
(1994) 01 MP CK 0022
In the Madhya Pradesh High Court
Case No : M.P. No. 85 of 1994

Tara Re-rolling Mill

APPELLANT

Vs

State of Madhya Pradesh and Another

RESPONDENT

Date of Decision : 25-01-1994

Acts Referred:

Madhya Pradesh General Clauses Act, 1957 — Section 21
Madhya Pradesh General Sales Tax Act, 1958 — Section 16C, 6(2)
Madhya Pradesh General Sales Tax Rules, 1959 — Rule 14C(4), 16(3)

Citation : (1995) 40 MPLJ 343 : (1995) MPLJ 343

Hon'ble Judges : U.L. Bhat, C.J.; P.P. Naolekar, J

Bench : Division Bench

Advocate : H.S. Shrivastava, for the Appellant; B.K. Rawat, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

U.L. Bhat, C.J.

The petitioner challenges sub-rule (4) of Rule 14C of the M. P. General Sales Tax Rules, 1959 (hereinafter referred to as the Rules for short) framed under the M. P. General Sales Tax Act, 1956 (hereinafter referred to as the Act for short) as ultra vires and beyond the rule making power of the State Government and to quash Annexure P-9, the notice, dated 22-12-1993 requiring the petitioner to show cause why the recognition certificate granted to it should not be cancelled.

Return has been filed on behalf of the second respondent.

The petitioner is a registered firm running a re-rolling mill as a small scale industry unit in village Tedesara, District Rajnandgaon. It is stated that subsequently, processing of iron and steel scrap was also started in the mill. The unit is registered as a small scale industry unit as per registration certificate dated 5-2-1988 registered under the Act and the Central Sales Tax Act, 1958, for manufacturing round angle, M.S. rounds, tore, angle, flat T-2 etc. and later on

the certificate was amended to incorporate processing of iron and steel and other raw materials. The petitioner was also granted exemption from payment of sales tax for six years from 6-10-1987 to 5-10-1993 as also exemption from payment of entry tax. The petitioner was also issued eligibility certificate.

The controversy in this case relates to recognition certificate required to be issued u/s 16C of the Act to enable the petitioner to purchase goods for use as raw material or incidental goods in accordance with Section 6(2)(b) of the Act. Rule 14C of the Rules deals with the grant of recognition certificate. Sub-rule (4) enables the appropriate Officer to cancel the recognition certificate. The petitioner contends that the rule making authority has no power to frame a rule enabling the appropriate officer to cancel the certificate once granted.

Section 4 of the Act deals with incidence of tax. Tax is payable on the taxable turnover in respect of sales or supplies of goods effected in the State. Section 6 of the Act deals with levy of tax. Sub-section (1) prescribes levy of tax payable by dealer on the taxable turnover relating to the goods specified in Schedule II of the rates mentioned therein. Sub-section (2) prescribes concessional rate of tax at 4% in certain circumstances. We are concerned in this case with clause (b) of sub-section (2) of Section 6. Under this provision, tax payable by the registered dealer on the sale of any goods specified in Schedule II, except Tendu leaves and whole pulses, to any registered dealer holding a recognition certificate u/s 16C for use by him as raw material or as incidental goods in the manufacture or in the processing of goods which are liable to tax, shall be levied at the concessional rate of 4%. According to sub-section (3), where the concessional rate is availed, but the goods are used in violation of restrictions and conditions prescribed, the dealer should be liable to pay tax or penalty as the case may be as prescribed therein.

Section 8 deals with set off or revision of tax paid in respect of goods in certain circumstances. The sum and substance of the provision is that when a registered dealer purchases tax paid goods which have borne tax u/s 6(1) of the Act at the full rate exceeding the concessional rate of 4% or such other concessional rate as may be notified, 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 specified in Schedule II which have not been exempted u/s 12, he shall be entitled to set off at a rate equal to the difference between the two rates of tax. It is unnecessary to go into the details of the various clauses of Section 8.

Section 16C of the Act enables issue of recognition certificate to dealers to enable them to purchase goods for use as raw material or incidental goods in accordance with Section 6(2)(b) of the Act subject to the conditions and restrictions which may be prescribed. The recognition certificate is to be issued only where the officer concerned is satisfied that the business of the registered dealer who manufactures taxable goods, is likely to suffer in view of the provisions of Section 8 either due to the fact that the goods manufactured are

liable to be taxed at substantially lower rates than the rate of tax on goods used as raw material of incidental goods or that the goods manufactured are wholly or substantially sold in the course of export or for any other reason. The issue of recognition certificate is based on the satisfaction of the officer concerned that the conditions prescribed in the provisions exist. The recognition certificate so granted enables the dealer to avail of the concessional rate of tax prescribed in Section 6(2) of the Act.

