

TAX INFO

Dated 21.10.2022

Latest update on GST Law: **Entertainment of the writ petition under Article 226 by the HC is unjustified when alternate remedy to appeal is provided in tax law as given in judgement by Supreme Court.**

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Name of Petitioner	The State of Madhya Pradesh
Name of Respondent	M/s. Commercial Engineers and Body Building Company Limited
Court	Supreme Court
Date of Judgement	14.10.2022
Appeal No.	Civil Appeal No. 7170 of 2022

Brief Facts of the Case Law:

By an Assessment Order dated 28.02.2015, the Assessing Officer denied the Input rebate under Section 14 of the MP VAT Act, 2002. Without preferring an appeal against the Assessment Order denying the Input rebate under Section 46(1) of the MP VAT Act, 2002, the assessee preferred the writ petition before the High Court. Despite the specific objection raised on behalf of the State not to entertain the writ petition against the Assessment Order in view of the availability of the statutory remedy of appeal under Section 46(1) of the MP VAT Act, 2002, the High Court entertained the writ petition by observing that there are no disputed questions of facts involved in the matter and it is a question to be decided on admitted facts for which no dispute or enquiry into factual aspects of the matter is called for. Thereafter by the impugned judgment and order, the High Court set aside the Assessment Order denying the Input rebate. The impugned judgment and order passed by the High Court is the subject matter of present appeal.

Findings and Decision of the Court:

The High Court ought not to have entertained the writ petition under Article 226 of the Constitution of India challenging the Assessment Order denying the Input rebate against which a statutory appeal would be available under Section 46(1) of the MP VAT Act, 2002. While entertaining the writ petition, the High Court has observed that there is no disputed question of facts arise and it is a question to be decided on admitted facts for which no dispute or enquiry into factual aspects of the matter is called for. The aforesaid can hardly be a valid ground to entertain the writ petition under Article 226 of the Constitution of India challenging the Assessment Order denying the Input rebate against which a statutory remedy of appeal was available.

A recent decision of this Court in the case of **The State of Maharashtra and Others v. Greatship (India) Limited (Civil Appeal No. 4956 of 2022, decided on 20.09.2022)** is also referred to. The Court while exercising its jurisdiction under Article 226 is dutybound to consider whether:

- adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;
- the petition reveals all material facts;
- the petitioner has any alternative or effective remedy for the resolution of the dispute;
- person invoking the jurisdiction is guilty of unexplained delay and laches;
- ex facie barred by any laws of limitation;

Thus, the impugned judgment and order passed by the High Court entertaining the writ petition under Article 226 of the Constitution of India against the Assessment Order denying the benefit of Input rebate is unsustainable and the same was quashed and set aside and the original writ petitioner was to be relegated to prefer an appeal against the Assessment Order dated 28.02.2015 passed by the Commissioner, which may be available under Section 46(1) of the MP VAT Act, 2002 within a period of four weeks from today, the same be entertained and decided and disposed of on merits without raising an issue with respect to limitation, subject to compliance of the statutory requirements for preferring an appeal under Section 46(1) of the MP VAT Act, 2002. The appellate authority to decide and dispose of the appeal and the issue without in any way being influenced by any of the observations made by the High Court.

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