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**(2014) 01 MP CK 0042**  
**In the Madhya Pradesh High Court**  
**Case No : Writ Petition No. 2024 of 2008**

N.T.P.C. Ltd.

APPELLANT

Vs

State of M.P.

RESPONDENT

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**Date of Decision :** 08-01-2014

**Acts Referred:**

**Citation :** AIR 2014 MP 93

**Hon'ble Judges :** Rajendra Menon, J;A.K. Sharma, J

**Bench :** Division Bench

**Advocate :** H.S. Shrivastava, Learned Sr. Advocate and Sandesh Jain, Advocate for the Appellant; Devashish Sakalkar, Advocate for the Respondent

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## Judgement

1. Challenging the order Annexure P-8 dated 28.11.2007 passed by the Assistant Commissioner, Commercial Tax, Satna imposing liability of Rs. 4,67,03,347/- by way entry tax, this writ petition has been filed by the petitioner. Petitioner company has established a Thermal Power Project at Vindhya Nagar, Sidhi. The project has been established after due approval from the Government of India for the assessment year 01.04.1997 to 31.03.1998 and the entry tax in question has been imposed. It is the case of petitioner that during this period for the purpose of establishment of their second phase certain construction activities were going on and for the purpose of this construction plant and machineries for setting up of the power house were purchased and were brought into area in question for which entry tax has been imposed.

2. Placing reliance on a judgment already rendered in the case of present petitioner National Thermal Power Corporation Ltd., Sidhi v. Additional Commissioner, Commercial Tax, Madhya Pradesh and Others, (2001) 34 VKN 90, Shri H.S. Shrivastava, learned senior counsel points out that for the purpose of erection of second phase of industry if building material or other material are brought into the local area and the material is used for the purpose of erection and production of industry, then entry tax on the product cannot be imposed.

3. Even though respondents have filed the reply, the only objection raised by the respondents is with regard to existence of statutory remedy of revision or appeal.

4. Shri H.S. Shrivastava, learned senior advocate points out that the order was passed by the re-assessment proceedings has been rejected by the revisional authority and, therefore, the objection is unsustainable.

5. Be that as it may be. Once the question of law involved in the matter is decided by a Bench of this Court between the same parties, it is not appropriate to re-litigate the matter and the petitioner to take recourse of remedy available. On the contrary, it is thought appropriate to take note of the law laid down in the case of N.T.P.C. (supra) relied upon by Shri H.S. Shrivastava, senior advocate, filed as Annexure P-3 and the writ petition in the said case also when the petitioner's establishment brought certain plants and machineries to the local area for erection of a new plant in the unit by way of extension of already existing unit. It seems that entry tax was charged with the material so brought and the question came to this Court in the writ petition, as indicated hereinabove, after taking note of the principle laid down in various cases as are referred to in para No. 4 of the said judgment. In Para No. 5, the following findings are recorded by the writ Court:

5. In view of the aforesaid enunciation of law it becomes quite 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 finding 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.

From the aforesaid findings, it is clear that petitioners are not liable to pay any entry tax for the material imported into local area for the purpose of erection of plant and machinery and brought for extension. In view of same, imposition of entry tax is unsustainable and the question of law involved in the matter having already been covered in the case of N.T.P.C. (supra), we see no reason to take a different view.

Accordingly, the impugned order Annexure P.8 dated 28.11.2007 is quashed and the writ petition is allowed and disposed of with the aforesaid.