AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPT No. 54 of 2012

M/s Aman Auto 71, Indra Complex, Near Gayatri Mandir, T.P. Nagar, Korba, Chhattisgarh, through proprietor Smt. Inderjeet Gulati through its power of Attorney Holder H.S. Gulati, son of late Shri Sant Singh Gulati, aged about 51 years, resident of 71, near Gayatri Mandir, T.P. Nagar, Korba Tahsil and District Korba, Chhattisgarh. **--- Petitioner**

Versus

1. State of Chhattisgarh through its Secretary, Finance and Planning Department (Commercial Tax Department) Mantralaya, D.K.S. Bhawan, Raipur, Chhattisgarh.

2. Commissioner, Commercial Tax Department, Government of Chhattisgarh (Vanijya Kar Bhawan), SouthCivil Lines, Raipur, Chhattisgarh.

3. Divisional Deputy Commissioner, Commercial Tax Division-2 (Vanijya Kar Bhawan) Civil Lines, Bilaspur, Chhattisgarh.

4. Commercial Tax Officer, Circle – Korba, (Vanijya Kar Bhawan), Korba, Chhattisgarh. **---- Respondents**

For the Petitioners : Mr. Anumeh Shrivastava, Advocate
For the State : Mr. Siddharth Patel, Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

22.06.2021

1. The challenge in this petition is to the order dated 28.8.2010 passed by the Divisional Deputy Commissioner of Commercial Tax, Bilaspur in case No.13/KC/10/Prantiy, whereby the order dated 11.08.2009 passed by Commercial Tax Officer, Korba Circle was affirmed.
2. The case of the petitioner, in brief, is that he is engaged in sale and purchase of all kinds of Moped and Spare parts and was a registered dealer under the “The Chhattisgarh Commercial Tax Act, 1994 as well as *The Chhattisgarh Value*

Added Tax Act 2005 (henceforth called as "The VAT Act, 2005). The petitioner contends that he was being assessed regularly, however, in Case No.625/2007, the input tax rebate was not allowed on the stock held by him on 01.04.2006 on the ground that Form-74 Stock Statement was not submitted on time. Consequently on the basis of extra demand, interest was also levied under section 19(4)(a) which was eventually affirmed by the order dated 28.08.2010 passed by the revisional authority, which is under challenge. It is the case of the petitioner that the petitioner had already purchased certain goods on which the tax was paid, as such, when the transitory period came into play and at that time if the return was not filed as per the C.G. VAT Act, 2005 due to certain unavoidable reasons, the double taxation could not be levied. He would submit that in any case, the meagre penalty could have been imposed to the extent which is prescribed under the statute, however, the levy of interest and tax again cannot be made. He further submits that the period of time which was prescribed for the transitory period is directory in nature. He referred to the judgment rendered in ***2019 SCC OnLine Gujrat 3711 (Siddharth Enterprises v. Nodal Officer)*** and drawing the analogy would submit that the transitional credit is procedural in nature and restriction of scope of beneficial provision cannot be interpreted as it would defeat all the object of the statute itself. Reference is also made to sections 72 & 73 of the Chhattisgarh VAT Act, 2005 and submits that the Rules called as were made there-under, which are called as Chhattisgarh Value Added Tax Rules

2006. Rule 80 prescribes the time limit-whereas Rule 82 only mandates for imposition of fine, therefore, the circumstances can be mitigated to levy the double tax and the interpretation should be made in the like nature which benefits to avoid impose the double tax in the like nature.

3. Per contra, learned State Counsel would submit that the very object of fixing time-limit is to bring an end to allow the new legislation to come into play. It is stated that after transitory period, the finality of claim cannot be arrived at if the time limit is diluted and shifting from old statute to new statute cannot be made. He refers to case law reported in ***(2019) 13 SCC 225 ALD AUTOMOTIVE PRIVATE LTD. Versus COMMERCIAL TAX OFFICER*** and would submit that input tax credit is a concession/benefit in nature and therefore, if the petitioner wanted to avail the benefit then he had to adhere to strict time sense which was prescribed in the statute. He further submits that the statute being fiscal in nature, the interpretation as projected by the petitioner cannot be accepted. He also submits that recently in case of ***Brand Equity Treatise Limited Versus Union of India 2020 SCC OnLine Delhi 1698***, the Delhi High Court while interpreting the GST Rule about the time limit held that it is directory in nature to claim the benefit of taxation of the input tax. The Supreme Court *prima facie* on an appeal stayed such effect, thereby the very intention had been made clear that the fiscal statutes are mandatory in nature and not directory. Hence, the claim of the petitioner cannot be sustained.

