

(2001) 04 MP CK 0061
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1880 of 1994

Indra Marshall Oil Engines	Vs	APPELLANT
State of Madhya Pradesh and Others		RESPONDENT

Date of Decision : 17-04-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Madhya Pradesh General Sales Tax Act, 1958 — Section 42B

Citation : (2002) 126 STC 199

Hon'ble Judges : A.M. Sapre, J

Bench : Single Bench

Advocate : P.M. Choudhary, for the Appellant; S. Mukati, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

A.M. Sapre, J.—By filing this writ under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the legality and validity of an order passed by the Commissioner of Sales Tax, dated June 21, 1994 (annexure P2) u/s 42-B of the Madhya Pradesh General Sales Tax Act, 1958 (since repealed). In order to appreciate the controversy raised in the writ few facts coupled with the scope of Section 42-B need mention.

2. Section 42-B, which alone is relevant for the disposal of the writ reads as under :

Section 42-B(1). If any question is raised by a dealer in respect of the rate of tax on any goods, the Commissioner shall, in accordance with such procedure as may be prescribed, make an order determining the rate of tax on such goods.

(2) Any order passed by the Commissioner under Sub-section (1) shall be binding on the authorities referred to in Section 3 in all proceedings under the Act except appeals."

3. Section 42-B was inserted by way of an amendment (being Act No. 25 of

1978) with effect from October 1, 1978. Perusal of section indicates that it is intended for the benefit of a dealer. In other words, if the dealer engaged in the business of any commodity which is subjected to payment of sales tax has any doubt or that he is unable to determine to himself as to at what rate he has to pay the tax on the goods/commodity in which he is dealing, then in such event, he has to make an application to the Commissioner requesting him to decide the question as to at what rate, he has to pay the tax on the goods in which he is dealing. Once an application is made by the dealer invoking Section 42-B, then it is the duty of the Commissioner to examine the case of dealer set up in the application, in the context of several entries of the Schedule, and in the light of material brought on record by the dealer. While exercising the powers u/s 42-B, the Commissioner is under legal obligation to examine the issue from various angles so as to come to a correct conclusion as to under which entry a particular goods/commodity falls for being taxed. In other words, the Commissioner has to examine the case of that particular commodity with reference to all possible entries which may have bearing for determining the rate of tax payable. Merely, because the dealer claims that his goods are liable to be taxed under a particular entry of Schedule does not mean that the Commissioner would only examine whether goods fall in that entry or not. It is the duty of the Commissioner to examine whether the goods which are subject-matter of application falls in the entry as contended by dealer and if not, then in which entry the goods will fall for being taxed. The object of Section 42-B is to let the dealer know as to under which entry of Schedule appended to Act, he has to pay the tax. It is essentially in the nature of guidance to him, because he is unable to know the correct rate of tax, which is payable by him. At times, the case of dealer can be that he is liable to pay lesser rate of tax under a particular entry whereas in some cases the case can be that dealer is totally unable to decide as to at what rate, he has to pay the tax. It is then for the Commissioner to decide the correct rate of tax. It is for the Commissioner to decide in every case as to what type of factual inquiry that is required to be undertaken by him for determining the rate of tax, which essentially depends upon the nature of goods, its characteristic, its marketability, use, etc. These factors always weigh and are in fact material for determination. It is also expected from the Commissioner to render its verdict by an authoritative pronouncement after taking into account aforementioned factors and judicial pronouncement on identical issues rendered by Supreme Court or/and High Courts because the verdict of Commissioner is essentially in the nature of judicial determination based on abstract question of law and binding on the assessing authorities. This intention is discernible on mere perusal of Section 42-B and the object underlying in its enactment.

4. It is in the background of what is observed supra, if one examine the facts of this case, then the impugned order rendered by the Commissioner u/s 42-B of the Act does not appear to be in conformity with the real objective of Section 42-B and hence, not sustainable. In short, the facts for which the petitioner -- a dealer had invoked Section 42-B *ibid* was that they claimed themselves to be the

manufacturer and sale of oil engines for pumping sets. According to the petitioner, they manufacture oil engines for pumping sets which are essentially used for agricultural purpose and then sell these engines to other companies engaged in the business of manufacture of pumping sets. According to petitioners the engines manufactured by them are as per specifications prescribed by ISI for pumping sets which are used for agricultural purpose. It is the case of petitioner that engines manufactured by them are in fact a spare part of pumping sets and hence, exempt from payment of sales tax as per exemption notification with effect from April 1, 1994. It was also the case of petitioner that in any event, the goods manufactured by them are agricultural implements worked with the aid of power and hence exempt from payment of tax as per exemption notification (annexure P4).

