

(1966) 08 MP CK 0014

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 294 of 1965

Commissioner of Sales Tax

APPELLANT

Vs

Daulatram Dulichand

RESPONDENT

Date of Decision : 20-08-1966

Acts Referred:

Madhya Bharat Sales Tax Act, 1950 — Section 4(3)
Madhya Bharat Sales Tax Rules, 1950 — Rule 11

Citation : AIR 1967 MP 89 : (1969) ILR (MP) 1063 : (1966) 11 MPLJ 1029 : (1967) 19 STC 502

Hon'ble Judges : P.V. Dixit, C.J.; R.J. Bhawe, J

Bench : Division Bench

Advocate : K.K. Dubey, for the Appellant; H.S. Shrivastava, for the Respondent

Judgement

Dixit, C.J.

This is a reference u/s 44 of the Madhya Pradesh General Sales Tax Act, 1968, by the Sales Tax Tribunal at the instance of the Commissioner of Sales Tax. The question which has been referred to this Court for decision is:

"Whether an exemption certificate issued under Rule 11 (c) of the M. B. Sales Tax Rules 1950 will be valid only for the quantum of turnover mentioned in it and will not cover any excess turnover over and above that mentioned in it and whether the excess turnover will be taxable at the rate of Rs. 1-9-0 per cent or at the rate of 0-4-0 per cent?"

In order to appreciate the facts and circumstances in which the reference has been made it is necessary first to refer to the relevant provisions of the Madhya Bharat Sales Tax Act, 1960 (hereinafter referred to as the Act) and of the Rules made thereunder (hereinafter referred to as the Rules) u/s 4 (2) of the Act no tax was payable on the sale of goods specified in the second column or Schedule I "on conditions mentioned in column three" of that Schedule Under Sub-section (3) the Government was given power to amend by a notification Schedule I and

exempt from tax the sale of any goods or class of goods or any person or class of persons on such conditions and on payment of such fee as may be specified in the notification. On 15th March 1955 the Madhya Bharat Government issued a notification in the exercise of the powers conferred by Section 4 (3) of the Act exempting from sales tax sales of bullion on the condition of the importer of bullion paying a fee of four annas per cent on the imported bullion. That notification was as follows:

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Rule 11 of the Rules which dealt with the matter of exemption u/s 4 was in the following terms:

"11 (a) Application for certificate of exemption. Every dealer liable to pay any fee in accordance with a notification issued u/s 4 shall within 15 days of the publication of such notification deposit the fee calculated on his turnover of the previous year in the treasury along with a challan in Form III (obtainable in all treasuries and Sales Tax Offices). If for any reasons, it is not possible to fix the taxable turnover for the previous year of any such dealer, the Sales Tax Officer may fix provisional amount of fee not exceeding Rs. 500 to be deposited by such dealer.

(b) Such dealer shall, within one week of the deposit of the fee, submit to the Sales Tax Officer a statement in Form IV showing his turnover in the previous year in respect of the goods to which the provisions of the notification issued u/s 4 are applicable, accompanied by the treasury receipt for the payment of the fee.

(c) If the Sales Tax Officer, after such enquiry as he may deem necessary, is satisfied that the information given in such statement is correct, and the fee has been correctly deposited, he shall issue an exemption certificate to the dealer in Form V.

(d) If the Sales Tax Officer finds that the fee deposited is less than that payable in accordance with the notification, he shall require the dealer to deposit the balance within a time to be fixed by him.

(e) If the Sales Tax Officer finds that the fee deposited by the dealer exceeds the amount payable he shall order the excess to be refunded".

By Rule 13 it was provided that the exemption certificate granted under Rule 11 or 12 would remain valid till the expiry of the assessment year and that a fresh certificate should be obtained for each subsequent year by making an application in that behalf and to such an application provisions of Rule 11 would apply mutatis mutandis In Form V in which an exemption certificate was issued to a dealer, the Sales Tax Officer of the Circle concerned was required to give details about the dealer's place of business, the number of his licence and registration certificate, and the amount deposited by him as the fees In that certificate the Sales Tax Officer was also required to state the turnover which would be exempt from tax by making the following statement:

"I hereby order that the turnover (of goods)... amounting to Rs..... will be exempt from tax".

The exemption certificate also contained a statement about its validity. It was thus:

"This certificate shall be valid till the 31st of March 19. ... unless cancelled earlier."

The assessee M/s. Daulatram Dulichand of Ratlam, a dealer in bullion, obtained under Rule 11 (c) an exemption certificate for the year 1958-59 by paying the prescribed fees on the actual sale of bullion of the value of Rs. 2,82,858 during the year 1957-58. The assessee's sale of bullion in 1958-59, however, exceeded the amount of Rs. 2,82,858 by Rs. 61,000. The sales tax authorities took the view that as the certificate granted to the assessee under Rule 11 (c) for the year 1958-59 exempted the turnover of sales of bullion up to the amount of Rs. 2,82,858, the assessee was liable to pay sales tax on the excess turnover of the value of Rs. 61,000. The assessee, however, contended that the excess turnover of Rs. 61,000 in 1958-59 was also exempt from sales-tax and that on that amount he was only liable to pay a "fee" at the rate of four annas per cent. This contention was ultimately accepted by the Sales Tax Tribunal.

It is plain from the notification issued by the Madhya Bharat Government on 15th March 1955 u/s 4 (3) of the Act and R. 11 that the assessee's turnover of bullion in a particular year was exempt from sales-tax on the condition of his paying in advance a fee of four annas per cent on an estimate of the turnover for the year made on the basis of his previous year's turnover. As the turnover of a particular year cannot be stated with precision and definiteness at the commencement of the year, the advance payment of duty on the turnover of that year cannot but be on an estimate made having regard to the assessee's turnover for the previous year.

If the estimated turnover on which the assessee has paid fee as required by Clauses (a) and (b) of Rule 11 turns out to be lower than the actual turnover in

the year, then at the time of obtaining an exemption certificate for the succeeding year the assessee has to pay fee on the excess turnover before getting the certificate. This is plain from Clauses (d) and (e) of Rule 11. If, therefore, the assessee has obtained an exemption certificate in conformity with Rules 11 and 13, then he is not liable to pay sales tax if his turnover for a particular year exceeds the turnover of the previous year on the basis of which he paid fees in accordance with Rule 11 (a) and (b). Rule 14 made the assessee liable to sales-tax only if no exemption certificate as provided by Rules 11, 12 or 13 had been obtained by him.

It would defeat altogether the scheme of exemption envisaged by the notification issued on 16th March 1955 and embodied in Rules 11 and 13 if it were to be held that the exemption of sales tax on bullion turnover for a particular year is only up to the value of the turnover stated in the certificate granted to the assessee in Form V at the commencement of the year. In the present case, the assessee obtained an exemption certificate for 1958-59 in accordance with Rules 11 and 13. That being so, he was not liable to pay sales tax on the excess turnover of Rs. 61,000 for the year. On that amount the assessee was liable to pay only a fee at the rate of four annas per cent.

For these reasons, our answer to the question referred is that an exemption certificate issued for a particular year under Rule 11 (c) of the Rules is valid not only for the quantum of turnover mentioned therein but also for any actual excess turnover in that year and on the excess turnover the assessee is liable to pay only a fee at the rate of four annas per cent. The assessee shall have costs of this reference. Counsel's fee is fixed at Rs. 100.