4. Heard learned counsel for the parties. The assessment in

this case was in respect of the period from 01.04.2006 to 31.03.2007. The C.G. Commercial Tax Act 1994 was being replaced by the Chhattisgarh VAT Act, 2005 and thereafter the Act, 2005 came into force on 01.06.2006. Section 72 of the Act, 2005 made the provision of repeal and savings. The relevant portion of Section 72 which would be necessary is reproduced herein below :

> "**Sec.72. Repeal and savings.--** The Chhattisgarh Vanijyik Kar Adhiniyam, 1994 (No.5 of 1995) shall stand repealed on the date of coming into force of this Act :
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> Provided that –
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> (I) Such repeal shall not affect -
>
> (a) the previous operation of the Act so repealed or Act No.2 of 1959 repealed by Act No.5 of 1995 (hereinafter referred to as a repealed Act) or anything duly done or suffered, thereunder; or
>
> (b) any right, privilege, obligation or liability acquired, accrued or incurred under the repealed Act, including the facility of exemption from payment of tax/deferment of payment of tax extended to any registered dealer under that Act for his having established new industrial unit in the State or undertaken expansion, modernization or diversification in such industrial unit :
>
> Provided that the facility of exemption from payment of tax/deferment of payment of tax extended to any registered dealer under that Act for his having established new industrial unit in the State or undertaken expansion, modernisation or diversification in such industrial unit, shall be suitably amended/modified as per the provisions of this Act. For this purpose, the State Government may issue fresh notification or amend the notification issued under the repealed Act."

A reading of section 72 of the VAT Act of 2005 would show that The Chhattisgarh Commercial Tax Act, 1994 shall stand repealed provided certain acts done in the Act of 1994 would be saved meaning thereby the petitioner claimed that he had filed the return under the Act of 1994. Therefore, his right, privilege and obligation or the liability acquired under the Repeal Act would be saved under the provision of Clause (i) (b) of section 72 or not is required to be examined.

5. Section 73 speaks about transitory provision which reads as under :

> "**73. Transitory provisions.**-- (1) Where a registered dealer holds the stock of any goods specified in Schedule-II on the date of commencement of this Act, he shall furnish the particulars thereof in such form within such period, in such manner and to such authority as may be prescribed.
>
> (2) Where any goods specified in Schedule II of this Act held in stock by registered dealer on the date of commencement of this Act [which have been purchased not earlier than twelve months from such date and] are tax paid goods within the meaning of the Act repealed by this Act, and are for sale by him on or after the said date within the State of Chhattisgarh or in the course of inter-State trade or commerce, he shall claim or be allowed in respect of such goods, in such manner and within such period as may be prescribed, an input tax rebate,-
>
> (i) at the rate specified in column (3) of Schedule II, if such goods are sold within the State; and
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> at the rate of four per cent [or at the rate reduced under sub-section (5) of Section 8 of Central Sales Tax Act, 1956 (No.74 of 1956) or the rate specified in

column (3) of Schedule II, whichever is lower, if such goods are sold in the course of inter-State trade or commerce.

6. Reading of section 73 would purport that the assessee would be required to furnish the particulars thereof to the authority on the date of commencement of the VAT Act 2005, in such form within such period in such manner as may be prescribed. The manner is further prescribed in The Chhattisgarh VAT Rules, 2006. Rule 80 is relevant and reproduced hereunder:

> **"Rule 80. Furnishing of statement of goods held in stock on the date of commencement of the Act under Section 73**.-- A registered dealer shall furnish a statement in Form 74 in respect of goods, specified in Schedule-II held in stock by him on the date of commencement of the Act and such statement shall be furnished by him to the appropriate Commercial Tax Officer within [31st May, 2006] days of such date."

7. Rule 82 thereafter speaks about imposition of penalty for breach of Rules. Reading of Rule 80 prescribed that a registered dealer shall furnish a statement in Form-74. Since it is a transitory period, the registered dealer after commencement of VAT Act 2005 shall furnish a statement in Form-74 in respect of goods specified in Schedule-II held in stock by him on the date of commencement of the Act and the statement should be furnished by him within 31st May, 2006. It is not disputed that the earlier time period was further extended for another 60 days. Admittedly the petitioner had filed the stock statement on 07.11.2006 with a

delay of 161 days. The petitioner claims that on the earlier Act of 1994, since the goods were purchased on which the tax were paid, he was entitled to get the benefit and the delay of filing being directory in nature cannot be strictly interpreted. The Supreme Court in ***ALD AUTOMOTIVE PVT. LTD. (2019) 13 SCC 225 (Supra) at para 36*** while drawing such analogy of interpretation on fiscal statute reiterated the view taken in State of ***Karnataka Vs. M.K. Agro Tech. (P) Ltd. (2017) 16 SCC 210,*** which reads thus :

