supra) while intending to rely on a different decision of this Court on an appeal preferred by the same party, reported in (1983) 2 SCC 433 (Titaghur Paper Mills Co. Ltd. vs. State of Orissa). While upholding the impugned order of dismissal of the writ petition, where an order passed by the Sales Tax Officer was under challenge, this Court in Titaghur Paper Mills Co. Ltd. (supra) held that the challenge being confined to the regularity of proceedings before the Sales Tax Officer and there being no suggestion that the concerned officer had no jurisdiction to make an assessment, the decision in Mohd. Nooh (supra) was clearly distinguishable since in that case there was total lack of jurisdiction. This Court also held that under the scheme of the relevant Act, there was a hierarchy of authorities before which the petitioners can get adequate redress against the wrongful acts complained of and that since the authority of the concerned officer to make an assessment was not in question, recourse ought to be taken by initiating proceedings thereunder. As noted above, the very jurisdiction of the Revisional Authority having been questioned in the writ petition, the impugned order of the High Court dismissing the writ petition without examining the merits of the challenge cannot be sustained even if the High Court were to rely on Titaghur Paper Mills Co. Ltd. (supra) to support such order.

9. He would submit that since the appellate authority is bound by the circulars of the department, as such, even if the remedy of appeal is provided under the Statute the writ petition is maintainable before this Court. He would further submit that in case of Godrej (surpa) the Hon'ble Supreme Court while deciding the issue of alternate remedy has held that where the controversy is purely legal one and it does not involve disputed questions of facts but only question of law, then it should be decided by the High Court instead of dismissing the writ petition on the ground of alternate remedy being available.

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

11. From the above submission made by the parties the point to be determined by this Court is whether the writ petition in view of alternate efficacious remedy of appeal under Section 107 of the GST Act is maintainable or not?

12. For better understanding the point raised in the petition it is expedient for this Court to extract Section 107 of the GST Act which reads as under :-

Section 107 of the Central Goods and Services Act, 2017 (CGST Act) - Appeals to Appellate Authority:-

(1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.

(2) The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or the Commissioner of Union territory tax, call for and examine the record of any proceedings in which an adjudicating authority has passed any decision or order under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, for the purpose of satisfying himself as to the legality or propriety of the said decision or order and may, by order, direct any officer subordinate to him to apply to the Appellate Authority within six months from the date of communication of the said decision or order for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.

(3) Where, in pursuance of an order under sub-section (2), the authorised officer makes an application to the Appellate Authority, such application shall be dealt with by the Appellate Authority as if it were an appeal made against the decision or order of the adjudicating authority and such authorised officer were an appellant and the provisions of this Act relating to appeals shall apply to such application.

(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month.

(5) Every appeal under this section shall be in such form and shall be verified in such manner as may be prescribed.

(6) No appeal shall be filed under sub-section (1), unless the appellant has paid—

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and

(b) a sum equal to ten per cent. of the remaining amount of tax in dispute arising from the said order, in relation to which the appeal has been filed.

(7) Where the appellant has paid the amount under sub-section (6), the recovery proceedings for the balance amount shall be deemed to be stayed.

(8) The Appellate Authority shall give an opportunity to the appellant of being heard.

(9) The Appellate Authority may, if sufficient cause is shown at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing: Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.

(10) The Appellate Authority may, at the time of hearing of an appeal, allow an appellant to add any ground of appeal not specified in the grounds of appeal, if it is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable.

(11) The Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against but shall not refer the case back to the adjudicating authority that passed the said decision or order:

Provided that an order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order:

Provided further that where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under section 73 or section 74.

(12) The order of the Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for such decision.

(13) The Appellate Authority shall, where it is possible to do so, hear and decide every appeal within a period of one year from the date on which it is filed:

Provided that where the issuance of order is stayed by an order of a court or Tribunal, the period of such stay shall be excluded in computing the period of one year.

(14) On disposal of the appeal, the Appellate Authority shall communicate the order passed by it to the appellant, respondent and to the adjudicating authority.

(15) A copy of the order passed by the Appellate Authority shall also be sent to the jurisdictional Commissioner or the authority designated by him in this behalf and the jurisdictional Commissioner of State tax or Commissioner of Union Territory Tax or an authority designated by him in this behalf.

(16) Every order passed under this section shall, subject to the provisions of section 108 or section 113 or section 117 or section 118 be final and binding on the parties.

13. From bare perusal of the Section it is quite vivid that the person aggrieved by any decision or order under this Act or the State GST Act or Union Territory Goods and Service Tax by an adjudicating authority may appeal to the Appellate Authority as may be prescribed within 3 months from the date on which the said decision or order is communicated to such person. The sub-clause of 4 also provides further period of 1 month within the aforesaid period of 3 months or 6 months as the case may be.

