
(1995) 05 MP CK 0036
In the Madhya Pradesh High Court
Case No : M.P. No. 1135 of 1994 (J)

M.P. Iron and Steel Company	Vs	APPELLANT
State of M.P. and others		RESPONDENT

Date of Decision : 10-05-1995

Acts Referred:

Entry Tax Act, 1976 — Section 3(2)

Citation : (1997) 1 MPJR 237

Hon'ble Judges : R.S. Garg, J;A.K. Mathur, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari and V.S. Dabir, for the Appellant; S.K. Seth, Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

A.K. Mathur, J.

The petitioner by this petition has prayed that provisions of section 3 (2) of the Entry Tax Act and the notification issued by the State Government thereunder purporting to levy Entry tax on the factory building material, plant and machinery of the petitioner company may be declared ultra vires and unconstitutional and it may be held that the legislation is beyond legislative competence of the State Legislature. It is further prayed that the order passed by the Assistant Commissioner, Sales Tax Gwalior dated 25.2.1994 (Annexure-F) may be quashed.

The petitioner is a steel manufacturing unit situated in Industrial Area, Malanpur, district Bhind of Hindustan Development Corporation Ltd., a company registered under Companies Act having its registered office at 27, Sir R.N. Mukherjee Road, Calcutta.

The Government of India declared a policy for industrial development in the backward area in various States. A Growth Centres were established in various states, including State of M.P. A Growth Centre was established at Malanpur,

district Bhind in the State of Madhya Pradesh. In pursuance of the aforesaid policy of the Central Government, the State Government acquired the land in village Malanpur in the interior of Bhind district where there are no facilities even the rail head is at a distance of more than 30 kms i.e. Gwalior. The petitioner company has set up building, machinery and plant for which Iron, Steel and Cement machinery etc, was brought in the industrial estate from outside State at also by local purchase. The factory has been constructed and has been commissioned from 25.3.1993. The petitioner submits that the State Government has notified Malanpur as Growth Centre vide notification issued on 26.8.1993 published in M.P. Rajpatra on 16.8.1993. By this, the Growth Centre has been given retrospective effect from 10.9.1987. The petitioner submitted that the area of Growth Centre is administered by the authority of the Growth Centre itself i.e. the M.P. Audyogic Vikas Niagam and the authorities under Municipal or Panchayat have neither the duty to provide facilities to the inhabitants therein nor they maintain the civic administration in that area. It is alleged that the petitioner company is a dealer within the meaning of the Central Sales Tax Act of 1956 as also under the M.P. General Sales Tax, 1958 vide registration dated 28.3.1989 and registration dated 28.3.1989 at Gwalior where the petitioner company submits required returns as prescribed under the Sales Tax Laws and the Entry Tax. It is alleged that there is an Act known as M.P. Sthaniya Kshetra Me Mal Ke pravesh Parkar Adhiniyam, 1976 Act No. 52 of 1976. (hereinafter referred to as the Entry Tax Act, 1976.) According to this, all the goods which are brought within the local area are subject to entry tax. The grievance of the petitioner is that this Growth Centre is a local area as defined in section 2 (e) and the petitioner company is not entitled to pay the entry tax for the goods brought within the local area. The Growth Centre does not fall in the local area as defined in section 2 (d) of the Act. Therefore, the assessing authority, under the Act, had no jurisdiction to assess the petitioner for liability under the Entry Tax. It is submitted that since these goods are capital goods which are brought by the company for the purpose of establishing the factory. Therefore, the entry 86 of the Union List of the VII Schedule of Constitution shall govern and the State has no power to impose tax. Next it is submitted that the notification issued u/s 3 (2) (b) (Annexure-F) was not placed before the floor of the Legislative Assembly. Therefore, it cannot be implemented. Lastly, Assistant Commissioner, Sales Tax was not competent to assess the petitioner company as he had no jurisdiction.

A return has been filed by the respondent/State and the respondents denied the allegation and has taken the position that the Act is within the competence of the State Legislature and in exercise of the power conferred under Entry No. 52 of the State List of VII Schedule of Constitution clearly covers this impost. It is pointed out that in the M/s. Sanjay Trading Co. Vs. The Commissioner of Sales Tax and others M.P. No. 22839/89, decided on 10.2.1994 this impost has been upheld. It is submitted that the local area is defined u/s 2 (d) and no goods can enter in the local area without paying entry tax. It is submitted that local area

falls within the Gram Panchayat, Malanpur, district Bhind and Growth Centre is not local area. So far as the competence of the Assistant Commissioner, Sales Tax, Gwalior is concerned, it is alleged that the Assistant Commissioner, Sales Tax is competent as this area falls within his jurisdiction. Lastly, it is submitted that placing a notification before the State Legislature is not mandatory and it is directory.

In order to examine the contentions of the rival parties, it is necessary to refer to the provisions of the Entry Tax Act, M.P. General Sales Tax Act, and the provisions of the Constitution.

