
(2000) 03 MP CK 0005

In the Madhya Pradesh High Court

Case No : Writ Petition No's. 1497 and 1498 of 1998

Jagdish Bhai Patel

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 07-03-2000

Acts Referred:

Madhya Pradesh General Sales Tax Act, 1958 — Section 12, 9

Citation : (2000) 3 MPLJ 422

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : H.S. Shrivastava, for the Appellant; R.S. Jha, for the Respondent

Final Decision : Allowed

Judgement

Dipak Misra, J.

The factual backdrop and the questions of law being similar in both the writ petitions they were heard analogously and are disposed of by this common order. For the sake of convenience and clarity the facts in W.P. No. 1497/1998 are adumbrated herein.

The facts as have been unfolded are that the government of M.P. with a view to give incentive to the industrialisation in the State in exercise of powers vested in it u/s 12 of the M.P. General Sales Tax Act, 1958 (hereinafter referred to as "the Act") issued notification No. A-3-41-81 (35) ST-V dated 23rd October, 1981 exempting dealers to set up industrial units for manufacture of goods for varying periods according to the location of industry in the various categories of backward districts. The said notification has been brought on record as Annexure-1. Being persuaded by the promise of exemption from payment of tax the petitioner set up a small scale industry for manufacture of wooden frames, shutters etc. which was registered with the General Manager, District Industries Centre, Chhindwara. He applied to the Sales Tax Officer for grant of registration under the repealed Act and after due enquiry and verification registration

certificate No. 015/CHW/SASR/3258/7 dated 18-3-1994 was granted to him. In the Registration Certificate he was shown as a manufacturer of wooden windows, doors, frames and shutters etc. Amongst others, timber, logs and sawn timber was specified as raw materials. Having satisfied the necessary conditions for grant of eligibility certificate under the abovesaid notification he applied for grant of eligibility certificate for exemption from tax and eligibility certificate No. DIC-CWA/FA/87/1710 dated 10-2-1995 was issued by the General Manager, District Industries Centre, Chhindwara. The said document was signed by the Divisional Dy. Commissioner of Sales Tax, Chhindwara and the General Manager, District Industries Centre, Chhindwara. The exemption was for a period of five years from 29-12-1993 to 28-12-1998. Subsequently, certificate No. DIC-CWA/FA/87/3503 dated 25-4-1996 was granted for a period of 7 years from 29-12-1993 to 28-12-2000. At this juncture the M.P. General Sales Tax Act, 1958 was repealed w.e.f. 1-4-1995 and a new statute namely M.P. Vanijyik Kar Adhiniyam, 1995 (Act No. 5 of 1994) was brought into existence.

It is averred in the writ petition that the State Government had issued a notification No. A-3-41-81(25)-ST-V dated 1st May, 1982, exempting selling dealer from payment of Sales Tax on the purchase from eligible dealer issuing the declaration appended thereto.

The petitioner had purchased timber logs in various auctions held by, amongst others, from Divisional Forest Officer (hereinafter referred to as DFO), South Seoni Production Forest Division, Seoni and offered declarations appended to the above notification dated 1-5-1982 and Commercial Tax was not being charged by him. Earlier the D.F.O. used to charge tax at full rate of 20% against which the petitioner had filed a Writ Petition No. 3040/1995. Eventually in the writ petition a submission was made that industries to whom exemptions had been granted from payment of tax would continue to avail the said exemption on purchases. On the basis of the said assurance the writ petition was withdrawn. While the matters stood thus the petitioner received a memo No. Rajaswa/98/2054 dated 20-3-1998 from D.F.O. South Seoni Production Forest Division intimating that the Commissioner of Commercial Tax, Indore vide memo No. 6/95/24-B/I/1258 dated 19-2-1998 has directed that according to Commercial Tax Act, 1994, timber is included in Schedule III, and hence it is not exempted from tax and that it can be sold only on payment of full rate of tax from 1-4-1995. He also demanded the tax at full rate and surcharge right from 1-4-1995 till date to be paid within a month or else the amount will be recovered by coercive method as arrears of land revenue. Both the orders have been brought on record as Annexure.P-5 and Annex.P-6.

