IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO.1889 of 2017

With
CIVIL APPLICATION (FOR ADDITIONAL EVIDENCE) NO.1 of 2025
In R/SPECIAL CIVIL APPLICATION NO.1889 of 2017

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA

and

HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

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Approved for Reporting	Yes	No
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STATE OF GUJARAT
Versus
WESTERN AGRI SEEDS LTD.

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Appearance:
MR PARTH PATEL, AGP for the Petitioner(s) No. 1
MR TUSHAR HEMANI, SENIOR ADVOCATE with MS VAIBHAVI K PARIKH(3238) for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR. JUSTICE A.S. SUPEHIA**
and
HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

Date : 29/07/2026

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. In the present writ petition, the State through the Commissioner of Commercial Tax have challenged the order dated 19.04.2016 passed by the Gujarat Value Added Tax Tribunal, Ahmedabad, (for short, “the Tribunal”) allowing the Revision Application No. 16 of 2015 filed by the respondent – Western Agri Seeds Ltd. challenging the

revision order dated 04.03.2015 passed by the Deputy Commissioner of Commercial Tax, Circle-7, Gandhinagar by which the assessment order dated 29.12.2010 passed by the Assistant Commissioner is taken into revision.

2. At the outset, we may mention that learned AGP Mr. Parth Patel has made some additional submissions over and above the averments which are made in the writ petition.

BRIEF FACTS:

3. The respondent is in the business of procuring the seeds and thereafter, they are processed in its factory and used for sowing purposes after they are germinated and the seeds from which they are procured are given to the farmers for sowing.

3.1. It appears that by the Assessment Order dated 29.12.2010 passed by the Assistant Commissioner, the petitioner was asked to pay the Value Added Tax Act, 2003, (for short, "the VAT Act") to the tune of Rs. 1,77,89,618/- which *inter alia* included the tax demand of Rs. 47,29,026/-, interest of Rs.63,06,350/- and penalty of Rs. 67,54,242/-. After considering the payment of Rs. 5,64,217/- already made by the petitioner, the net demand of Rs. 1,72,25,401/- was raised.

3.2. The respondent challenged the assessment order before the Appellate Authority, i.e., Deputy Commissioner under the provisions of Section 73 of the VAT Act and by the order dated 22.12.2011, the Appellate Authority partly allowed the appeal by modifying the demand of tax to the extent of reducing the tax to Rs. 44,998/-. The said order had become final and has not been assailed before any authority.

3.3. It appears that thereafter, the Deputy Commissioner in exercise of its power under Section 75 of the VAT Act revived the original Assessment Order dated 29.12.2010 and passed the order dated 04.03.2015. The respondent assailed the said order before the Tribunal by filing the Revision Application No. 16 of 2015 and the Tribunal vide its impugned judgment and order dated 19.04.2016, has set aside the order of revision dated 04.03.2015.

SUBMISSIONS ON BEHALF OF THE PETITIONER:

4. Learned AGP Mr. Parth Patel, while referring to the notification dated 29.04.2006 issued by the Finance Department has submitted that the seeds which are procured by the respondents are not used for sowing purposes and hence, the Tribunal has fell in error in considering the activity of the respondent of processing such seeds to that of using it for sowing purposes.

4.1. Further, it is submitted that the Tribunal has fell in error in placing reliance on the decision dated 04.03.2013 rendered by the Determining Authority in the case of M/s.King and Queen Seeds Corporation. While referring to the said decision, it is contended that it will not apply to the case of the petitioner.

4.2. Reference is also made to the provisions of Section 9 of the VAT Act read with Schedule 2 and Item 48, and has submitted that the seeds used by the petitioners are not exempted and carried the taxation of four paisa in a rupee. Thus, it is urged that the petition may be allowed and the impugned order may be quashed and set aside.

4.3. Learned AGP has also referred to the Determination Order passed in case of M/s.Green India Farm Biotech dated 18.03.2009 in which the Determination Order reflects passing of the Assessment Order.

<u>SUBMISSIONS ON BEHALF OF THE RESPONDENT:</u>

5. Opposing the present writ petition, learned Senior Advocate Mr.Tushar Hemani for the respondent at the outset has submitted that the impugned order passed by the Tribunal, does not require any interference as the same is appropriately passed, more particularly, in wake of the fact that the revision authority which has exercised revision under Section 75 of the VAT Act has failed to notice the Appellate order dated 22.12.2011 which has become final.

5.1. It is submitted that the original Assessment Order dated 29.12.2010 by applying the doctrine of merger has merged with the Appellate Order dated 22.12.2011 with the Revisional Authority and the authority has totally ignored the same and hence, the Tribunal order may not be entertained. Moreover, it is submitted that the case of the petitioner is squarely covered by the notification dated 29.03.2006 and accordingly, the appellate authority has decided the demand looking to the period prior from 31.03.2006 on which, the notification was issued by the State Government which did not exempt all type of seeds as mentioned in the notification dated 29.04.2006 and accordingly, the demand of tax was determined by the Appellate Authority which the petitioner has already complied with.

