(2014) 04 MP CK 0005

In the Madhya Pradesh High Court

Case No : W.P. (T) No. 12492/2008

M/s. Birla Corporation Ltd. APPELLANT

Vs

Assistant Commissioner and Others RESPONDENT

Date of Decision : 28-04-2014

Acts Referred:

Citation : (2014) 04 MP CK 0005

Hon'ble Judges : Rajendra Menon, J;Anil Kumar Sharma, J

Bench : Division Bench

Advocate : Mukesh Agrawal, Learned Counsel, Advocate for the Appellant; Rahul Jain, Learned Dy. Advocate General, Advocate for the Respondent

Final Decision : Allowed

Judgement

1. Challenging the impugned order Annexure-P3 dated 8.2.2008, whereby entry tax on a plant and machinery is being imposed, this writ petition has been filed.

2. Petitioners have established a Cement Plant in the District of Satna and the plant has become functional. It is said that the material brought into the area for construction of plant and machinery is being subjected to entry tax and, therefore, challenging the same, this writ petition has been filed after the orders of the Assessing Officer and the Revisional Officer went against the petitioner.

3. It is the case of the petitioner that as the material in question namely, plant and machinery and other raw material mainly, machinery was brought into the local area for expansion purposes of the industrial unit and for upgradation of the boilers of the captive power plant, required for generation of power through captive power plant in the expanded industrial unit, the entry of the material for the said purpose in the local area cannot be subjected to entry tax. In support of the aforesaid contention, reliance is placed in the case of National Thermal Power Corporation Ltd. Sidhi Vs. Addl.

W.P.(T) No. 12492/2008

4. Commissioner, Commercial Tax, Jabalpur & Ors. 2004 (3) STJ 670. That apart, another judgment of this Court in the case of Commissioner of Sales Tax, MP Vs. Universal Cables Ltd., Satna 2007 (11) STJ 307 has been relied upon in support of the aforesaid contention.

5. We have considered the rival contentions and we found that in the judgment rendered in the case of NTPC (Supra) and Commissioner of Sales Tax (Supra), the principles have been clearly laid down and in Paragraph-5 of the judgment rendered in the case of NTPC (Supra), the findings recorded reads as under:

5. In view of the aforesaid enunciation of law it becomes quit vivid that the items which are transported into the area before the commencement of production are not liable to entry tax. In the present case, the plant and machinery were brought before the commencement of generation of power, and, therefore, they cannot be made liable to entry tax. In view of the aforesaid principles the view expressed by the Additional Commissioner is not correct and the findings recorded by him is liable to be set aside to that limited extent, and accordingly, I do so, it is further directed that the assessing officer shall proceed in accordance with law.

6. From the aforesaid, it is clear that if the material in question, which is being subjected to entry tax is brought into local area for the purpose of expansion and up-gradation of the already existing unit, then the same is not subjected to entry tax.

7. In view of the above, as the entry tax in the present case is being levied for the purpose of expansion and upgradation of the already existing unit, the imposition of tax is unsustainable. Accordingly, the petition is allowed. The order impugned Annexure-P3 dated 8.2.2008 levying entry tax is quashed.

8. The petition is allowed and disposed of.

9. Certified Copy as per rules.