Similar instructions for charging tax at full rate were issued by the Commissioner of Commercial Tax to Oil Companies for charging tax at the full rate of 20% on sale of diesel oil to industries holding eligibility certificates. It is set forth in the writ petition that the Grasim Industries Ltd., Tata Iron and Steel Company Ltd., and Larsen and Tubro represented the matter to the government of Madhya

Pradesh, Commercial Tax Department which vide memo No. A-3-77/97-5 dt. 7-2-1998 rejected their representations. According to the directions of the Commissioner of Commercial Taxes, Diesel Oil was not specified in the eligibility certificate granted to M/s. Jindal Strips Ltd., Raigarh by the State Level Committee against which the party filed an appeal before the State Appellate Tribunal. The State Appellate Forum directed inclusion of diesel oil in their eligibility certificate. It is put forth that by such recognition it is apparent that industries holding eligibility certificate under the notification issued under the Repealed Act are entitled to exemption in respect of goods mentioned in Schedule HI of the Act. It has been highlighted in the writ petition that the direction of the Commissioner of Commercial Tax dated 19-3-1998 contained in Annexure P.6 that industries holding eligibility certificate are not entitled to exemption on timber is arbitrary, and illegal. It is also put forth that demand of tax by the D.F.O. is also unsound and illegal. It is further put forth that the vested rights have been saved under the new Act.

With the aforementioned averments, prayer has been made to declare that the petitioner is entitled to purchase timber logs without payment of tax under the earlier notification and the demand made by the Commissioner on 19-3-1998 vide Annexure P-6 is illegal and arbitrary and deserves to be quashed and further to direct the Divisional Forest Officer to accept the declaration granted under the eligibility certificate and not to demand tax.

A return has been filed by the answering respondents contending, inter alia, that after coming into force of Commercial Tax Act certain amendments have been made in section 9(2) and section 13 of the Act for the purposes of ensuring that the tax on five essential products is recoverable at full rates and further it has been categorically specified that no concession in the rate of tax shall be provided in respect of these products namely; diesel oil, petrol, opium, Tendu Patta and Timber. The object of the amendment was to augment the revenue by recovery of tax at full rate of sale or purchase of these five products. It has been highlighted that the intention of the answering respondents is to recover the tax at the full rates of these products and not to permit any concession or exemption in respect of these five products. It is further put forth that timber is included in these categories which is enumerated in Schedule-III of the Act. It is also stated that the principle of promissory estoppel has no application and the plea is misconceived. It is further put forth that after coming into force the M.P. Commercial Taxes Act, 1994 concessions or exemptions in respect of taxes or goods enumerated in Schedule-III are not applicable, therefore, all previous notifications granting exemptions stand superseded and modified in accordance with the Commercial Tax Act, 1994 any contrary stipulation therein stands automatically repealed. It is also set forth that exemption notifications issued under the old Act have to be read in consonance with the provisions of the new Act. It is highlighted that the petitioner unit is engaged in production of door, frames and shutters and use timber as raw material and in view of the provisions of sections 9 and 13 of the Act exemptions from payment of tax in respect of

timber is not available after coming into force the Commercial Tax Act and, therefore, on the basis of the clarification as issued by the Commissioner, Commercial Tax Act regarding the applicability of the provisions of the Commercial Tax Act 1994, the petitioner has been directed to pay tax at full rates of timbers. Emphasis has been placed on section 9 of the Act which has specifically stated that the goods enumerated in Schedule III when used as raw materials would be excluded from and the provisions of benefit of grant of concessional rate of tax and the tax at full rate would be charged on the sale of these goods and in view of the said provisions, the petitioner is not entitled to exemption.

In essence the contentions of the petitioners can be categorised into two compartments, namely, that the exemption granted under the repealed statute is saved as it is a vested right and secondly that the State Government having promised such exemption and granted such exemption is estopped to deny the same.

Mr. Shrivastava, learned counsel for the petitioner has contended that the provisions of the new Act do not extinguish the benefit of the concession. He has referred to section 9 of the Act which reads as under:-

9. Levy of Tax. - (1) Subject to provisions of sub-section (2) and sub-section (3) the tax payable by a dealer under this Act shall be levied on the taxable turnover relating to goods specified in Schedule II at the rate mentioned in corresponding entry in column (3) of the said Schedule.