Learned counsel for the petitioner has submitted that the entry tax is covered by entry 86 of the List-I i.e. Union list of 7th. Schedule, therefore, the State Legislature is not competent to legislate on the subject. The contention of the learned counsel is misconceived. Entry 86 deals with taxes on the capital value of the assets of the company and it has nothing to do with the goods which are brought by the company for establishing the factory, the capital value of the assets will only arise after the factory is established. Then the total value of the assets will be assessed. Therefore, the entry 86 has nothing to do with the goods which entered for the local area for the use, sale or consumption. The contention is absolutely misconceived. Simply the goods or the machinery of high valuation, are brought in the local limit mat will not amount to capital value of the assets. The assets will only arise after all the goods are brought in the local area and the factory is raised, then only the assets of the value will arise, simply brings the part of the factory for raising the factory in the local area, will not amount to capital assets. Till all parts of the factory are assembled and factory is raised, it will not be capital asset. The each part brought within local area will be goods for consumption in local area. Therefore, the entry 52 of the State List of the 7th Schedule of the constitution which lays down that the entry tax will be leviable on the goods brought within the local area for use, sale or consumption shall govern and not the entry 86. The incidence of taxation under entry 52 of the II list of VII Schedule of the Constitution is entry of goods in the local area which is vastly different from the entry 86 which deals with the taxation of the capital value of the assets of the company. Hence, we are not impressed by the argument and the same is overruled.

Next question that arises for consideration whether Growth Centre is the local area or not. The local area has been defined in section 2 (d) which read as under :-

"local area" means the area comprised within the limits of a local authority.

Apart from this, it is revelant to mention that definition of local authority is u/s 2 (e), which reads as under :-

"local authority" means an authority constituted under a law relating to local authority but shall not include a Janapada Panchayat, a Zila Panchayat, a Mandal Panchayat or such other local authority as the State Government may, by

notification, specify ;

Law relating to local authority is defined u/s 2 (c) which read as under :-

"Law relating to local authority" means the Cantonment Act 1924 (No. 2 of 1924) the Bhopal State Town Area Committee Act, 1954 (No. 25 of 1954). The Madhya Pradesh Municipal Corpn. Act, 1956 (No. 23 of 1956), the Madhya Pradesh Municipalities Act, 1961 (No. 37 of 1961). The Madhya Pradesh Panchayat Act, 1962 (No. 7 of 1962) or the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 (No. 23 of 1973) the case may be.

Therefore the local area means the area which falls within the territory of any local authority. Local authority is created under the law relating to local authority that can be under the Cantonment Act or it can be M.P. State Town Area Committee under the Municipal Act or it can be Panchayat Act. It is, therefore clear that the local area has to be declared by any of local laws. It is only under this local enactment, any local area can be defined. The local authority, which has been constituted under the Panchayat Act like Janpad Panchayat, Zila Panchayat, Mandal Panchayat, they have been excluded from local authority. A power has been conferred on the State that the State can exclude any local authority by issuing a notification to this effect. Therefore, by virtue of section 2 (e) what is excluded in the definition of local authority is Janpad Panchayat, Zila Panchayat, and Mandal Panchayat but the Gram Panchayat, Malanpur which within jurisdiction this industry falls has not been excluded from operation of this Act. Therefore, moment the petitioner company brings the goods within the local area, then they are subject to entry tax. The contention of the learned counsel that the Growth Centre has been established by the State and be treated as local authority and Act is not applicable is not correct. The submission of the learned counsel is absolutely misconceived for the reasons that the local authority has been defined in section 2 (e) and the law relating to local authority has been defined in section 2 (c) and the local authority can only be declared under the laws which has been mentioned in section 2 (c).

This Growth Centre has been established under any law relating to local authority, therefore, the so-called establishment of Growth Centre cannot be treated to be local authority and the contention is absolutely misconceived. Learned counsel also invited our attention to Bhojraj Vs. State of M.P. 1958 MPLJ 459 and Irrawaddy Flotilla Company Vs. Bugwandass The law Reports-Indian Appeal - 121. The decisions given in these cases are not relevant.

It was contented by the learned counsel for the petitioner that the gram Panchayat is a part of the Zila Panchayat and larger area has been excluded, therefore, the smaller area like Gram Panchayat which is the part of the Janpad Panchayat automatically stand excluded. This contention of the learned counsel is absolutely misconceived. Gram Panchayat is created under the Panchayat Act which is a statutory body itself. It is not the Part of the Janpad Panchayat, under the Panchayat Act. There is three tier system and the lowest level is the Gram

Panchayat as mentioned in the Act i.e. Gram Sabha at the Village level which is constituted of village or group of villages, which has also statutory function to perform. It is not a part of Janpad Panchayat. It is an independent statutory body and it has its own functions under the Act. It is wrong to contend that it is a part of the Janpad Panchayat. It cannot be said to be a part of the Janpad Panchayat. Elected representatives of the Gram Panchayat has its own statutory functions. Therefore, it is wrong to say that since the larger body has been excluded, therefore, Gram Panchayat, automatically stands excluded.

