

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 10137 of 2020**

KAVITA KRUSHNA KUMAR
Versus
UNION OF INDIA

Appearance:

MR JIMI S PATEL(10578) for the Petitioner(s) No. 1
MR TRUPESH KARATHIYA, ASST.GOVERNMENT PLEADER for the
Respondent(s) No. 2,3
MR PY DIVYESHVAR(2482) for the Respondent(s) No. 1

CORAM:HONOURABLE MS. JUSTICE SONIA GOKANI
and
HONOURABLE MR. JUSTICE SANDEEP N. BHATT
Date : 19/01/2023
ORAL ORDER
(PER : HONOURABLE MS. JUSTICE SONIA GOKANI)

1. The petitioner has challenged the re-assessment order dated 25.03.2020 and the final notice of assessment, on the ground of the same being invalid due to non-availment of an opportunity and the final hearing not being given despite the acknowledgment of the lock down due to the COVID-19 virus in the following factual background.

1.1 The petitioner is an individual and

engaged in the business of retail sales of Cotton Seed Oil Cakes. She had applied for registration under Gujarat Value Added Tax Act, 2003 ('the VAT Act' hereinafter) and under the Central Sales Tax Act, 1956 ('the CST Act' hereinafter) in November 2013. The certificate of registration was granted under the VAT Act and CST Act w.e.f. 27.11.2013.

1.2 The petitioner transferred the Cotton Seed Oil Cakes from her local depot situated in Deesa to depot situation in Santpur, Abu Road, Sirohi, Rajasthan. The petitioner had prepared the invoice-cum-delivery challan and Form 402 prescribed under Rule 51 of the Gujarat Value Added Tax Rules, 2006 ('the VAT Rules'

hereinafter) for verification on demand at check post. It was required to be generated online from the portal of Gujarat Commercial Tax Department and while preparing this Form, the registered person is required to state the nature of transaction, where it reflected that the invoice-cum-delivery challan was against the stock, which had been transferred and also the nature of the transfer. It was a Branch transfer against Form F.

1.3 It is the say of the petitioner that the respondent authority had by way of an audit assessment passed an order under Section 34(2) of the VAT Act by accepting the declared turnover of the petitioner for local sales on 30.03.2019. On 02.07.2019,

the first notice of reassessment under Rule 9(4) of the Central Sales Tax (Gujarat) Rules, 1970 ('the CST Rules' hereinafter) had been issued upon the petitioner, but, due to closure of the business, the notice remained unserved.

1.4 The second notice dated 10.01.2020 for reassessment was served upon the erstwhile consultant of the petitioner. The petitioner was informed by the consultant about the fixing of hearing on 10.01.2020.

1.5 On 16.01.2020 the petitioner made an application before the Assistant Commissioner of Commercial Tax, Rajasthan for issuance of Form-'F' for financial year 2014-15. On 17.03.2020, the reassessment notice for the third time had been issued

to the petitioner asking her to remain present with Form-'F' on 24.03.2020. However, in the meantime, there came an imposition of the partial lock-down in the State of Rajasthan and the complete lock-down from 23.03.2020 in the State of Gujarat.

1.6 On 24.03.2020, the respondent No.3 since insisted the personal appearance, the petitioner's husband appeared along with the tax consultant and showed the inability to produce the Form-'F' due to the COVID-19 situation and made a request for adjournment. However, the order came to be passed by the respondent having taken note of the fact that the request is made for grant of time. This has aggrieved the

petitioner and therefore, she is before this Court seeking following reliefs:

“13...

(A) *this Hon'ble Court be pleased to call for the records of the proceedings, look into them and be pleased to issue a writ of certiorari or any other appropriate writ, order or direction quashing the impugned re-assessment order dated 25.03.2020 at Annexure-L, and Final Notice of Assessment under CST Act, 1956 at Annexure L1.*

(B) *this Hon'ble Court be pleased to call for the records of the proceedings, look into them and after looking into them, if it is found that re-assessment proceedings has been conducted and completed without issuing and/or serving Notice in Form No.303 as per Section 35 of Gujarat Value Added Tax Act, 2003 read with Rule 32(1) of Gujarat Value Added Tax Rules, 2006 read with Section 9(2) of Central Sales Tax Act, 1956 then be pleased to issue a writ of mandamus/certiorari or a writ in the nature of mandamus/certiorari or any other appropriate writ, order quashing and setting aside the reassessment order dated 25.03.2020 at Annexure L and Notice of Final Assessment dated 25.03.2020 at Annexure L1.*

(C) this Hon'ble Court be pleased to call for the records of the proceedings, look into them and after looking into them, if it is found that reassessment proceedings has been initiated without recording and/or serving reason recorded as mandated by Section 35 of Gujarat Value Added Tax Act, 2003 read with Section 9(2) of Central Sales Tax Act, 1956 then be pleased to issue a writ of mandamus/certiorari or a writ in the nature of mandamus/certiorari or any other appropriate writ, order quashing and setting aside the reassessment order dated 25.03.2020 at Annexure L and Notice of Final Assessment dated 25.03.2020 at Annexure L1.

(D) Pending the hearing and final disposal of this application, this Hon'ble Court be pleased to stay recovery proceedings that may be initiated in pursuance of Final Notice of Assessment dated 25.03.2020 at Annexure L and be further pleased to stay implementation of reassessment order dated 25.03.2020 at Annexure L and Final Notice of Assessment under CST Act, 1956 at Annexure L1.