(2) Subject to such restrictions and conditions as may be prescribed and to the provisions of sub-clause (iii) of clause (iv) of section 2.-

(a) The tax payable by a registered dealer on the sales of any goods specified in Schedule-II except the goods specified in Schedule-III, to another registered dealer for use by him inside the State-

(i) as raw material or as incidental goods, in the manufacturer or in processing of goods or in the mining of goods, declared tax free u/s 15 of exempted in whole u/s 17 and sold by him-

(a) in the State of Madhya Pradesh, or

(b) in the course of inter-State trade or commerce, or

(c) in the course of export out of the territory of India, or

(ii) in the generation or distribution of electrical energy or and other form of power, shall be levied at the concessional rate of four per cent.

(b) (i) the tax payable by a registered dealer on the sale of any goods specified in Schedule-III, to another registered dealer holding a recognition certificate u/s 25 for use by him as raw material or as incidental goods in the manufacture of procession or mining of taxable goods other than coal; or

(ii) the tax payable by registered dealer on the sale of any goods specified in Schedule-II to another registered dealer holding a recognition certificate u/s 25 for use by him as raw material or incidental goods in the mining of coal,

for sale by him in the State of Madhya Pradesh or in the course of inter-State trade or commerce or in the course of export out of the territory of India, shall be levied at the concessional rate of four per cent:

Provided that when the tax on the sale of such raw material or incidental goods is payable under sub-section (1) at a rate lower than four percent the tax payable under clause (a) or clause (b) shall be calculated at such lower rate or at such other lower rate as may be notified by the State Government.

(3) Where any goods purchased by a registered dealer under clause (a) or clause (b) of sub-section (2) are used by him contrary to the purpose specified therein or in violation of the restrictions and conditions prescribed under the said sub-section such registered dealer shall be liable to pay in such manner as may be prescribed, tax or penalty, as the case may be, at the rate equal to the difference of the full rate of tax under sub-section (2), in respect of such goods:

Provided that no tax or penalty shall be imposed on a registered dealer where any goods purchased for use by him as raw material or incidental goods under clause (a) or clause (b) or sub-section (2), are sold by him subject to such restrictions or registered dealer who is a manufacturer of goods declared tax free u/s 15 or goods exempted in whole u/s 17, who holds a recognition certificate u/s 25 for the purpose specified in the said clauses.

Explanation - In this section,-

(i) the expression "taxable goods" shall mean the goods liable to tax under this Act. (ii) the amount payable for violation of restrictions and conditions shall be by way of tax in respect of goods other than declared goods and by way of penalty in respect of declared goods.

On a fair and objective reading of the aforesaid provision it becomes quite vivid that the "expression" except the goods specified in a Schedule-III take away the such goods from the sweep and ambit of sub-section (2). Timber is one of the items which is enumerated in Schedule-III. Such an item is not even accessible to concessional rate of tax. In this context one may usefully refer to section 12 of the M.P. General Sales Tax Act, 1958. It is worth-while to refer to section 17 of the new Act which corresponds to the old provision. Section 17 reads as under:-

17. Saving. - (1) The State Government may, by notification and subject to such restrictions and conditions as may be specified therein, exempt whether prospectively or retrospectively,-

(i) (a) any class of dealers: or

(b) any goods or class goods, in whole or in part, from the payment of tax under this Act for such period as may be specified in the notification:

(ii) any dealer or class of dealers from any provision of this Act or any provision of a rule made u/s 80 for such period as may be specified in the notification.

(2) Any notification issued under this section may be rescinded before the expiry of the period for which it was to have remained in force and on such rescission such notification shall cease to be in force. A notification rescinding an earlier notification shall have prospective effect.

(3) Notwithstanding the repeal of the Madhya Pradesh General Sales Tax Act, 1958 (No. 2 of 1959) (hereinafter referred to as the repealed Act) the State Government may, by notification, exempt-

(i) (a) any class of dealer, or

(b) any goods or class of goods in whole or in part, from the payment of tax under the repealed Act; or

(ii) any dealer or class of dealers from any provision of the repealed Act or the provision of any rule made thereunder,

for any period before the commencement of this Act and for that purpose it shall and shall always be deemed that the provision of section 12 of the repealed Act have revived for the purpose of such exemption.

