IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.392 of 2010

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M/s Laxmi Press Motijheel, Muzaffarpur through the sole proprietor Rabindra Kumar, son of Late Rajdeo Prasad, resident of Ayodhya Prasad Lane, Mohalla Motijheel, Police Station Kotwali, Muzaffarpur, District- Muzaffarpur.

... ... Appellant/s

Versus

1. The State of Bihar through the Chief Secretary Bihar, Patna.
2. Commissioner of Commercial Taxes, Bihar, Patna.
3. Commercial Taxes Officer, Muzaffarpur Circle, Muzaffarpur.

... ... Respondent/s

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Appearance :

For the Appellant/s : Mr.Suryadeo Prasad Tiwary, Advocate

For the Respondent/s : Mr. P.K. Shahi, AG

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 13-07-2023

There are five questions of law framed by the appellant in the above case relating to (i) the time prescribed for filing the declaration regarding opening stock, (ii) the vires of sub-rule-(1) and (2) of Rule-6 and (iii) the justifiability of subjecting the same goods to tax twice. There is absolutely no reason why the vires of the provision should be considered in a statutory appeal and, hence, the said question of law is not relevant. As to the same goods being subjected to tax twice, it has to be noticed that the prayer is for input tax credit for the tax paid on purchase of goods before the value added tax regime came in; declining which does not lead to tax being levied twice. The only question of law, according to us, is as framed below:

> Whether the declaration in Form-D II filed on 17.09.2005 can be deemed to be within the 45 days from the appointed date; especially when there is no arrangement made for receiving the declaration beyond the working hours ending at 06:00 p.m. on 16.05.2005?

2. The short facts to be noticed is that the appellant, a sole proprietor firm registered under the Central Sales Tax Act, continued its registration and business under the Bihar Value Added Tax Act, 2005 which came into effect on 01.04.2005; which is the appointed day under the Act. Every dealer claiming input tax credit under the value added tax regime was required, by Section-95 of the Bihar Value Added Tax Act, 2005 to declare the stock of goods held as on 1st of April, 2005. By the aforesaid provision, every dealer registered under the Bihar Finance Act, 1981, as it stood before its repeal by Section-94, or who makes an application for registration as a dealer on the 1st day of April, 2005, has to declare the details regarding the stock of goods held by him on 31st March, 2005 in the prescribed

manner, with such particulars and within such time and to such authority, as may be prescribed. The prescription as per Section-96 is available in Rule-56. The manner in which the declaration has to be made is by way of Form-D II and the time prescribed is 45 days from the appointed day as per sub-section (1); with the prescribed authority being that specified in Rule-62. Sub-section (2) of Section 56 also restricts any dealer who fails to furnish the declaration in detail as required under sub-rule(1) from claiming input tax credit on the opening stock.

3. Tax on value addition, as introduced by the Value Added Tax Act, enables credit to a dealer of the tax paid by him for purchase made of goods, on which a value addition is made and a further sale carried out. The tax liability of such dealer who purchases and sells goods with a value addition thereon would stand reduced by the tax paid by him to his purchaser; thus ensuring tax to the State at the rates in the schedule for the price of the goods sold to the end consumer. The said provision was not available in the sales tax regime and it is in this situation that the opening stock was required to be declared as on the date on which new regime of Value Added Tax came into force. Only the tax paid on such opening stock which are sold after the value addition regime came into force on 01.04.2005,

would be entitled to input tax credit. The declaration is very crucial, especially since the sale made by the dealer prior to 01.04.2005 cannot be claimed for input tax credit under the value added tax regime.

4. It is in this background that the issue has to be examined. Going by Rule-56, the declaration has to be made on 15.05.2005; i.e. 45 days from 01.04.2005. It is the contention of the appellant that 15.05.2005 was a Sunday and as per the General Clauses Act the declaration could have been filed on 16.05.2005. On 16.05.2005, the appellant fell sick and he was not able to file the return on the same day; which he filed on 17.05.2005, on the very next day. The appellant contends that as per the General Clauses Act a day extends from the midnight to the next midnight. The learned counsel also placed reliance on a judgment of the Hon'ble Supreme Court in ***AIR 2009 SC 1816, Eerati Laxman Vs. State of A.P.*** The learned counsel would rely on the proposition laid down in ***Prabhu Dayal Sesma v. State of Rajasthan, (1986) 4 SCC 59*** that 'A legal day commences at 12:00 O'Clock midnight and continues until the same hour the following day.'

5. The decision in Eerati Laxman (supra) was under the Juvenile Justice Act and the declaration of law in Prabhu

Dayal Sesma (supra) was noticed, to find the day on which the accused had attained the age of 16 years which was held to be only at 12:00 O'Clock in the midnight of the previous day of his birth anniversary. First of all, it is to be noticed that the Juvenile Justice Act is a beneficial legislation in which the most relevant aspect for conferring the benefit, is the date on which a juvenile in conflict with law attains the prescribed age. The said dictum also flows from the statutory prescription in the Indian Majority Act, 1875 providing for the majority age of persons, deemed to have attained at the beginning of the 18th anniversary of the date of birth.

6. We find no reason to import the said dictum based on a statutory prescription, to the present case. The learned Government Pleader has also pointed out the decision of a Co-ordinate Bench of this Court in ***M/s. B.S. Enterprises vs. State of Bihar & Ors., 2006 (4) P.L.J.R. 612***. It was held that Rule-56 of the Value Added Tax Rules does not envisage any relaxation of the period of time fixed under it. It was declared that the period prescribed is not a limitation period and was a cut-off date. The furnishing of the details of opening stock to the prescribed authority, it was held, cannot be equated to the initiation of an actionable claim. The time provided under Rule-

56 was held to be a cut-off date without any condonation, relaxation or extension made possible. The Division Bench also held that input tax credit is a right conferred under the Act subject to the provisions of the Act and it is not an absolute right and is one fettered by conditions, restrictions and limitations. Hence, the time frame has to be scrupulously followed, failing which, as per the statutory rule, the dealer would be disentitled from raising the claim for input tax credit.

7. We are also not convinced of the contention raised by the appellant that there was no provision to file the declaration after the working hours and that a provision should be made on the last date till 12:00 of midnight. As we notice, there was no statutory backing for enabling filing of a declaration after the working hours. The contention of the petitioner is also that he fell ill on the last date and there is no explanation as to why he did not file the declaration within the 44 days that fell before the last date.

8. The declaration having not been filed within the 45 days; the appellant cannot claim for condonation of the single day by which the filing of the declaration was delayed. We answer the question framed, against the assessee and in favour of the Revenue.

9. The appeal stands rejected.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

K.C.Jha/-

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