(E) This Hon'ble Court be pleased to grant any further or other relief as this Hon'ble Court deems just and proper in the interest of justice, and

(F) This Hon'ble Court be pleased to allow this

application with costs against the respondent.”

2. When notice was issued, the Assistant Commissioner of State Tax filed affidavit-in-reply giving the chronological details. It is contended that the petitioner was registered under the VAT Act and CST Act and also made an application before the authority to cancel the registration w.e.f. 30.06.2017. There is a pendency of assessment proceedings under the CST Act as well as the VAT Act and in view of the same, the audit assessment order was passed on 23.01.2018 under the CST Act and the VAT Act. Subsequently, the respondent authority had found that online portal called Data Warehouse System (DWHS) from where the report was generated that assessee has supplied the goods against the statutory

Form-F for the assessment year 2014-15 between the period of 01.04.2014 to 31.03.2015 worth Rs.56,21,78,410/- and the amount was not reflected in the VAT/CST returns. Therefore, the reassessment notice was issued in Form VI(B) on 02.07.2019 and it was accepted by the petitioner in the presence of the officers.

3. Second and third time the notice was needed to be issued and final reassessment order came to be passed on 25.03.2020, the date had expired on 30.06.2015 and transaction which was required to mention the VAT/CST returns was not shown and hence, the order came to be passed.

4. It is also the say of the respondent that the assessee was not in a position to

supply the statutory Form-'F', then in that case the authority is required to consider the transaction as a sale and only if, the Form-'F' is supplied, the authority can treat it as a zero rated transfer as it was a Branch transfer.

5. This Court has heard the learned advocate, Mr.Jimi Patel and learned AGP, Mr.Trupesh Karathiya.

6. The short question that arises for the court's consideration is whether this petition is maintainable under Article 226 of the Constitution of India when there is an appeal provided against the reassessment order and secondly, whether the circumstances existed at the relevant point of time had actually made any breach of

principle of natural justice.

7. The details which have been given shows that the VAT assessment for the assessment year 2014-15 determined the sales in huge figure, where the interstate sale was to the tune of Rs.56,21,78,810/-. There was a requirement of Form-'F' and that was questioned by the officer concerned. The request was made by the petitioner that due to the lock-down because of the COVID-19 virus, the request is made to the Rajasthan Authority for Form-'F' and it will not be feasible to furnish the same therefore, the time was sought. As the acknowledgment receipt of Form-'F' was issued by the Rajasthan Tax Department and the same had been produced, the Form-'F' transactions

are to the tune of Rs.99,87,59,478/-.

Because of the lock-down due to serious condition of the prevalence of the Corona Virus in the entire country, the request was made by the petitioner that there was no possibility of submitting the Form-'F' on or before 31.03.2020 and keeping in mind the time limit of reassessment transaction, the officer concerned did not chose to avail the opportunity of hearing to the petitioner and passed the reassessment order.

8. Noticing the fact that the officer concerned had the statutory time limit to meet with as the same was expiring on 31.03.2020, although later on the period of limitation had also been extended by the Apex Court in its various orders, but, the officer can be given the benefit that at the time when he actually passed this order

on 25.03.2020, he may not be aware of such developments. In fact, no one was aware of the seriousness of the entire issue. And, yet, the fact remains that the officer concerned, having taken a note of the fact that the request has been made by the petitioner to the Rajasthan Authority for issuance of Form-'F', he has chosen not to accommodate the petitioner nor was he given an opportunity to tender the Form-F nor any opportunity of hearing was accorded. Therefore, this petition under Article 226 of the Constitution of India can be entertained bearing in mind the fact that this is a clear violation of principle of natural justice. Even if, while not accepting and acceding to the request of adjournment, there was an absence of any intent for willful disobedience to settled position of law on the part of the officer, the fact remains that the proper opportunity as required under the law is missing. Having recognized the fact that it was impossible for the petitioner to get

the Form-'F' in a situation that prevailed at the relevant time he continued to reassess the order and therefore, this petition not only under Article 226 of the Constitution of India is maintainable for the action being in breach of principle of nature justice, but the same deserves to be allowed quashing and setting aside the order of reassessment with all consequential reliefs.

9. Availability of alternative remedy in the form of appeal this stage would not have served the purpose for this being a violation of the principle of natural justice. It was an unprecedented situation where people had suffered, no one was sure as what is going to be the future. In such circumstances, when peoples were struggling to save the human lives, the request for the petitioner to get the Form-F from the

concerned authority was a mere impossibility, the opportunity shall need to be availed.

10. Resultantly, this petition is allowed. The reassessment order dated 25.03.2020 and the final notice of assessment are quashed and set aside with all consequential reliefs. The matter shall be taken up from the stage where it was left. The officer concerned shall avail an opportunity of hearing of the petitioner. The petitioner is permitted to file Form-'F' or any other documents within a period of one week before the officer concerned, who will continue to hear the reassessment proceedings. There shall be no adjournment

taken by the petitioner and let the entire process be completed within a period of four weeks from the date of receipt of a copy of this order. The factum of the respondent authority passing the final reassessment order pursuant to the direction of this Court will in no manner be held against the authority if any time in the future litigation, if needed this issue of limitation is raised by the party.

11. Over and above the regular mode of service, direct service through e-mode on official email address is also permitted.

(SONIA GOKANI, J)

M.M.MIRZA

(SANDEEP N. BHATT,J)