

**(1984) 09 MP CK 0016**

**In the Madhya Pradesh High Court**

**Case No : Miscellaneous Petition No. 231 of 1983**

Kanchan Kumar

APPELLANT

Vs

The State of Madhya Pradesh and Others

RESPONDENT

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**Date of Decision : 14-09-1984**

**Acts Referred:**

Madhya Pradesh General Sales Tax Act, 1958 — Section 19

**Citation : (1985) 59 STC 359**

**Hon'ble Judges : G.L. Oza, Acting C.J.; V.D. Gyani, J**

**Bench : Division Bench**

**Advocate : P.K. Saxena, for the Appellant; S.R. Joshi, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

G.L. Oza, Ag. C.J.

1. This is a petition filed by the petitioner for quashing of the order passed by the Additional Sales Tax Officer, dated 24th April, 1979 (annexure A) and the order passed by the Deputy Commissioner of Sales Tax, dated 28th May, 1981 (annexure B).

2. Facts necessary for disposal of this petition are that the petitioner is a registered dealer under the M. P. General Sales Tax Act. During the period 27th October, 1973 to 13th November, 1974 the petitioner had sold goods worth Rs. 2,15,728 to various registered dealers and an assessment was duly made on 6th October, 1977 by respondent No. 2 and the tax was paid. It is alleged that these sales were liable to concessional rate of tax as the sales were made to registered dealers who had given declarations under form XII-A which were submitted with the return and therefore, concessional rate of tax was imposed on these sales. In February, 1981 a demand was affixed on the premises of the petitioner from which he learnt that the assessments have been reopened u/s 19 of the Act and a demand of Rs. 10,786 has been made. The petitioner applied for a copy of the order and preferred a revision before respondent No. 3 u/s 39 of the Act. The

petitioner by this petition challenges the order on the ground that the reopening of the account u/s 19 of the Act was illegal as no opportunity was given to the petitioner and that Rule 20-A(1)(v) of the M. P. General Sales Tax Rules, 1959 as amended, has not been followed. It is alleged that respondent No. 3 also rejected the revision petition by his order dated 28th May, 1981. The petitioner also filed an application u/s 45 of the Act for rectification which was also rejected by order dated 7th December, 1982, and therefore, the petitioner has filed the present petition.

3. In the return filed by the respondents, facts are not in dispute. It is admitted that a declaration in form XII-A of the purchasing dealer was submitted along with the return for assessment of tax at a concessional rate. It is alleged that Rule 20-A which was amended by Act No. 25 of 1978 and which came into force on 1st October, 1978 was not of much use. It is contended that the items which were sold were not specified in the registration certificate of the purchasing dealer as articles used as raw material and it was the duty of the selling dealer, i. e., the petitioner to verify whether the items were specified in the registration certificate of the purchasing dealer. It is also contended that initial assessment was made without any enquiry as to whether the items were specified in the registration certificate of the purchasing dealer but later on the mistake was detected and therefore, proceedings were taken u/s 19(1) for reopening of the assessment. It is further contended that Rule 20-A(1)(v) could be given retrospective operation only if the purchasing dealer had submitted an application for compounding by payment of Rs. 100 but as the purchasing dealer had made no such application, the question of giving retrospective benefit to the petitioner does not arise. In the return, reliance has also been placed on a Full Bench decision of this Court in Commissioner of Sales Tax v. Lalloobhai B. Patel & Co. Ltd. 1976 (9) VKN 125 (FB).

4. Learned counsel for the petitioner contended that after the full Bench decision the rules have been amended and the amended Rule 20-A(1)(v) clearly provides that if a declaration by the purchasing dealer was made after 1st January, 1974 in form XII-A, then the only course open to the Department is to call upon the purchasing dealer to apply for compounding and recover a fee of Rs. 100 for such compounding and no liability could be fastened against the selling dealer for levy of tax at the normal rate and no recovery could be made of the difference of the tax levied at the concessional rate and which could have been levied at a normal rate. It was, therefore, contended that the view taken by the assessing authority and the revising authority is directly in contravention of Rule 20-A(1)(v).