At this juncture section 81 of the New Act becomes relevant. The said section is as under:

81. Repeal and saving. - (The Madhya Pradesh General Sales Tax Act, 1958 (No. 2 of 1959) shall stand repealed on the date of coming into force of this Act.):

Provided that-

(i) such repeal shall not-

(a) affect the previous operation of the Act so repealed or anything duly done or suffered, thereunder; or

(b) affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed Act; or

(c) affect any penalty, forfeiture or... punishment incurred in respect of any offence committed against the repealed Act, or

(d) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation liability; and

any such investigation, legal proceeding or remedy may be instituted, continued or enforced any such penalty, forfeiture or punishment may be imposed, as if this Act had not been passed and the said Act had not been repealed.

(ii) Unless it is otherwise expressly provided anything done any action taken (including any appointment, notification, notice order, rule, form, regulation,

certificate or license) in the exercise of any power conferred by or under the said Act shall, insofar as it is not inconsistent with the provision of this Act as if this Act were in force on the date on which such thing was done or action was taken unless and until it is superseded by under this Act and all arrears of tax and other amount due at the commencement of this Act may be recovered as if they had accrued under this Act.

(iii) Any assessment, appeal revision or other proceedings arising under the repealed Act and the rules made thereunder and or pending before an officer or authority duly empowered to make assessment or hear and decide such appeal, revision or other proceeding immediately preceding the commencement of this Act shall, on the date of such commencement stand transferred to the officer or authority competent to make assessment or to hear and decide appeal thereupon such assessment, shall be made or such appeal or revision or other proceeding shall be heard and decided by such officer or authority in accordance with the provisions of the repealed Act or the Rules made thereunder as if they were the officer or authority duly empowered for the purpose under the repealed Act.

(iv) Notwithstanding anything contained in clause (i), any appeal revision reference or other proceedings arising under the repealed Act but preferred or initiated after the commencement of this Act, shall be heard and decided by the authority competent to entertain the appeal, revision, reference or any other proceedings in accordance with the provisions of this Act.

Submission of Mr. Jha is that once Timber is excluded from the concessional rate as per section 9 no exemption can be granted. If any exemption is permissible a fresh notification has to be issued u/s 17. Resisting the aforesaid submission it has been canvassed by Mr. Shrivastava that exemption was granted u/s 12 of the Act and section 17 read with section 81 of the New Act saves such exemption. In this context he has drawn the attention of this Court to a decision rendered in the case of Mysore Cement Ltd. and another vs. State of M.P. and others, in W.P. No. 1319/1999 decided on 6-10-1999 wherein a learned Single Judge of this Court while interpreting this section has held as under:-

.....The provisions in a statute are required to be read as whole. Once section cannot be read in isolation divorced from others. In a taxing statute also the charging section and the exemption or "saving" clause are to be read together. Section 12 of the Act of 1958 and section 17 of the New Act have marginal heading as "saving". This "saving" provision preserves and protects the rights granted by the clause and constitutes an exception or a proviso to the earlier charging sections under the Act. Therefore, the petitioner would continue to have the benefit of the exemption notification and the eligibility certificate.

I am in respectful agreement with the aforesaid view as I am of the considered opinion that the rights which were conferred by way of exemption has been saved. That apart there should be no confusion between "concession" and "exemption". Rate in respect of particular item may not be covered with the

concept of concessional rate of tax but as far as exemption is concerned, there is no bar for granting total exemption. It needs no special emphasis to state that the timber was granted total exemption under the repealed statute and as it is vested right it has been saved.

In my humble view it would continue and it cannot be curtailed or curbed by the language employed u/s 9(2) of the Act.

As far as second limb of argument is concerned, Mr. Shrivastava has fairly stated that the principle of promissory estoppel would not be applicable to the present case and the same has also been negated in the case of Mysore Cement (supra). I do not find any justifiable reason to differ with the said view.

Resultantly, the writ petitions are allowed. The letters issued by the Department denying the privilege of concession are quashed. The petitioners would be entitled to get exemption as per the previous notification. However, in the peculiar facts and circumstances of the case, there shall be no order as to costs.

Writ petitions allowed.