> "36. This Court had the occasion to consider the Karnataka Value Added Tax Act, 2013 in State of Karnataka v. MK Agro Tech (P) Ltd. This Court held that it is a settled proposition of law that taxing statutes are to be interpreted literally and <u>further it is in the domain of the legislature as to how much tax credit is to be given under what circumstances.</u> The following was stated in para 32: (SCC p.223)
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> > "32. Fourthly, the entire scheme of the KVAT Act is to be kept in mind and Section 17 is to be applied in that context, Sunflower oil cake is subject to input tax. The legislature, however, has incorporated the provision, in the form of Section 10, to give tax credit in respect of such goods which are used as inputs/raw material for manufacturing other goods. Rationale behind the same is simple. When the finished product, after manufacture, is sold, VAT would be again payable thereon. This VAT is payable on the price at which such goods are sold, costing whereof is done keeping in view the expenses involved in the manufacture of such goods plus the profits which the manufacturer intends to earn. Insofar as costing is concerned, element of expenses incurred on raw material would be included. In this manner, when the final product is sold and the VAT paid, component of raw material would be included again. Keeping in view this objective, the legislature has intended to give tax credit to some extent. <u>However, how much tax credit is to be given and under what circumstances, is the domain of the legislature and the courts are not to tinker with the same.</u>"

(Emphasis Supplied)

8. The Delhi High Court in ***W.P(C) No. 11040/2018 (Brand Equity Treaties Limited Versus Union of India)*** and other connected cases has interpreted the GST statute to be directory in nature and not mandatory and held that "procedural law is not to be a tyrant but a servant, not an obstruction but an aid to justice no obstruction but in aid to justice. This interpretation of the Delhi High Court has been stayed by the Supreme Court in ***Special Leave to Appeal (C) No.7425-7428/2020*** *(Union of India Vs. Brand Equity Treaties Ltd)* by order dated 19th June 2020. Therefore, at this moment, I am not impressed upon the decision of Gujarat High Court relied upon by the learned counsel for the petitioner in *Siddharth Enterprises Versus Nodal Officer 2019 SCC OnLine Gujarat 3711 (supra)* wherein the fiscal law was held to be directory in nature. The Supreme Court in *ALD Automotive Pvt. Ltd., 2019 SCC 225 (supra)* while dealing with the input tax credit held that the condition under which the concession and benefit is given is always to be strictly construed. It further held that in the event it is accepted that there is no time period for claiming input tax credit, the provision becomes too flexible and gives rise to large number of difficulties including difficulty in verification of claim of input credit. It also held that taxing statutes contain self-contained scheme of levy, computation and collection of tax. The time under which a return is to be filled for the purpose of assessment of the tax cannot be dependent on the will of a dealer.

9. Under such interpretation when we refer to transitory

provisions of section 73 sub-section (2) of the VAT Act, 2005 it mandates that where any goods specified in Schedule-II held in stock by registered dealer on the date of commencement of the Act, which have been purchased not earlier than 12 months from such date and are tax paid goods within the meaning of the Act repealed by the Act of 2005 and are for sale by him on or after the date within the State of Chhattisgarh or in the course of inter-State trade or commerce, he shall claim or to be allowed in respect of such goods within such period as may be prescribed an input tax rebate. Section 73(1) has used the word 'shall' with a further phrase “within such period” meaning thereby time limit has been fixed and Rule 80 of C.G. VAT Act 2006 also used the words in express language that “the registered dealer shall furnish a statement in Form-74 in respect of goods, specified in Schedule II within a stipulated time. Therefore, the legislature has used the word 'shall' and hence it cannot be interpreted by the Court that it would be directory in nature. The statute and condition of the VAT Act therefore are to be strictly complied with. Further more, claiming an input tax credit would be in the nature of concession provided by the legislature on fulfillment of certain conditions. In order to fulfill the condition under the VAT Act and Rules, the dealer has to follow certain time-line as otherwise, to claim the privilege the conditions cannot be said to be fulfilled at the wish and will of the dealer.

10. While the entire tax structure was being replaced by a new frame work, it was necessary for the Legislature to make a transitional provision. The transitional provision essentially

preserves all taxes paid or suffered by the dealer earlier and credit thereof. Therefore, in order to put and end to finality of the claim while switching over from one tax regime to another, the time-frame prescribed by the legislature cannot be diluted by the Court order as it being the fiscal in nature and the circumstances of the nature has to be strictly complied. There has to be a degree of finality of claims, credits, transfer of such credits and all issues related thereto when the entire tax structure was shifted from one tax regime to another i.e., Commercial Tax Act 1994 to VAT Act.

11. In view of the discussion, I do not find any illegality in the order dated 28.08.2010 *(Annexure P-1)*. Accordingly the writ petition is dismissed.

Sd/-
GOUTAM BHADURI
JUDGE

Rao