(2014) 05 MP CK 0143

In the Madhya Pradesh High Court

Case No : W.P. No. 8965/2013

M/s. Marvel Vinyls Ltd. APPELLANT

Vs

State of M.P. and Others RESPONDENT

Date of Decision : 06-05-2014

Acts Referred:

Central Sales Tax Act, 1956 — Section 8, 8(1), 8(4), 8(5)
Companies Act, 1956 — Section 62(3)
Constitution of India, 1950 — Article 301

Citation : (2014) 72 VST 283

Hon'ble Judges : S.K. Gangele, J;B.D. Rathi, J

Bench : Division Bench

Advocate : Ankur Mody, Advocate for the Appellant; Raghvendra Dixit, Government Advocate for the State, Advocate for the Respondent

Judgement

1. The petitioner has filed this petition against the order dt. 05.09.2013 (Annexure P/1).

2. Return has been filed by the respondents and as submitted by the counsel for the petitioner that the matter has been covered by the decision of Allahabad High Court, hence, with the consent of the parties, the petition is disposed of finally at motion hearing stage.

3. The petitioner is a company incorporated under the Companies Act. The petitioner was granted exemption initially. Earlier the Assistant Commissioner, Commercial Tax granted benefit to the petitioner vide order dt. 30.11.2005, however, the matter was taken in suo motu revision and a show cause notice was issued to the petitioner u/s 62(3) of the Act that why a tax of Rs. 34,86,955/- with penalty and interest be not imposed against the petitioner in regard to liability of the petitioner for payment of tax of the assessment year w.e.f. 1.4.2002 to 31.3.2003. It was mentioned in the show cause notice that the petitioner did not submit "C" form, hence, in view of amendment dt. 13.5.2002 in Section 8(5) of CST Act, the petitioner was not eligible to get exemption from

payment of tax. The revisional authority did not agree with the reply of the petitioner and imposed a tax liability. Against the aforesaid order, the petitioner filed a writ petition before this court. It was registered as W.P. No. 339/2012 and the same was disposed of vide order dt. 3.4.2013 with the following directions:-

Hence, the petition is disposed of with the following direction:

The impugned order dated 21st December 2010 is hereby quashed. The Revisional Authority is directed to consider the eligibility of the petitioner for set off in accordance with the exemption granted to the petitioner vide Annexure P/3.

The petition is disposed of with the aforesaid.

4. In pursuance to the remand order, the revisional authority again passed the order dt. 5.9.2013 (Annexure P/1). The aforesaid order is under challenge in this writ petition.

5. The petitioner pleaded that even though he did not submit "C" form in that circumstances also the petitioner was eligible to get the benefit of tax exemption in view of the exemption certificate issued in favour of the petitioner by the appropriate government.

6. The question for consideration before this court is that even the petitioner did not submit "C" form, whether the petitioner is liable to get exemption from payment of tax within the capex limit in accordance with exemption certificate issued in favour of the petitioner.

7. The department vide notification No. A-3-24-94-STV(108) dated 6.10.1994 announced tax exemption policy to encourage investment in backward districts. The petitioner submitted an application for exemption from tax and he was found eligible to get benefit of tax exemption facility from the date of commencement of commercial production to the extent of cumulative quantum of tax payable by him under the M.P. GST, Act, 1958 and the CST, Act 1956 upto 250% of the capital investment in fixed assets Rs. 621.00 lakhs for a period of 9 years i.e. 10.08.99-09.08.2008 or at an earlier date on which this cumulative quantum of tax is achieved or utilized. This is not in dispute.

8. Section 8 of the Central Sales Tax Act, 1956 (hereinafter referred to the ''CST Act'') prescribes rates of tax on sales in the course of inter-State trade or commerce. Section 8(5) of the Act gives power to the State Government to give exemption from payment of tax to any dealer having business of place in the State of M.P. The relevant provision is as under:-

(5) Notwithstanding anything contained in this Section, the State Government may on the fulfillment of the requirement laid down in sub-section (4) by the dealer, if it is satisfied that it is necessary so to do in the public interest, by notification in the Official Gazette, and subject to such conditions as may be specified therein, direct,-

(a) that no tax under this Act shall be payable by any dealer having his place of business in the State in respect of the sales by him, in the course of inter-State trade or commerce to a registered dealer, from any such place of business of any such goods or classes of goods as may be specified in the notification, or that the tax on such sales shall be calculated at such lower rates than those specified in sub-section (1) as may be mentioned in the notification;

(b) that in respect of all sales of goods or sales of such classes of goods as may be specified in the notification, which are made, in the course of inter-State trade or commerce to a registered dealer, by any dealer having his place of business in the State or by any class of such dealers as may be specified in the notification to any person or to such class of persons as may be specified in the notification, no tax under this Act shall be payable or the tax on such sales shall be calculated at such lower rates than those specified in sub-section (1) as may be mentioned in the notification.

