(2014) 07 MP CK 0141

In the Madhya Pradesh High Court

Case No : Tax Reference No. 1 of 2012

Madhya Pradesh APPELLANT

Vs

Maihar Cement Unit No. 2 RESPONDENT

Date of Decision : 02-07-2014

Acts Referred:

Citation : (2014) 07 MP CK 0141

Hon'ble Judges : Rajendra Menon, J;Alok Verma, J

Bench : Division Bench

Advocate : Aditya Adhikari, Learned Counsel, Advocate for the Respondent

Judgement

Rajendra Menon, J.—This is a reference received from the Revenue under Section 70 of the M. P. Commercial Tax Act, 1994 and the substantial question of law as referred for consideration of this Court reads as under :-

?Whether under the facts and circumstance of the case, the Appellate Board was justified in holding that the purchase of raw material during the period of eligibility but not consumed, shall be exempted under Notification No. (112) dated 06.10.94 ??

2. Respondent assessee is a manufacturer of cement and has its establishment in the District of Satna in Maihar where it has set up a new establishment. The assessee was granted exemption under the Madhya Pradesh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976. It is not in dispute that the exemption was granted and was applicable for the period in question for which assessment was made. The assessee brought into the local area certain raw material which was required for manufacturing purpose.

3. In the matter of payment of entry tax on such raw material which entered into the local area, a circular was issued by the State Govt. on 9th February, 1977 wherein in the schedule to the notification for exemption, clause (c) was incorporated which reads as under:-

(c). The manufacturer shall utilise the goods referred to in (a) above and entered into a local area by him for use as raw material, therein, for the specified purpose before the expiry of the period specified in column (2).

(Emphasis supplied)

4. Subsequently, this notification was superseded and a fresh notification dated 6th October, 1994 was issued wherein Clause (1) to (4) of the aforesaid notification reads as under :-

(1). The exemption from payment of entry tax shall be available to the dealers referred to in column (1) against serial numbers 1, 2 and 3 when they enter into a local area, any goods specified in Schedule II and Schedule III appended to the Entry Tax Act for consumption or use as raw material or for use as incidental goods including capital goods in the manufacture of goods or for use in the packing of goods manufactured in their new industrial units or in the expanded capacity of their existing unit.

(2). The goods entered by such dealers into a local area for the purpose specified in (1) above should be specified as raw material or incidental goods in their registration certificate under the Sales Tax Act.

(3). The eligibility to avail of the facility of exemption from payment of entry tax under this notification shall be available to such dealers only when they hold an eligibility certificate for that purpose issued to them by the competent authority in accordance with the provisions in the Annexure.

(4). The facility of exemption from payment of entry tax under this notification shall be available to such dealers in respect of the entry of the said goods into the local area for the aforesaid purchasers purpose during the period of eligibility specified in their eligibility certificate.

(Emphasis supplied)

5. It is seen from the records that in the matter of entry of raw material into the local area, petitioner sought exemption from payment of entry tax available on the purchase made and entry of raw material into the local area during the period when the exemption was available. However, on the ground that the raw material which was brought into the local area was not consumed during the period when exemption was in existence, the assessing officers and the appellate authorities imposed certain tax liability. This liability was imposed in view of the Clause (c) of the circular dated 9th February, 1977 as reproduced hereinabove.

6. However, when the matter went to the Board of Revenue in an appeal, the Board of Revenue found that provisions of Clause (c) of the circular dated 9th February, 1977 has been superseded and in Clauses 1 to 4 of the circular dated 6th October, 1994, there is no requirement with regard to consumption or use of the raw material within the period of exemption. It was held by the Board of Revenue that the only requirement of the circular dated 6th October, 1994 was

that the raw material should be purchased and brought into the local area during the subsistence of the exemption even if it was utilized later on, and, therefore, the matter is decided in favour of the assessee by the Board of Revenue. However, on the request made by the department, the question as indicated hereinabove is referred.