Learned counsel next submitted that the notification issued u/s 3 (2) (b) (Annexure-F) should have been placed before the floor of the State Assembly required u/s 3 (2) (c), of the Act. In reply filed by the State a stand has been taken that this provision is a directory and not mandatory, in support of which, they have invited our attention to a decision of the Hon'ble Supreme Court in V.C. Shukla and Others Vs. State (Delhi Administration), as under :-

As we read the section, we are clearly of the opinion that its provisions are purely directory and not mandatory so that if the condition mentioned in it are not fulfilled the declaration would not be vitiated. It is to be noted that the section does not say that until a declaration is placed before the two Houses of Parliament, it shall not be deemed to be effective, nor does the section intend that any consequence would result from its non-compliance, more-over, the matter is no longer res integra and is concluded by several decisions of this Court, the most recent of them being Atlas Cycle Industries Ltd. and Others Vs. The State of Haryana, , where this Court observed -

Thus, two considerations for regarding a provision as directory are (1) absence of any provision for the contingency of a particular provision not being complied with or followed, and (2) serious general inconvenience and prejudice that would result to the general public if the act of the Government or an instrumentality is declared invalid for non-compliance with the particular provision...

.. ...

In the instant case, it would be noticed that sub-section (6) of section 3 of the Act merely provides that every order made u/s 3 by the Central Government or by officer or authority of the Central Government shall be laid before both Houses of Parliament, as soon as may be, after it is made. It does not provide that it shall be subject to the negative or the affirmative resolution by either House of Parliament. It also does not provide that it shall be open to the Parliament to approve or disapprove the order made u/s 3 of the Act. It does not even say that it shall be subject to any modification which either House of Parliament may in its wisdom think it necessary to provide. It does not even specify the period for which the order is to be laid before both Houses of Parliament nor does it provide any penalty for non-observance of or non-compliance with the direction as to the laying of the order before both Houses of Parliament. It would also be noticed that the requirement as to the laying of the

order before the both Houses of Parliament is not a condition precedent but subsequent to the making of the order. In other words, there is no prohibition to the making of the orders without the approval of both Houses of Parliament. In these circumstances, we are clearly of the view that the requirement as to laying contained in sub-section (b) of section 3 of the Act falls within the first category, i.e. "simple lying" and is directory not mandatory.

Thus, this contention of the learned counsel has no merit in view of the law laid down by the Hon"ble Supreme Court that non-compliance of placing notification u/s 3 (2) (c) will not vitiate the notification.

Last contention of the learned counsel is regarding competence of the assessing authority. Under Entry Tax Act, machinery for assessment of the tax is same as created under the M.P. General Sales Tax Act, 1958. Rule 11 -B of the Entry Tax Rules reads as under :-

11-B. Authority and the manner for assessment of tax under sub-section (2) of section (3) - Tax under sub-section (2) of section 3 shall be assessed by the Sales Tax Officer appointed u/s 3 of the Sales Tax Act having jurisdiction over the local area in which the person liable to payment of tax u/s 3 (2) effects entry of goods in the manner prescribed under the sales Tax Act and the Sales Tax Rules for a dealer.

According to this rule, it says that the Sales Tax Officer shall have the jurisdiction to assess the tax under the provisions of section 3 (2) of the Entry Tax Act. Therefore, the Sales Tax Officer appointed under the M.P. General Sales Tax Act, alone has jurisdiction to assess and levy the tax. In the present case, the tax has been assessed and levied by the Assistant Commissioner (I) Gwalior. He is not an authority to levy and collect the tax, though under M.P. General Sales Tax Act, he is the authority who can collect tax as he is one of the taxing authorities but the Sales Tax Officer is also empowered in the area under the Sales Tax Act to collect the tax. Since taxing statute has to be strictly construed and authority to collect the tax has been conferred under the Rules on Sales Tax Officer, then he alone can assess the tax and not the Assistant Commissioner, Sales Tax. Though the Assistant Commissioner Sales Tax is also an authority created under the provisions of sec. 3 of the Act but no power of assessment, collection has been conferred on him, therefore, the Sales Tax Officer concerned, alone has jurisdiction to assess the taxing liability. In the present case, the tax has been assessed by the Assistant Commissioner, Sales Tax who has no authority, therefore, the assessment order passed by the Asstt. Commissioner Sales Tax (Annexure-F) is without jurisdiction.

Hence, we allow the petition in part and set aside the order (Annexure-F), the assessment order passed by the Assistant Commissioner, Sales Tax, Gwalior and direct that the Sales Tax Officer area concerned, alone shall have the jurisdiction to assess the entry tax liability of the petitioner. It will be open for the Sales Tax Officer area concerned to impose the liability of the petitioner of the entry tax

and proceed in accordance with law. No order as to costs.