9. Section 8(4) of the CST Act prescribes that the dealer has to submit a declaration that the goods are sold containing the prescribed particulars. The relevant provision is as under:-

(4) The provisions of sub-section (1) shall not apply to any sale in the course of inter-State trade or commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority:

Provided that the declaration is furnished within the prescribed time or within such further time as that authority may, for sufficient cause, permit.

10. If a dealer does not furnish the particulars alongwith "C" form as required u/s 8(4) of the CST Act, then the dealer is liable to pay tax @ 10 %, however, if a dealer furnishes "C" form, then the dealer is liable to pay the tax @ 4%.

11. It is clear from the provisions that if a dealer furnishes "C" form with particular declaration, then it is liable to pay tax @ 4%, however, this does not mean that if the dealer does not furnish "C" from, then he would not be liable to get the facility of exemption from payment of tax, which was granted to the dealer in accordance with the notification issued by the Government on the ground that the industry was established in backward area.

12. Admittedly, the petitioner was granted exemption from payment of tax with certain capex for a period of 9 years or on an early period when the exemption limit be achieved on the ground that the petitioner had established industry in a backward area.

13. Division Bench of Allahabad High Court in a judgment passed on 1.9.2010 in Civil Misc. Writ Petition No. 1446/2006 (M/s. Yamaha Motor Exports Limited Vs. State of U.P. and others and other connected writ petitions has considered the similar question to the effect that whether the assessee is eligible to get

adjustment set off of the tax quantified u/s 8(1) of the CST Act from the monetary limit of the exemption mentioned in accordance with the eligibility certificate granted to the assessee u/s 4-A of the U.P. Trade Tax Act for the relevant assessment year even the assessee did not furnish "C" form. After considering the provision, the Division Bench has held as under:-

We do not find substance in the submission of Shri S.P. Kesarwani made on behalf of the State-respondents that if the reduced rate of tax is not allowed for not production of Form C/D after 13.5.2002, the higher rate of tax will not be permissible to be set off from the limits prescribed under the eligibility certificate u/s 4-A of the U.P. Trade Tax Act. The rate of tax has nothing to do with the amount of tax benefit under the Eligibility Certificate. The incentive to be given to the industry, for the limit worked out, for specified period on graded basis is not linked to the rate of tax on the manufactured products. We may further observe that non production of Form C/D will not make the interstate transaction illegal or void. It will only result into denying the manufacture the benefit of reduced rate of tax. If we accept the argument of Shri S.P. Kesarwani, the requirement of producing Form C/D after 13.5.2002, to qualify for reduced rate of tax will become violative of Act under Art. 301 of the Constitution of India.

We, therefore, hold that, whereas the amendment to the Central Sales Tax Act by Finance Act No. 20 of 2002 published on 13.5.2002, are valid and do not suffer from any vice of discrimination, and also do not violate principle of promissory estoppel qua the petitioner, the higher rate of tax payable for non compliance of the amended provisions of Section 8(5) namely non production of Form C/D, cannot be taken to be a ground to deny the set off of such higher rate of tax from the limits prescribed in the eligibility certificate u/s 4-A of the Trade Tax Act, subject to other conditions namely the maximum limit fro particular year or period and maximum amount for which such exemption is provided.

14. The court has clearly held that even if the dealer did not submit "C" form, then in that circumstances also he is eligible to get benefit of set off in accordance with eligibility certificate within the limit of higher rate of tax. We are in agreement with the reasonings assigned by the Allahabad High Court.

15. From the reading of Section 8(4) and (5) of the CST Act, it is clear that if a dealer does not furnish "C" form, then he is liable to pay tax higher rate and the exemption certificate issued to petitioner grants immunity to the petitioner from payment of tax within capex limit for a certain period. That facility can not be withdrawn and it can not be held that the petitioner is not eligible to get the set off because the petitioner did not submit "C" form.

16. Hence, the petition is allowed. The impugned order dt. 05.09.2013 (Annexure P/1) is hereby quashed. It is held that the petitioner is eligible to get set off in accordance with the exemption certificate within the capex limit at the higher rate of tax, which was applicable to the petitioner because he did not produce "C" form. The authority may calculate and fix the tax liability of the

petitioner accordingly, if any, within the capex limit in accordance with the exemption notification.

No order as to costs.