5. The learned Commissioner by impugned order, held it to be not a spare part. This is what the learned Commissioner concludes :

^^mDr leLr U;k;ky;hu fu.kZ;ksa ds izdk"kr esa ;g Li"V gS fd fopkjk/khu oLrq fMty baftu ifiax lsV Lis;j ikVZ ugha gSA vr% ;g fuf.kZr fd;k tkrk gS fd Mhty baftu vuqlwph AA ds Hkkx AAA dh izfof"V ?ekad 9-All machines or machines worked by electricity diesel or petrol and spare parts and accessories thereof..... ds vUrxZr fnukad 31-3-94 rd 12 izfr"kr dh nj ls rFkk fnukad 1-4-94 ls 10 izfr"kr dh nj ls dj ;ksX; gSA**

6. Having heard the learned counsel for the parties, as observed supra, I am unable to uphold the impugned order of Commissioner as in my opinion, the learned Commissioner did not properly apply its mind to the facts of the case much less in the context of the relevant entries. This is clear when one sees the conclusion quoted supra, where the learned Commissioner did not even quote the full entry 9 of Part III of Schedule II, but has only quoted portion of it. The entire entry 9 of Part III of Schedule II reads as under :

SCHEDULE II

S. No. Description of goods Rate of tax

PART III.

9.

All machineries or machines worked by electricity, diesel or petrol and spare parts and accessories thereof but excluding tractors and pumping sets as specified in entry 12 of Part-IV and agricultural machinery and accessories, implements and parts thereof

12.

7. The question, that fell for consideration before the Commissioner in this case was :

1. Whether goods manufactured by the petitioner can be regarded as agricultural

implements worked with the aid of power so as to fall in entry 4 of exemption notification dated March 30, 1994 (annexure P4) ?

2. Whether goods manufactured by the petitioner can be regarded as or termed as spare parts of pumping sets so as to fall in entry 5 of exemption notification ?

or

3. Whether goods manufactured by the petitioner fall in entry 9 of Part III of Schedule II so as to treat them as machinery worked by diesel ?

8. To decide the aforementioned questions, following three entries, i.e., two entries from exemption notifications and one from Schedule II are relevant :

S. No.

Class of goods

4. All kinds of agricultural implements worked with the aid of power or tractor.

5. Pumping sets and spare parts and accessories thereof,

SCHEDULE II (PART III)

9. All machineries or machines worked by electricity, diesel, or petrol and spare parts and accessories thereof but excluding tractors and pumping sets as specified in entry 12 of Part IV and agricultural machinery and accessories, implements and parts thereof.

9. The learned Commissioner should have first referred to these entries, then should have examined the facts brought on record by the petitioner to indicate the nature of goods, its use, its manufacture and then decided the question as to why the goods in question do not fall in any of the two exempted entries of exemption notifications but fall in entry 9 of Schedule II of Part III.

10. In order to decide such issue by this Court, there has to be a finding duly recorded by the Commissioner with reference to each entry then only this Court in its writ jurisdiction examine its legality and correctness in the context of relevant entries and the material brought on record. Since in the present case, the learned Commissioner neither examined the matter in the light of relevant entries nor rendered any finding and hence, the impugned order deserves to be quashed.

11. Accordingly petition succeeds and is allowed. Impugned order dated June 21, 1994 (annexure P2) is set aside and the matter is remanded to the Commissioner to redecide the issue in the light of observations made supra, and then record a definite finding as to under which entry the goods of the petitioner falls -- whether they are exempt or/and if not then under which entry of Schedule they can be taxed. Needless to observe, the Commissioner will pass a reasoned order after giving an opportunity to the petitioner to place their case. Let this be done within six months from the date of this order.

No costs. Security amount, if deposited by the petitioner, be refunded as per rules.