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# IN THE HIGH COURT OF BOMBAY AT GOA

## WRIT PETITION NO.215 OF 2023

Huntsman Advanced Material (India), Private Limited (Merged with Huntsman International (India) Pvt Ltd Lighthall, B-Wing, Saki Vihar road, Andheri (E), Mumbai – 400072, through its legal Counsel, Mr Avinash Kumar ... Petitioner

***Versus***

1. The State of Goa, through the Secretary, Ministry of Finance, Secretariat, Porvorim – Goa.

2. The Asst. Commercial Tax Officer, Ponda – Ward. ... Respondents

**Mr. Rajan Mishra and Mr Vibhav Amonkar, Advocates** *for the Petitioner.*
**Mr. D. Pangam, Advocate General with Ms Maria Simone Correia, Additional Government Advocate** *for the Respondents.*

**CORAM: M. S. SONAK &**
**BHARAT P. DESHPANDE, JJ.**

**DATE : 25th JULY 2023**

**ORAL JUDGMENT : (*Per M.S. Sonak, J.*)**

**1.** Heard Mr Rajan Mishra with Mr Vibhav Amonkar for the petitioner. Mr D. Pangam learned Advocate General appears along with Ms Maria Simone Correia for the respondents.

**2.** Rule. The rule is made returnable at the request of and with the consent of the learned Counsel for the parties.

**3.** The petitioner challenges the orders dated 14.10.2019 and 24.09.2020 made by the first and second appellate authorities dismissing the petitioner's original appeal against the assessment order dated 27.04.2017 under the Goa Value Added Tax Act, 2005 (the said Act) on the ground that the same was barred by limitation.

**4.** As against the assessment order dated 27.04.2017, the petitioner filed an appeal on 12.07.2017. However, the record shows this appeal was not filed in the prescribed format. There was confusion because the petitioner, on the same date, filed an appeal questioning the CST assessment before the same forum. The CST assessment was also made by the impugned assessment order dated 27.04.2017. The CST appeal was filed in the prescribed format but the VAT appeal was not filed in the prescribed format. There is considerable confusion because it appears that the petitioner filed a consolidated appeal on the impugned common order dated 27.04.2017 regarding the CST and VAT assessment.

**5.** There is no dispute that the appeal if adequately instituted on 12.07.2017, would be within the prescribed limitation period. Mr Mishra pointed out that the appeal, in so far as CST assessment is concerned, was even allowed by the appellate authority.

**6.** At a later stage, upon realising that the VAT appeal may not have been in the prescribed format, the petitioner placed on record the formatted appeal in addition to the appeal already filed. The petitioner's case is that this point about the defective format was brought to their attention on 19.03.2019; therefore, the formatted appeal was placed on record on 15.04.2019. The learned AG states that the petitioner placed the formatted appeal on record on 15.04.2019, and this was not some defect being pointed out by the appellate authority.

**7.** Be that as it may, the record supports Mr Mishra's contention that at least the formatted appeal was placed on record on 15.04.2019. However, nothing is on record to show that the appellate authority pointed out this error to the petitioners on 19.03.2019. Still, this does not make a significant difference because the petitioner filed an appeal (though not in the prescribed format ) within limitation.

**8.** On 11.09.2019, the petitioner was heard by the appellate Authority. Mr Mishra submits that the hearing was on the merits of the matter because no objections were raised about the appeal being in the prescribed format or any delay in filing the appeal. However, the first appellate authority, by its order dated 14.10.2019, has dismissed the appeal on the sole ground that the appeal memo was filed on 15.04.2019 when the impugned assessment order was made on 27.04.2017 and served on the petitioner on 15.05.2017. The unformatted appeal filed within the limitation was entirely ignored. There is no discussion on the merits, and the appeal was dismissed solely on the bar of limitation.

**9.** The petitioner appealed to the second appellate authority (Administrative Tribunal), which dismissed the appeal by order dated 24.09.2020.

**10.** From the record, we are satisfied that the petitioner had instituted the appeal against the common assessment order (CST and VAT) dated 27.04.2017 and 12.07.2017. This was admittedly within the prescribed period of limitation. However, because of the confusion due to the filing of the consolidated appeal, the VAT appeal may not have been in the prescribed format. Therefore, the VAT appeal in the prescribed format was placed on record on 15.04.2019 for the convenience of the appellate authority. Such placement does not amount to originally instituting the appeal. Therefore, the approach of the first appellate authority was rather hyper-technical. The appeal should have been following the law rather than non-suiting the petitioner based on such technicality. A valuable right of appeal on merits should not have been denied for such hypertechnical considerations. When technical and substantive concerns are pitted against one another, the latter must prevail over the former. The Administrative Tribunal also failed to appreciate the matter from this perspective, and therefore, these orders warrant interference.

**11.** For the above reasons, we set aside the impugned orders dated 14.10.2019 and 24.09.2020 and restore the petitioner's VAT appeal bearing no.66/2019-20 before the first appellate authority so that the first appellate authority can dispose of the same on merits and by following the law.

**12.** The first appellate authority must issue a notice to the petitioner for appearance. After hearing the petitioner, dispose of the above appeal by following the law and on its own merits.

**13.** The rule is made absolute in the above terms without any cost order.

**14.** All concerned to act on an authenticated copy of this order.

**BHARAT P. DESHPANDE, J.** **M. S. SONAK, J.**

NITI K HALDANKAR Digitally signed by NITI K HALDANKAR Date: 2023.07.27 16:28:48 +05'30'