

(1987) 06 MP CK 0009

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 1687 of 1983

M.P. Shoe House

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 26-06-1987

Acts Referred:

Madhya Pradesh General Sales Tax Act, 1958 — Section 12(1)(i)

Citation : (1987) 67 STC 427

Hon'ble Judges : N.D. Oza, C.J.;C.P. Sen, J

Bench : Division Bench

Advocate : B.L. Nema, for the Appellant; The Advocate-General, for the Respondent

Final Decision : Allowed

Judgement

N.D. Ojha, C.J.—This order shall govern the disposal of Miscellaneous Petition No. 3160 of 1985 (Lucky Boot House, Katni v. State of M. P. and Ors.) and Miscellaneous Petition No. 3291 of 1986 (Suresh Shoe Emporium, Satna v. State of M. P. and Ors.) also.

2. A Notification F. No. A-3-16-81(12) ST-V, dated 7th April, 1981, was issued in exercise of the powers conferred by Clause (i) of Sub-section (1) of Section 12 of the M. P. General Sales Tax Act, 1968 (hereinafter referred to as "the Act"), by the State Government exempting from payment of tax the sales of the class of goods specified in column (1) of the schedule given below the notification, to the extent specified in column (2), for the period specified in column (3) of the said schedule, subject to the restrictions and conditions specified in column (4) thereof. Item 1, mentioned in the schedule, in the category of class of goods, is shown as "footwear made of rubber or plastic". The whole of tax u/s 6 of the Act is shown the extent of exemption in column (2), whereas the period of exemption in column (3) is stated to be from 1st April, 1981, to 31st March, 1982 (both days inclusive). We are informed that this period has been enhanced from time to time. In column (4), containing restrictions and conditions, subject

to which exemption is granted, is stated "when sold by a dealer registered under the M. P. General Sales Tax Act, 1958 (No. 2 of 1959), who deals exclusively in footwear made of rubber and/or plastic and the sale price of such footwear does not exceed rupees ten per pair". The prayer contained in the three writ petitions, which are being decided by this order, is that the word "exclusively", occurring in column (4) of the notification, referred to above may be quashed, inasmuch as it is arbitrary and indeed contrary to the purpose for which the exemption was granted. According to the learned counsel for the petitioners, there is no nexus with the purpose sought to be achieved in the use of the word "exclusively". For the respondents, it was urged by the learned Advocate-General that grant of exemption u/s 12 is a matter of policy decision to be taken by the State Government and can be availed of only in the manner specified in the notification granting exemption.

3. Having considered the respective submissions of the learned counsel for the parties, we are of opinion that even though it is true that under Sub-section (1) of Section 12 of the Act, the discretion to grant exemption with reference to class of dealers or any goods or class of goods lies with the State Government, but it also, in our opinion, is equally true that if the conditions or restrictions, which have been placed in the matter of grant of exemption, which militate against the purpose for which exemption has been granted and have indeed the effect of defeating that purpose to a large extent, they cannot be upheld, if no reasonable justification is forthcoming for introducing such restrictions or conditions, which indeed render it arbitrary. Sub-section (1) of Section 12 of the Act read as hereunder:

12. 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, in whole or in part-

(i) any class of dealers or any goods or class of goods 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 the Act for such period as may be specified in the notification;

(iii) any turnover in relation to any goods or class of goods or in relation to any dealer or class of dealers from the payment of additional tax under this Act for such period as may be specified in the notification.

(2)...