14. The submission made by the learned counsel that the department is bound with the Circular issued by the department as per the Section 168 (1) of the GST

Act, as such it is simple formality and deserves to be rejected otherwise the provisions of filing appeal as provided under the GST Act will be redundant. The judgment cited by the petitioner in case of M/s Filterco (supra) is distinguishable on the facts as in that case the Commissioner of Sales Tax while exercising its power under Section 42-B of the Sales Tax which provides Commissioner's power to determination of disputed questions and the Section 42-B(2) provides that any order passed by the Commissioner under Subsection 1 shall be binding on the authorities referred to it in Section 3 in all proceedings under the Act except appeals. Whereas the petitioner is taking specific stand that there is no nexus of imposing GST liability with regard to Cess. This is a legal issue which can very well be examined and determined by the appellate authority, as such the submission made by the learned counsel for the petitioner that the appellate authority is bound with the circular is not applicable in the present facts in view of specific stand taken by the petitioner in the reply submitted by them before the adjudicating authority.

15. Hon'ble Supreme Court in case of The State of Madhya Pradesh and Another vs M/s Commercial Engineers and Body Building Company Ltd {Civil Appeal No. 7170 of 2022 dated 14.10.2022} has considered the alternate remedy of filing of appeal under the M.P. Value Added Tax, 2002 and has held under:-

6. At this stage, a recent decision of this Court in the case of The State of Maharashtra and Others v. Greatship (India) Limited (Civil Appeal No. 4956 of 2022, decided on 20.09.2022) is required to be referred to. After taking into consideration the earlier decision of this Court in the case of United Bank of India v. Satyawati Tondon and others, reported in (2010) 8 SCC 110, it is observed and held that in a tax matter when a statutory remedy of appeal is available, the High Court ought not to have entertained the writ petition under Article 226 of the Constitution of India against the Assessment Order by-passing the statutory remedy of appeal.

7. In view of the above and for the reasons stated above and without expressing anything on merits in favour of either of the parties on the Input rebate claimed by the respondent – original writ petitioner, the impugned judgment and order passed by the High Court is hereby quashed and set aside. The writ petition preferred by the respondent herein – original writ petitioner – assessee is hereby dismissed on the ground of alternative efficacious statutory remedy of appeal available to the respondent. The respondent is relegated to prefer an appeal before the appellate authority under Section 46(1) of the MP VAT Act, 2002. If such an appeal is preferred within a period of four weeks from today, the same be entertained and decided and disposed of on merits without raising an issue with respect to limitation, however, subject to compliance of the statutory requirements, if any, for preferring an appeal under Section 46(1) of the MP VAT Act, 2002. The appellate authority to decide and dispose of the appeal and the issue without in any way being influenced by any of the observations made by

the High Court which as such is hereby quashed and set aside by the present judgment and order.

16. The Hon'ble Supreme Court in case of Assistant Commissioner and others vs. Commercial Steel Limited {(2021) SCCOnline SC 884} wherein the provisions of Section 107 of the GST Act has come up for consideration, has held in paragraph 11 to 13 as under:-

11. The respondent had a statutory remedy under section 107. Instead of availing of the remedy, the respondent instituted a petition under Article 226. The existence of an alternate remedy is not an absolute bar to the maintainability of a writ petition under Article 226 of the Constitution. But a writ petition can be entertained in exceptional circumstances where there is:

- (i) a breach of fundamental rights;
- (ii) a violation of the principles of natural justice;
- (iii) an excess of jurisdiction; or
- (iv) a challenge to the vires of the statute or delegated legislation

12 In the present case, none of the above exceptions was established. There was, in fact, no violation of the principles of natural justice since a notice was served on the person in charge of the conveyance. In this backdrop, it was not appropriate for the High Court to entertain a writ petition. The assessment of facts would have to be carried out by the appellate authority. As a matter of fact, the High Court has while doing this exercise proceeded on the basis of surmises. However, since we are inclined to relegate the respondent to the pursuit of the alternate statutory remedy under Section 107, this Court makes no observation on the merits of the case of the respondent.

13 For the above reasons, we allow the appeal and set aside the impugned order of the High Court. The writ petition filed by the respondent shall stand dismissed. However, this shall not preclude the respondent from taking recourse to appropriate remedies which are available in terms of Section 107 of the CGST Act to pursue the grievance in regard to the action which has been adopted by the state in the present case.

17. Considering the above factual and legal submission, it is quite vivid that the petitioner has alternate and efficacious remedy of appeal available as provided under Section 107 of the GST Act, the writ petition is not maintainable. Accordingly this writ petition is disposed off directing the petitioner to take appropriate remedies which are available in terms of Section 107 of the GST Act. It is made clear that if the petitioner files duly constituted appeal within 30 days from the date of receipt of copy of the order, neither the appellate authority nor the respondents shall take plea of limitation and the appellate authority will decide the appeal on its own merits without being influenced from any of the observation made by this Court.

18. It is made clear that the trial Court has not gone into the merits of the case but consider rival submission of the parties to decide the issue of alternate remedy available to the petitioner.