5.2. It is submitted that the Tribunal has precisely placed reliance on the decision of the determining authorities dated 04.03.2013 in the case of <u>M/s.King and Queen Seeds Corporation</u> and since the Joint Commissioner which is a higher authority to the Commissioner has passed the impugned order of revision, hence, the same is required to be followed and adopted which the Tribunal has taken cognizance of. Thus, it is urged that the present writ petition may not be entertained.

OPINION AND CONCLUSION:

6. We have heard the learned advocates appearing for the respective parties at length. The facts which are established from the pleadings are that initially on 29.12.2010, the Assistant Commissioner passed an Assessment Order demanding tax under the Vat Act for the amount of Rs. 1,77,89,618/- which *inter alia* included the tax demand of Rs. 47,29,026/-, interest of Rs.63,06,350/- and penalty of Rs. 67,54,242/-.

6.1. Being aggrieved by the demand of tax, the respondent challenged the said order before the Appellate Authority under the provision of Section 73 of the VAT Act and by the order dated 22.12.2011, the Appellate Authority gave a relief reducing the interest from Rs.1,75,047/- to Rs. 1,65,857/- and also reducing the penalty from Rs. 5,55,804/- to Rs. 1,30,296/-. Thus, the dispute was laid quietus at that stage as the petitioner accepted the said order. It is pertinent to note that the Appellate Authority was aware of the two notifications issued by the Finance Department, first dated 31.03.2006 and the second, the modified notification dated 29.04.2006 and accordingly, fixed the tax.

6.2. We may, at this stage, refer that initially by the notification dated 31.03.2006 issued by the Finance Department while exercising its powers under Section 5(2) (a) of the VAT Act, the *“Desi Biyaran”* (seeds other than oil seeds of all types and peanuts were exempt from the tax). Subsequently, on 26.04.2006, another notification was issued wherein an entry at Serial No. 4 of the notification dated 31.03.2006 was substituted and it was declared that “seeds of all types other than imported seeds used for sowing purpose” were exempted.

6.3. It is not the case of the Department that the petitioner is importing any seeds. After the aforesaid Appellate order was passed, the revisional authority while resorting to the provision of Section 75 of the VAT Act, ordered the assessment order dated 29.12.2010 to be taken under revision. By the order dated 04.03.2015, the Deputy Commissioner while exercising powers under Section 75 of the Act revisited the tax liability and revised the order dated 29.12.2010 (Assessment Order) and raised demand of Rs. 1,77,89,618/- which included a demand of Rs.47,29,026/- towards tax, an amount of Rs. 63,06,350/- towards interest and penalty of Rs. 67,54,242/-. After debiting the amount of Rs. 5,64,217/- which the respondent had already paid, the net demand of Rs. 1,72,25,401/- was raised which was challenged by the respondent filing Revision Application No. 16 of 2015 before the Tribunal. The Tribunal after considering the rival submissions and the nature of use of seeds by the respondent allowed the revision application by holding thus:

> *"9. We have considered the rival submissions and the facts of the case. We have also gone through the orders passed by the authorities below and the documents produced before this Tribunal. We have also considered the relevant notifications as well as determination orders placed before us for our consideration. There are three legal objections raised by the applicant against the impugned revisional order. We find sufficient force and merits legal submissions. It is an admitted position that at the time when the original audit assessment order was passed by the assessing officer on 29.12.2010, the earlier determination order in the case of M/s. Green India Farm Biotech, Junagadh dated 18.03.2009 was very much in existence. Despite this fact, the assessing officer has not levied any purchase tax under section 9(1) of the Act. Not only this, the applicant has filed First Appeal against the audit assessment order dated 29.12.2010. In that First Appeal the Ld. Deputy Commissioner has reduced the amount of interest well as penalty. The determination order dated 18.03.2009 was available. The Ld. Deputy Commissioner could have revised the assessment order by exercising his revisional powers, while*

deciding the First Appeal. However, he has not done so. The natural presumption, therefore, can be drawn that he has also thought it fit and proper not to levy purchase tax under section 9(1) of the Act on the applicant. The Ld. Deputy Commissioner, before passing the impugned revisional order has issued the notice in Form No. 503 on 05.03.2013. In that notice he has specifically referred to the determination order passed in the case of M/s. Green India Farm Biotech, Junagadh. Despite this notice, the assessing officer has passed an order for the assessment period 2007-08 on 30th March, 2013 and he has taken the view that the purchase tax is not leviable on the applicant, after relying on the determination order in the case of M/s. King and Queen Seeds Corporation, Gandhinagar. In view of all these facts and circumstances of the case, we are of the view that the subsequent incumbent in the office, merely on the basis of change of opinion and accepting one determination order as against the another determination order which is equally held to be applicable in the case of the applicant, cannot levy purchase tax under section 9 (1) of the Act. The action of the Ld. Deputy Commissioner of revising the assessment order is therefore not justified.

