courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 19/08/2026

(2014) 07 MP CK 0238

In the Madhya Pradesh High Court

Case No : W.P. No. 6616/2013

Sterling Agro Industries Ltd. — APPELLANT

Vs

State of M.P. — RESPONDENT

Date of Decision : 02-07-2014

Acts Referred:
Central Sales Tax Act, 1956 — Section 3
Constitution of India, 1950 — Article 14, 269, 269(1), 286, 286(2)
Madhya Pradesh Electricity Duty Act, 1949 — Section 2(a)

Citation : (2014) 07 MP CK 0238

Hon'ble Judges : S.K. Palo, J;S.K. Gangele, J

Bench : Division Bench

Advocate : Avinash Menon and Yogesh Singhal, Advocate for the Appellant;
Vivek Khedkar, Dy. Advocate General and Vivek Jain, Advocate for the Respondent

Final Decision : Dismissed

Judgement

1. Heard.

2. The petitioner has challenged the vires of Section 3(2) of Madhya Pradesh Vidyut Shulk Adhiniyam 2012.

3. The State Legislature enacted an Act named as Madhya Pradesh Vidyut Shulk Adhiniyam 2012 (hereinafter referred to as "Act of 2012"). The object of the Act to provide for the levy of a duty on sale or consumption of electricity in the State of Madhya Pradesh. Section 3(2) of the Act of 2012 reads as under :-

(2) Every consumer consuming electricity obtained through open access from outside the state shall pay every month to the State Government at the prescribed time and in the prescribed manner a duty calculated at the rates specified in Part-B of the Schedule on the units of electricity consumed by him.

4. The contention of the learned counsel for the petitioner is that the petitioner has been receiving electricity from outside of the State and it is consumed for captive purpose. Hence, the State legislature is not empowered to levy duty.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/sterling-agro-industries-ltd-appellant...

Section 3(2) of the Act of 2012, which empowered the State to levy duty is ultra vires in view of the Entry-53 of List II (State List) of Seventh Schedule.

5. We are not in agreement with the argument advanced by the learned counsel for the petitioner. Entry-53 of List II (State List) of Seventh Schedule of the Constitution of India reads as under :-

53. Taxes on the consumption or sale of electricity.

6. The entry empowers the State to collect levy taxes on the consumption of electricity. In the aforesaid entry, there is no mention to the fact that if the person is receiving electricity from outside of the State, then the levy could not be imposed. The mandate is that the State can levy duty on consumption of electricity. Admittedly, the petitioner has been consuming the electricity even though it has received the aforesaid electricity from the outside of the State.

7. The aforesaid point has been considered by the Hon''ble Supreme Court in the case of State of A.P. Vs. National Thermal Power Corporation Ltd. and Others, . In the aforesaid case, Hon''ble Supreme Court has held as under :-

31. Though it may be permissible to fix the situs of sale either by appropriate State legislation or by Judge-made law as held by the majority opinion in 20th Century Finance Corpn. case we would like to clarify that none of the two can artificially appoint a situs of sale so as to create territorial nexus attracting applicability of tax legislation enacted by any State Legislature and tax an inter-State sale in breach of Section 3 of the CST Act read with Articles 286(2) and 269(1) and (3) of the Constitution. No State legislation, nor any stipulation in any contract, can fix the situs of sale within the State or artificially define the completion of sale in such a way as to convert an inter-State sale into an intra-State sale or create a territorial nexus to tax an inter-State sale unless permitted by an appropriate Central legislation. But this is exactly what the definition of "consumer" in Section 2(a) of the M.P. Electricity Duty Act, 1949 has done. The definition of consumer has been artificially extended to include any person who receives electrical energy (without regard to its consumption) and also to include a person who, receiving the electrical energy in bulk, forwards it onwards for distribution, (without regard to the fact whether it is transmitted outside the State and whether the electricity is or is not consumed within the State). The same definition has been adopted in the M.P. Upkar Adhiniyam, 1981. This definition of consumer shall have to be read down as including within it only such persons who receive the electricity for consumption or distribution for consumption within the State. Without such reading down, the definition of "consumer" would be rendered ultra vires of Articles 286 and 269 of the Constitution read with Section 3 of the Central Sales Tax Act, 1956.

8. Constitution Bench of Hon''ble Supreme Court has clearly held that the persons who receive the electricity for consumption or distribution for consumption within the State would be covered under the entry. Up to that extent the State is competent to levy the duty. In such circumstances, in our

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/sterling-agro-industries-ltd-appellant…

opinion, the argument of the learned counsel for the petitioner is not acceptable.

9. Learned counsel for the petitioner further submitted that the section is ultra vires to Article 14 of the Constitution.

10. It is a vague argument. The entry empowers the State to levy duty as discussed above and as held by the Constitution Bench of the Hon''ble Supreme Court, the State legislature is empowered to impose the duty if the consumption or distribution of electricity is within the State. Apart from this, it is admitted fact that the petitioner has been receiving electricity from outside of the State of Madhya Pradesh. At that point of time no levy was imposed and if no levy was imposed in the State of Madhya Pradesh also, in such circumstances, the petitioner would be beneficiary in contrast to the other consumers, who have been consuming electricity within the State of Madhya Pradesh which is received from the outside of State.

11. Consequently, we do not find any merit in this petition. It is hereby dismissed. No order as to costs.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/sterling-agro-industries-ltd-appellant…