7. Learned counsel for the State Govt. tried to emphasize that the Board of Revenue committed an error in dealing with the matter and in view of the judgments rendered in the case of M/s Radha Kishan Bal Krishna Muchhal Vs. Sales Tax Commissioner, 6 TLD 238 and Siddharth Tubes Ltd. Vs. Commissioner Commercial Tax 26 TLD 164, the exemption was not available to the assessee.

8. Shri Aditya Adhikari, learned counsel appearing for the assessee refuted the aforesaid and pointed out that there is a marked difference in both the circulars. It is emphasized by Shri Aditya Adhikari that in the circular dated 9th February, 1977, clause (c) contemplates a situation where the raw material is not only to brought into the local area but the manufacturer is required to utilize the raw material during the period of exemption. It is said that this specific provision of the notification Annexure R-2 dated 9th February, 1977 mandating the manufacturer to utilize the raw material during the subsistence of the exemption is done away with in the circular Annexure R-1 on 6th October, 1994 and the only requirement as appended in Annexure R-1 goes to show that the raw material has to be purchased and brought into the local area during the subsistence of the exemption but there is no specific provision for utilizing the raw material during the subsistence of the exemption.

9. Shri Aditya Adhikari argues that the question of law proposed does not arise for consideration and on a wrong assumption that the matter is covered by the circular dated 9th February, 1977, a reference is made. He further emphasized that the case of M/s Radha Kishan (supra) and Siddharth Tubes Ltd. (supra) will not apply in the facts and circumstances of the present case because they are based on the interpretation of the circular dated 9th February, 1977 and not to the subsequent circular dated 6th October, 1994. Accordingly, Shri Aditya Adhikari submits that the reference is answered by holding that the substantial question of law does not arise for consideration in this appeal.

10. We have heard learned counsel for the parties and perused the record. As far as factual aspect of the matter is concerned, there is no dispute that the assessee was granted exemption for a period of 5 years and during the period in question for which assessment was made, the exemption was in operation. The raw material in operation was brought into the local area, the only question is as to whether the raw material has to be subjected to entry tax. If the circular dated 9th February, 1977 filed as Annexure R-2 along with the written submission of the assessee is taken note of, it is seen that the Clause (c) of the aforesaid circular clearly mandates that the manufacturer shall utilize the goods referred to and which has entered the local area before the expiry of this period specified in column no. 2 i.e. the period of exemption. It is therefore clear from

the aforesaid provisions of this circular dated 9th February, 1977 that this circular mandates not only purchase and entry of raw material into the local area during the subsistence of the exemption but it also further mandates the manufacturer to utilize it within the period when the exemption is in force. However, when the subsequent circular Annexure R-1 was issued on 6th October, 1994, the provisions of clause (1) to (4) is introduced. If the provision of the circular dated 6th October, 1994 is taken note of, it clearly indicates that the facility of exemption from payment of entry tax under the notification dated 6th October, 1994 is made applicable to such dealers in respect of entry tax if the goods are brought into the local area and the purchase is made during the eligibility period and validity of the eligibility certificate. There is nothing in this circular to show that the goods so brought into the local area should be utilized and consumed during the subsistence of the eligibility period.

11. That being so, we find much force in the objections and submissions made by Shri Aditya Adhikari and we find that the Board of Revenue in its order has rightly interpreted the aforesaid to circulars. After the circular dated 6th October, 1994 came into force, the circular dated 9th February, 1977 is deemed to have been superseded. That apart, the judgments referred to by the State are also pertaining to interpretation of the circular dated 9th February, 1977.

12. In view of the specific provisions and the difference in the wordings of the circular dated 9th February, 1977 and 6th October, 1994, we hold that any raw material entering the local area as specified in the statute during the period when the exemption certificate is in existence is exempt from payment of entry tax and the assessee cannot be denied exemption from payment of entry tax only because the assessee/manufacturer did not utilize the raw material so brought within the period of subsistence of the exemption. The question of utilization of the goods during the period of exemption will not be applicable in all cases where the goods entered into the local area subsequent to issuance of the circular dated 6th October, 1994 and when their exemptions are available after 6th October, 1994, the reference is accordingly answered and this reference is disposed of.