10. Even on the merits of the matter, we found sufficient substance in the submissions made by the applicant. As a matter of fact the applicant has given reply on 21.06.2013 in response to the notice of revision issued in Form No. 503. In that reply, it was stated that the main business of applicant the is manufacturing and reselling of all types of seeds and all types of seeds are tax free as per the Government Notification dated 29.04.2006. It was also made clear that the applicant was not purchasing the certified seeds from the farmers but the applicant got manufactured all the certified seeds in the farm by providing the basic seeds to the farmer and the farmers are cultivating these seeds on behalf of the applicant. The applicant's research personnel personally remained present in the farms and after due verification and undertaking proper research such as germination test, grow out test and generic test, certified seeds are prepared under the research and development program. This entire process is under taken in the farm and on such seeds, no purchase tax is leviable. The applicant has also relied on the determination order passed in the case of M/s. King and Queen Seeds Corporation, Gandhinagar on 04.03.2013, wherein it is specifically held that no purchase tax is leviable on such certified seeds. The applicant has also invited the attention of the Deputy Commissioner that even in the assessment order for the assessment Ld. period 2007-08 no purchase tax was leviable by *the assessing officer himself. Despite this reply given by the applicant, the Ld. Deputy Commissioner has not considered any of these submissions and merely relied upon the earlier determination order in the case of M/s. Green India Farm Biotech, Junagadh and passed the impugned order.*

11. Even after the aforesaid reply to the notice for revision the applicant has filed written submissions dated 25.11.2013 wherein at length all issues relating to the certified seeds prepared by the applicant under the research and development program and the levy of purchase tax under section 9 (1) of the Act, were dealt with. The applicant has also referred to the relevant agreements/contracts and the activities under taken by the farmers. The applicant has also pointed out that under section 5 (2) of the VAT Act a notification was issued on 31.03.2006 wherein seeds of all types were not exempt. However, the State Government has issued new notification on 24.04.2006, under which seeds of all types other then imported seeds used for sowing purpose were of made tax free. The applicant has also referred to the determination order in the case Gujarat State's Seeds Corporation Limited dated 08.03.2007 wherein all types of seeds were exempt. In view of the notification dated 29.04.2006 the applicant has also referred to the determination order in the case of the M/s. Green India Farm Biotech, Junagadh dated 29.03.2009. However, in that case no one remains present before the Ld. Determining Authority and hence the decision was taken that the purchase tax was leviable under section 9 of the Act. However in subsequent determination order in the case of M/s. King and Queen Seeds Corporation, Gandhinagar dated 04.03.2013, Ld. Determining. Authority has specifically held that the seeds were prepared under the research and development program and such certified seeds were sold and hence there was no question of levying any purchase tax.

12. Considering the facts of the applicant's case in light of the contentions raised, documents produced and two determination orders passed and the acceptance by the assessing officer himself of the subsequent determination order, we are of the view that the Ld. Deputy Commissioner is not justified in revising the assessment order for the purpose of levy of purchase tax under section 9(1) of the Act. The order passed by him is therefore quashed and set aside and entire amount of additional tax, interest as well as penalty are deleted."

7. The petitioner Department has not denied that the respondent

Company is doing the research on the seeds procured by them and after processing the same, they are sown in the farmers land and after inspection is done by the Company's Agriculture Supervisor, high-quality seeds are produced. The Company's processing plant conducts germination test to ensure that the seeds are disease free and pesticide free and are grown out of generic tests and the seeds which fail in this test are returned to the farmers and seeds packed per kilo rate decided and a compensation is paid on that basis. These seeds are only meant for sowing purposes. Thus, on two aspects, the revision order was required to be quashed and set aside which the Tribunal has precisely done. (i) It is not the case of the petitioner Department that the respondent is importing any seeds and (ii) They are not used for sowing purposes.

8. The reliance placed by the petitioner on the determination order dated 18.03.2009 in case of Green India Farm Biotech will not come to the rescue of the petitioner, which is precisely distinguished by the Tribunal. Over and above, we find that the case of the petitioner will get squarely covered by the notification dated 29.03.2006 as the petitioner Department has miserably failed to prove before us that the seeds which are procured by the respondents are not used for sowing purposes.

9. The Tribunal has also considered the order passed by determining authorities in case of M/s.King and Queen Seeds Corporation wherein the Joint Commissioner of Tax (legal) in similar set of facts has held that the seeds which are used for research and development program, cannot be said to be of business and purchase. Thus, the writ petition being devoid of any merit, is required to be dismissed and hence, we dismiss the same.

10. Consequently, subsequent Civil Application would not survive and is also disposed of, accordingly.

(A. S. SUPEHIA, J)

(VAIBHAVI D. NANAVATI,J)

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