

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 496 OF 2017

M/s. Fulford (India) Ltd.

.. Petitioner

v/s.

The State of Maharashtra & Ors.

.. Respondents

Mr. V. Sridharan, Senior Counsel a/w Mr. C.B. Thakkar for the petitioner

Mr. V.A. Sonpal, Special Counsel for the respondents

**CORAM : S.V. GANGAPURWALA &
G.S. KULKARNI, J.J.**

DATED : 20th JUNE, 2017

P.C.

1. The petitioner has filed the present writ petition with following prayers :-

“(a) That this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India.

(i) Declaring 'note' “To be furnished to the assessing authority in accordance with rules framed under Section 13(4)(e)” forming part / appearing on 'original' and

declaring 'note' and “To be retained by the transferor” forming part / appearing in duplicate of Form F enacted by Notification No. G.S.R. 56(E), dated 9-2-1973 by Central Government as amended from time to time is ultra-vires the Rule making power of Central Government under Section 13(1)(d) of Central Sales Tax Act, 1956.

(b) That this Hon'ble Court be pleased to issue a Writ of Mandamus or a writ in the nature of Mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India directing respondents by themselves, their subordinate, servants and agents to forthwith :

(i) withdrawn and / or cancel impugned orders dated 04.11.2015 passed by respondent no.3 under Section 9(2) of CST Act, 1956;

(ii) refrain from acting upon or taking any further proceedings in pursuance of and / or in implementation and / or in furtherance of impugned orders dated 04.11.2015 passed by respondent no.3 under Section 9(2) of CST Act, 1956;

(c) That this Hon'ble Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India calling for the records of the petitioners' case and after examining the legality and validity thereof quash and set aside impugned orders dated 04.11.2015

(Exhibit “A1” and Exhibit “A2”) hereto passed by respondent no.3 under Section 9(2) of CST Act, 1956;

(d) Pending the hearing and final disposal of the above petition, by an interim order and injunction of this Hon'ble Court, the respondent no.2, himself, his subordinates, servants and agents be restrained from taking any further proceedings or steps in furtherance of and / or in implementation of impugned orders dated 04.11.2015 (Exhibit “A1” and Exhibit “A2”) passed by respondent no.3 under Section 9(2) of CST Act, 1956;

(e) for interim relief in terms of prayer above; and

(f) for costs of the petition;

(g) for such further and other reliefs, as this Hon'ble Court may deem fit and proper in the nature and circumstances of the case.”

2. The learned Counsel for the respondent raises a preliminary objection. So far as prayer clauses (b) and (c) are concerned, the petitioner has remedy of filing an appeal under the statute.

3. So far as prayer clause A(i) is concerned, in fact, the challenge is on the ground that the Central Government does not have authority to frame Rules with regard to the subject covered under Sections 13(3) and 13(4) of the Central Sales Tax Act. The said

authority vests with the State Governments. As such, the form prescribed by the Central Government including the Note therein is illegal, ultra-vires and beyond authority. According to the learned Counsel, the Rules framed by the State Government under Section 13(4)(e) of the Act, does not make it mandatory to submit Form F. The said Rule is directory in nature and even in the absence of submission of Form F, other evidence can be led.

4. The Note appearing on Form F, prescribed by the Central Government reads as under :-

"To be furnished to the Assessing Authority in accordance with the Rules framed under Section 13(4)(e)"

5. Perusing the Note, it only states that Form is to be furnished to the Assessing Authority in accordance with the Rules framed u/s 13(4)(e) of the Act. The Rules u/s 13(4)(e) are framed by the State Government. The said fact is not disputed. Whether as per Rules framed u/s 13(4)(e), the submission of the said Form 'F' is mandatory or directory is for the Authority to consider. The Note is explicitly clear. It refers to Rules framed u/s 13(4)(e). There is no dispute that the State Government is empowered to frame the Rules

thereunder. The Note also is in reiteration and only clarifies that the Form is to be furnished to the Assessing Authority in accordance with the Rules framed u/s 13(4)(e) of the Act. So the said Form will be required to be produced as may be required under the Rules framed by the State Government u/s 13(4)(e) of the Act.

6. It is for the Authority to whom the appeal would be filed to consider whether the Rules framed u/s 13(4)(e) are directory or mandatory.

7. With this observation, the Writ Petition stands disposed of.

8. The petitioner will be at liberty to assail the assessment order by filing an appeal as is provided under the statute. If the appeal is filed within a period of four weeks from today, the same shall be considered to be within limitation by the Authority. Needless to state that all the contentions of the respective parties are kept open.

(G.S. KULKARNI, J.)

(S.V. GANGAPURWALA, J.)