
(2000) 06 MP CK 0011

In the Madhya Pradesh High Court

Case No : Writ Petition No. 2917 of 2000

Century Textiles And Industries Limited

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 26-06-2000

Acts Referred:

Madhya Pradesh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976 —
Section 10, 4A

Citation : (2001) 1 MPLJ 694

Hon'ble Judges : Bhawani Singh, C.J;A.K. Mishra, J

Bench : Division Bench

Advocate : H.S. Shrivastava, for the Appellant;

Final Decision : Dismissed

Judgement

Arun Mishra, J.

The Petitioner challenges the vires of Notification No. A-3-80-98-ST-V (49) dated 4th May, 1999 issued in exercise of powers conferred by Section 10 of The Madhya Pradesh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976 (hereinafter referred to as "the Adhiniyam" for short) whereby the State Government has exempted certain class of goods specified in Column No. 1 of the Schedule to the extent mentioned in Column No. 2. The notification clearly mentioned that "This exemption shall not affect the tax liability created by any notification issued u/s 4-A of the said Adhiniyam."

The relevant portion of Section 4 of the Adhiniyam runs as under:

4(1) The entry tax payable by a dealer under this Act shall be charged on his taxable quantum relating to goods specified in Schedule-II and Schedule-III at the rates mentioned in the said Schedule:

Provided that notwithstanding anything contained in this Sub-section and subject to such conditions and restrictions as may be prescribed ?

(i) The entry tax payable in respect of goods specified in Schedule-II, other than those specified in serial No. 3 which are consumed or used as raw material for the manufacture of other goods, shall be one percent, if the rate of tax specified in Schedule-II exceeds one percent:

According to the Petitioner, upto 31-3-1995 tax on raw material was being levied at the rate of 1/2 percent and thereafter at the rate of 1 percent from 1-5-1995 till 30th April, 1997. From 1-5-1997 the Act was amended and the State retained the power to levy entry tax only on goods specified in the Schedule at the rates mentioned against each of the goods while on other goods the power to levy entry tax in the form of Local Body Tax was given over to the local bodies. It is stated that the State took over the levy of tax on other goods, but Section 4 was amended from 1-5-1997 which reads as under:

4(1) The tax payable by a dealer under this Act shall be charged on his taxable quantum relating to the goods specified in Schedule at the rate mentioned therein.

This provision continued to be in force upto 30th September, 1997.

Subsequently again amendment was effected and the amended provision runs as under:

4. Rate at which entry tax to be charged. - (1) The entry tax payable by a dealer under this Act shall be charged on his taxable quantum relating to goods specified in Schedule-II and Schedule-III at the rates mentioned in the said schedules:

Provided that notwithstanding anything contained in this Sub-section and subject to such conditions and restrictions as may be prescribed:

(i) the entry tax payable in respect of goods specified in Schedule-II other than iron and steel as specified in Serial No. 3 of the said Schedule which are consumed or used as raw material for the manufacture of other goods shall be one per cent, if the rate of tax specified in Schedule-II exceeds one percent.

The State Government issued notification Annexure-P/1 u/s 10 of the Adhiniyam on 4th May, 1999. The notification was amended on 5-7-1999 by which coal excluding cooking coal was included in the Schedule to the earlier notification. The explanation below the notification provides that "the amount shall not be refunded in any case on the basis that the dealer has paid the tax at a higher rate. The Petitioner submits that he has paid the tax on coal at the full rate of 2.5% and 2% respectively instead of 1%. He submits that in view of the notification he is liable to pay tax at the reduced rate of 1%. It is submitted that the Explanation to Notification (Annexure-P/1) is ultra vires. The Explanation takes away the efficacy of the exemption granted. Explanation could not make such a provision. It is the main contention of the Learned Counsel for the Petitioner that it defeats the intendment of notification.

We have given our anxious consideration to the submissions made by the Learned Counsel for the Petitioner. However, we find ourselves unable to agree with the same. Section 10 of the Adhiniyam confers power on the Government to exempt prospectively or retrospectively. By notification in question, power has been exercised retrospectively to reduce rate of tax to 1% with respect to the transactions for the period 1-5-1997 to 30-9-1997. It applies prospectively to transactions where tax has not been paid i.e. to say it has yet to be paid. It appears that the Explanation has been added in the interest of revenue in order to escape the liability of refund on the basis that dealer has paid the tax at a higher rate. If the tax has been paid at the higher rate no one is entitled to claim the refund. Thus, it cannot be said that the explanation exceeds its purpose. It is simply explanatory to the nature of cases to which exemption has been granted. It cannot be said that the notification (Ex. P/1) suffers from arbitrariness.

We find no substance in the petition. It is accordingly dismissed summarily.