5. The learned Government Advocate contended that this rule came into force on 22nd February, 1979 and before this rule was amended, the Full Bench decision ruled that even in spite of the declaration given by the purchasing dealer in form XII-A a duty was cast on the selling dealer to find out as to whether the goods have been specified in the registration certificate of the purchasing dealer as

goods used as raw material and as the selling dealer has not made those enquiries and merely relied on the declaration filed under form XII-A, he is liable to pay the difference of tax which is being charged to him after the reassessment.

6. It is not in dispute that after the Full Bench decision the rules have been amended and it is also not disputed that the rule as it now stands which came into force on 22nd February, 1979 reads :

20-A. (1) Tax at the concessional rate under clause (a) of Sub-section (2) or under clause (a) of Sub-section (3) of Section 6 on sales of raw material or incidental goods for the manufacture of tax-free goods or taxable goods as the case may be shall be levied subject to the following restrictions and conditions, namely :--

(v) If in any case it is found that the purchasing registered dealer has given on or after 1st January, 1974 declaration in form XII-A in respect of goods not specified as raw material or incidental goods in his registration certificate, the selling registered dealer shall not be held liable to pay any tax representing the difference between the full rate of tax and the concessional rate of tax. In such a case, the purchasing registered dealer shall be liable to pay a composition fee of rupees one hundred on the payment of which the raw material or incidental goods shall, if the purchasing registered dealer is otherwise entitled to have such goods specified as raw material or incidental goods, be specified in his registration certificate with effect from the earliest date on which he issued a declaration in form XII-A.

This rule clearly provides that if the purchasing registered dealer has given on or after 1st January, 1974 a declaration in form XII-A in respect of goods specified as raw material or incidental goods in his registration certificates, the consequence will follow. It is not in dispute that in the present case the declaration filed by the purchasing dealer which was filed along with the assessment by the assessee petitioner was the declaration under form XII-A and was of a date after 1st January, 1974. Under these circumstances, therefore, this rule will be applicable and there is no question about giving a retrospective operation to this rule. In terms of the language of the rule itself in the facts of the present case this rule will apply and as admitted by learned counsel for the parties in view of the fact that this rule is applicable, it is not necessary for us to go into the Full Bench decision. This rule further provides that "the selling registered dealer shall not be held liable to pay any tax representing the difference between the full rate of tax and the concessional rate of tax." It is, therefore, clear from this language used in this rule that no liability could be fastened against the selling dealer and that is what has been done against the petitioner-assessee by the impugned orders, and therefore, it is clearly in contravention of rule 20-A(I)(v).

7. It is further provided in this rule that "the purchasing registered dealer shall be liable to pay a composition fee of rupees one hundred on the payment of

which the raw material or incidental goods shall, if the purchasing registered dealer is otherwise entitled to have such goods specified as raw material or incidental goods, be specified in his registration certificate with effect from the earliest date on which he issued a declaration in form XII-A". This part of the rule, therefore, fastens a liability on the purchasing dealer for payment of composition fee and it also authorises the authorities to specify the goods in the certificate of registration as provided in this rule. It is therefore clear that in the case in hand the petitioner could not be held liable for payment of the difference of tax between the full rate of tax and the concessional rate of tax and therefore, the order passed by respondent No. 2 dated 24th April, 1979 and the order passed by respondent No. 3 dated 28th May, 1981 could not be maintained.

8. The petition is, therefore, allowed. The orders passed by the two authorities referred to above are hereby quashed. It is further directed that if recovery has been made in pursuance of these orders, the petitioner is entitled to refund of the same. In the circumstances of the case, parties are directed to bear their own costs. Security amount deposited be refunded to the petitioner.