

(1998) 07 MP CK 0040

In the Madhya Pradesh High Court

Case No : Writ Petition No. 718 of 1995

Associated Cement Co. Ltd.

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 28-07-1998

Acts Referred:

Madhya Pradesh General Sales Tax Act, 1958 — Section 16C, 6, 6(3), 8, 8(1)

Citation : (2000) ILR (MP) 136 : (2000) 118 STC 187

Hon'ble Judges : A.K. Mathur, C.J.; Dipak Misra, J

Bench : Division Bench

Advocate : B.L. Nema and Seema Agarwal, for the Appellant; A.K. Gohil, Dy. A.G., for the Respondent

Judgement

A.K. Mathur, C.J.—The petitioner by this writ petition has prayed that Sections 6(2), 8(2), 8(1)(c), 7AA and 19(1) of the M.P. General Sales Tax Act, 1958 may be declared ultra vires the Constitution. It is also prayed that the petitioner may be held entitled to set-off of an amount of Rs. 6,98,676.

2. Brief facts giving rise to this writ petition are that the petitioner is a public limited company with its registered office at 121, Maharshi Karve Road, Bombay. It has its manufacturing units at Katni and Kymore in Madhya Pradesh. It is a registered dealer under the M.P. General Sales Tax Act, 1958 (for short, "the Act"). The period of assessment involved is from August 1, 1985 to July 31, 1986. The petitioner was first assessed for sales tax and thereafter it was reassessed u/s 19(1) of the Act. The whole question agitated is with regard to set-off of an additional tax in accordance with Section 8(1)(c) of the Act. Since the petitioner was not given the set-off of Rs. 6,98,676 u/s 8(1)(c) of the Act, therefore he has challenged the validity of the aforesaid provision. On reassessment, the assessee was found liable for the aforesaid liability. It was confirmed by the Appellate Deputy Commissioner and ultimately, second appellate authority also confirmed the orders of the assessment.

3. Shri Nema, Senior Advocate appearing for the petitioner did not press the

validity part of the aforesaid provision, therefore we need not dilate on that aspect. However, the learned counsel only submitted that the petitioner is entitled to set-off of additional tax u/s 8(2) of the Act. Shri Nema, learned counsel, denied the liability of the petitioner as it had purchased the raw material after paying full tax to the selling dealer and therefore it is entitled for set-off.

Learned counsel for the respondents referred to Section 8(2) of the Act which is as under provides that :

"Nothing in Sub-section (1) shall apply to a registered dealer to whom the provisions of Clause (b) of Sub-section (2) of Section 6 apply."

Learned counsel submitted that according to Sub-section (2) of Section 6, a tax payable on the sale of any goods specified in Schedule II, except tendu leaves to any registered dealer holding recognition certificate for use by him as raw material or as incidental goods in the manufacture or in the processing of goods which are liable to tax shall be subjected to tax at concessional rate as specified in Clause (a) of Sub-section (2) of Section 6 of the Act and the proviso thereto. The petitioner holds a recognition certificate u/s 16-C of the Act. It was submitted by the learned counsel for the respondents that since the petitioner holds certificate of recognition u/s 16-C of the Act, therefore benefit of Section 8(1) is not available to the petitioner.

4. We have considered the submissions of the learned counsel for the parties. It is true that a person who has already availed the benefit of Section 16-C under the provisions of Sub-section (3) of Section 6 in respect of concessional rate of tax, then such benefit of Section 8(1) of the Act is not available. As the assessee has already availed the concession, question of grant of set-off does not arise. Set-off is only available to those dealers who are entitled to claim it u/s 8(1)(c) of the Act on the full tax paid on such goods. The first and foremost question is whether the assessee has availed the concessional rate of tax or not. If the assessee has already availed concession u/s 6(2) of the Act, then the benefit u/s 8(1) of the Act will not be available to him for the reason of his having already availed the same. In any case, notwithstanding the fact that the assessee has certificate of recognition u/s 16-C of the Act and has not availed the concession on the goods purchased by him required for manufacture as per Schedule II, in that case, he cannot be denied the benefit of Section 8(1) of the Act. But it depends upon the question of fact whether the assessee has availed the benefit. In case he has not availed concession u/s 6(3) of the Act, it is on verifying the fact, he can claim the benefit u/s 8(1). In the present case, a statement has been made by the learned counsel for the State that the petitioner is not entitled for the benefit. We need not go into factual aspect of the matter and we leave it to the authorities to examine that in case the goods purchased by the assessee has already received benefit under Sub-section (2) of Section 6 by virtue of recognition certificate u/s 16-C of the Act. then no benefit can be given ; and notwithstanding the recognition certificate u/s 16-C, it has not availed the concession, the authorities shall redetermine the whole issue.

5. So far as the question of additional tax is concerned that matter is no more res Integra since no argument has been raised before us in this regard and as such, this question need not be gone into.

The authorities are directed to re-examine the matter in the light of observations made above. The petition is accordingly disposed of. There shall be no order as to cost.