
(2001) 11 MP CK 0017
In the Madhya Pradesh High Court
Case No : Writ Petition No. 208 of 1996

Panam Packers (P) Ltd.

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 21-11-2001

Acts Referred:

Madhya Pradesh General Sales Tax Act, 1958 — Section 6(1), 8(1)
Madhya Pradesh General Sales Tax Rules, 1959 — Rule 20C

Citation : (2002) 128 STC 517

Hon'ble Judges : A.M. Sapre, J

Bench : Single Bench

Advocate : A.M. Mathur and V.P. Saraf, for the Appellant; S. Mukati, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Sapre, J.—By this petition filed under Article 226/227 of the Constitution of India, the petitioner has assailed the order dated July 17, 1995 (annexure P/5) and order dated July 17, 1995 (annexure P/5-A) passed by the revisionary authority u/s 39(1) of the M.P. General Sales Tax Act, 1958 (for short, "the Act") (since repealed) arising out of an assessing order dated February 10, 1994 and August 26, 1993 for the period (April 1, 1989 to March 31, 1990) and (April 1, 1990 to March 31, 1991) respectively.

2. The short question that falls for consideration in this writ is whether the petitioner is entitled to claim set-off u/s 8 of the Act for the period in question in respect of the goods in question. Both the assessing authority and the revisionary authority have declined to grant set-off and have thus rejected the petitioner's claim. The petitioner is now in writ to challenge these orders by which their claim for set-off was rejected.

3. The petitioner is engaged in the business of manufacture and sale of HDPE bags. The case of the petitioner was that during the period in question the petitioner purchased certain raw material for manufacture of finished goods from

some new industries which were exempted from payment of sales tax on those items (raw materials). The petitioner then in the assessment claimed that they are entitled to claim set-off to the extent of tax payable on the raw material while determining their liability for payment of tax on their finished goods. In the opinion of the assessing officer and also affirmed by the revisionary authority, no benefit of set-off was available to the petitioner because admittedly they purchased the raw material without payment of any tax. It is this view, which is assailed by the petitioner in this writ.

4. Heard Shri A.M. Mathur, Senior Advocate and Shri S. Mukati, Government Advocate for the State-respondents.

5. Relying upon the decision of this Court in the case of *Suruchi Doors, Indore v. Commissioner of Sales Tax* [1997] 104 STC 211 (1996) TLD 131, learned counsel for the petitioner urged that the law laid down by this Court in the case of *Suruchi Doors* [1997] 104 STC 211 applies to this case and hence the benefit of set-off as contemplated in Section 8 read with Rule 20-C should have been given to the petitioner. Learned counsel urged that the raw material purchased by the petitioner was subjected to tax and what was exempt was the industry who manufactured it and hence the petitioner was entitled to claim the benefit of set-off to the extent of the tax payable on the raw material purchased by the petitioner for its use/consumption in manufacture of their finished goods.

6. Learned counsel for the State supported the view taken by the two authorities below and prayed for its upholding.

7. Having heard the learned counsel for the parties and having perused the record of the case, I find no merit in the writ. In my opinion, the view taken by the two authorities below does not call for any interference. In other words, the view taken by the authorities that the petitioner is not entitled to claim any benefit of set-off u/s 8 *ibid*, is legal and proper.

8. Section 8(1)(a) and Rule 20-C which alone are relevant in the case of set-off reads as under :

"Section 8. Set-off of tax in respect of tax-paid goods in certain circumstances.--
(1) Subject to such restrictions and conditions as may be prescribed a set-off, as provided in this section shall be granted in such manner as may be prescribed, to a registered dealer in respect of tax-paid goods in the circumstances specified below :--

(a) When a registered dealer purchases any tax-paid goods, other than tendu leaves and whole pulses which have borne tax under Sub-section (1) of Section 6 at full rate exceeding the concessional rate of 4 per cent or exceeding such other concessional rate as may be notified by the State Government in respect of use of such goods as raw material or incidental goods and subsequently consumes or uses such goods as raw material or incidental goods in the manufacture or in the processing of any goods or in the mining of any goods specified in Schedule II

which have not been exempted u/s 12, he shall be entitled to a set-off at a rate equal to the difference between the tax at full rate under Sub-section (1) of Section 6 at the concessional rate of four per cent, or such other aforesaid concessional rate as the case may be in respect of such goods in such manner and on such quantum of the price at which such goods were purchased from a registered dealer, as may be prescribed.

....."

"20-C. Grant of set-off u/s 8(1).--.....

(iii) the registered dealer claiming the set-off shall, at the time of his assessment produce copies of the relevant bills or cash memoranda obtained from the selling registered dealer in support of the fact that the goods purchased by him and consumed or used as raw material or used as incidental goods have borne tax at full rate under Sub-section (1) of Section 6."

9. Mere perusal of Section 8(1)(a) read with Rule 20-C would at once show that in order to claim set-off, the registered dealer has to purchase tax-paid goods. He has to then submit the proof in assessment proceedings provided in Rule 20-C such as copies of bills, or cash memoranda, that the goods, i.e., raw materials purchased by him have borne tax at full rate or prescribed u/s 6(1) *ibid*. It is only after satisfactory proof tendered by the registered dealer that he has purchased the tax-paid goods, then only he is entitled to claim set-off as specified in Section 8(1)(a) *ibid*.

10. In the present case admittedly, the petitioner did not purchase tax-paid goods (raw material) because, the industries who sold the goods to the petitioner were exempted from payment of tax on those goods. When the petitioner did not pay any tax on the raw material, they were not entitled to claim set-off. The very principle behind the set-off is that amount already paid by way of tax on raw material would be adjusted against a tax payable on the finished goods--a concept somewhat similar to that of MODVAT in Central Excise.

11. The submission of learned counsel for the petitioner was that since in this case, the exemption was to the industries and not to goods and hence the petitioner was entitled to claim the set-off. The argument has no substance. As held *supra*, sine qua non for claiming set-off by the registered dealer u/s 8 *Ibid*, is payment of tax on the raw material. Indeed, Rule 20-C in clear terms enjoins and makes it obligatory to prove this fact with reference to submission of documents. Whether the exemption is to an industry (manufacturer) or to goods, the fact remains that the petitioner did not pay any tax on the goods purchased by him and hence he is not entitled to get any benefit of set-off.

12. Reliance placed by learned counsel for the petitioner on the case of *Suruchi Doors* [1997] 104 STC 211 (MP) is distinguishable on facts. Indeed in that case it was an admitted fact that the registered dealer had purchased the goods by paying the full rate of tax. This is what their Lordship before proceeding to decide

the legal issue observed in para 9 :

"Section 8(1)(a) provides for set-off or refund of tax in respect of tax-paid goods in certain circumstances. In the instant case there is no dispute that the applicant purchased goods in the shape of raw materials at full rate of tax". In the face of this admitted position, the applicant was entitled to set-off in terms of Section 8(1)(a) of the Act. Such a facility and concession cannot be denied on the supposed grounds that such a assessee could have purchased tax-free goods as raw materials in view of the later notification. The reasonings and the grounds contained in the orders passed by the Tribunal do not appear to be correct and sound."

13. In the present case the position is just the reverse.

14. I, therefore, do not find any merit in the writ as the view taken by two authorities was perfectly legal and proper It did not call for any interference. The petition thus fails and is dismissed.