Clause (i) of Sub-section (1) of Section 12 indicates that exemption from payment of tax under the Act can be in respect of either (a) any class of dealers, or (b) any goods or class of goods. No one has a vested right for claiming exemption and it is in the discretion of the Government to grant exemption or withdraw any exemption that has been granted earlier. However, once the Government, in its discretion, decides to grant exemption to a class of dealer,

even though the dealers not falling within that class may not be able to claim exemption on the ground that it is discriminatory, the persons falling in the same class, for the benefit of whom exemption has been granted, can certainly challenge the conditions or restrictions which may work out discrimination between dealers of the same class. Likewise, if exemption is granted with reference to any goods or class of goods and it is apparent from the notification itself that the exemption was granted for the benefit of a category of consumers and any condition or restriction is placed which has the effect of depriving the persons falling under that category, such condition or restriction can be challenged on the ground that it is arbitrary and defeats the purpose for which exemption with regard to goods or class of goods concerned was granted. Even from the plain language of the impugned notification, in the instant case, it is apparent that the exemption from payment of tax has not been granted to a class of dealers but has been granted in respect of a class of goods, namely, footwear made of rubber or plastic, the sale price of which does not exceed Rs. 10 per pair.

4. It has been urged by the learned counsel for the petitioners that on reading the notification as a whole, there seems to be no doubt that the purpose of granting exemption was for the benefit of the consumers, who could not afford to purchase footwear of price exceeding Rs. 10 per pair. It was urged by him that the purpose given in the notification is not in doubt even from the language of the notification. In the alternative it is urged that in case there is any doubt in regard to the purpose of issuing the notification, reference may be made to the budget speech of the Law Minister in regard to the 1981-82 budget, which supports the submission that the exemption was granted for the benefit of the poor persons. In this connection, the learned counsel for the petitioners has brought to our notice, para 63 of Part II of the speech. The relevant portion of the speech, translated in English, is to the effect that this year the Government has decided to exempt from sales tax footwear made of rubber or plastic, the value whereof does not exceed Rs. 10 and which are used by poor labourers. The use of the word "exclusively" in column (4) containing restrictions and conditions subject to which exemption is granted, has the effect of defeating the purpose of granting exemption to a large measure. Even in big cities such dealers, who may be exclusively dealing footwear made of rubber and/or plastic alone will not be considerable but indeed would be sparse. In most of the villages, on the other hand, it would be a more worse position, to have such dealers who may be exclusively selling footwear made of rubber or plastic. Normally in villages where provision is made for the poor labourers and other poor persons, there are small shops containing all necessary items; which are used by such persons. These dealers will obviously not fall under the category of dealers, who deal exclusively in footwear made of rubber or plastic.

5. Consequently, if a poor labourer, for whose benefit exemption has been granted, has to purchase a footwear in regard to which exemption has been granted, from one of such shops, he will have to pay sales tax, inasmuch as the

dealer from whom he purchases it is not a dealer exclusively in footwear made of rubber and plastic. To find out such a dealer the poor labourer may have to travel to the city and in the process may have to spend much more than the amount of sales tax, the exemption of which has been granted. The purpose sought to be achieved by the notification, on the other hand, could have been served completely had the word "exclusively" not been used in column (4) of the notification. Since the notification, on the face of it appears to be with reference to the class of goods and not with reference to any particular class of dealers, the emphasis which seems to have been placed on the class of dealers in column (4), obviously seems to be misplaced. Indeed, the State Government itself seems to have subsequently realised that the use of the word "exclusively" in column (4) of the impugned notification had the effect of defeating the purpose of grant of exemption. As is apparent from annexure-C to the rejoinder, it has issued another notification being Notification F. No. A-3-7-1986 (22)-ST-V, dated 20th March, 1986. By this notification, footwear made of rubber or plastic the price whereof does not exceed Rs. 60 per pair and straps of chappals made of rubber or plastic have been completely exempted from payment of sales tax under Sub-section (1) of Section 6 of the Act. In view of the foregoing discussion we are of opinion that use of the word "exclusively" in column (4) of the notification has absolutely no nexus with the purpose sought to be achieved by the aforesaid notification and since no justification whatsoever for use of that word is forthcoming the same is arbitrary and deserves to be quashed.

6. In the result, all these three writ petitions succeed and are allowed to this extent that the word "exclusively" used in column (4) of the impugned notification dated 7th April, 1981, is quashed. There shall be no order as to costs. The security amount be refunded to the petitioners.