Section 51 confers on the State Government power to make rules for carrying out purposes of the Act. Clause (ffff) of sub-section (2) of Section 51 enables the Government to make rules prescribing the form and manner in which restrictions and conditions subject to which a recognition certificate should be issued u/s 16C. In exercise of the rule making power, the Government issued the rules. Rule 14C deals with grant of recognition certificate. Sub-rule (1) requires application for the purpose in Form III-B. Sub-rule (2) requires the officer to make such enquiry as he considers necessary to ascertain the correctness of the particulars furnished in the application and if he is satisfied that the applicant is eligible for grant of recognition certificate u/s 16C, he is required, after recording reasons therefor, to submit the case to the Assistant Commissioner who shall either accord approval or refuse to accord approval or direct such further enquiry as he may consider necessary to be made before according approval. Refusal to accord approval shall be supported by reasons. The certificate must be in Form IV-B. If on the other hand, the officer concerned is satisfied that the registered dealer is not eligible to obtain the certificate, he shall reject the application after giving the dealer an opportunity of being heard and send an intimation to the dealer. Time frame has been prescribed in Rule 14C for action on the part of the various officers. Sub-rule (b) requires the officer to specify the raw materials or incidental goods in respect of which the dealer is found eligible. Sub-clause (b) of sub-rule (3) states that the certificate granted shall ordinarily be valid till the registration certificate issued to him u/s 15, 16 or 16B as the case may be, remains in force and stands cancelled from the date on which registration certificate ceases to be in force.

Sub-rule (4) of Rule 14C reads thus :

"(4). Where the appropriate Sales Tax Officer has reason to believe that a registered dealer has ceased to be eligible to hold a recognition certificate or has committed breach of this rule or defaulted in the payment of tax due, he may, notwithstanding anything contained in sub-rule (3), after giving the dealer an opportunity of being heard, cancel the recognition certificate granted to such dealer".

The ordinary rule is that recognition certificate remains in force as long as the registration certificate issued u/s 14, 16 or 16B is in force. Sub-rule (4) is a sort of an exception to the ordinary rule. The exception is that recognition certificate can be cancelled when the registered dealer has ceased to be eligible to hold it or has committed breach of the rule or default in payment of tax due. Cancellation

can only be made after the dealer is given an opportunity of being heard.

Thus, we find that elaborate procedural scheme is prescribed for grant of recognition certificate, the period of validity and cancellation. The petitioner contends that while the Legislature has provided for issue of recognition certificate in Section 16C, it has not made any statutory provision enabling cancellation of the certificate. It is pointed out that in regard to registration certificates, specific provisions have been made for cancellation, as in Sections 15(1), 16 and 16B. It is argued that where the dealer holding a recognition certificate misuses the certificate, statute has prescribed penalty as can be seen from sub-section (3) of Section 6. It is, therefore, contended that the State Government has no power to frame a rule enabling cancellation of the certificate on the ground that the registered dealer has ceased to be eligible or has committed breach of Rule 14C, or default in payment of tax due. The answer of the respondent is based on Section 21 of the M. P. General Clauses Act.

Section 21 of the M. P. General Clauses Act reads thus :

"21. Power to make to include power to add, to amend, vary or rescind orders etc. - Where, by any Madhya Pradesh Act, a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanctions and conditions, if any, to add, to amend, vary or rescind any notifications, orders, rules or bye-laws, so issued."

If the issue of recognition certificate or order issuing recognition certificate can be taken to be a notification or an order, there will be no inhibition against the applicability of Section 21 to the facts of the case and the authority concerned can be regarded as having the power to rescind the decision, notification or order.

We may, in this connection, advert to some of the decisions cited before us. In the decision in Kamla Prasad Khetan Vs. The Union of India (UOI), the Court was dealing with the case u/s 18A of the Industries (Development and Regulation) Act, 1951, authorising a person to take over the management of the whole or any part of the undertaking. Section 21 of the Central Act was held to reflect rule of construction having reference to the context and subject matter of the particular statute.

In The State of Bihar Vs. D.N. Ganguly and Others, the Supreme Court held that once Government made a reference u/s 10(1) of the Industrial Disputes Act, 1947, it has no power to cancel or supersede the reference and Section 21 of the Act would be inapplicable in the context and subject matter of the particular statute and the power conferred to order reference.

In State of Kerala and Others Vs. K.G. Madhavan Pillai and Others, the Supreme Court held that once an order granting sanction for opening a new school was passed under the Kerala Education Act, there would be no implied power of cancellation of the order. This conclusion was based on the scheme of the particular statute.

In *Laghu Udyog Karmachari Co-operative Housing Society Ltd., Indore v. State of M. P. and others* 1974 MPLJ 887, a Division Bench of this Court held that though there is no specific provision in the M. P. Town Improvement Trust Act, 1961, to release any land included in the scheme, since there is a provision enabling the Government to issue a notification including certain land in a particular scheme, it has, by virtue of Section 21 of the Act, also power to issue notification releasing portion of the land in the scheme.

In *Thakur Vishweshwarsharan Singh v. State Transport Appellate Tribunal* 1981 MPLJ 377, it was held that once a power under the statutory provision empowering Government to bring into force a particular statute is exercised, the power is exhausted and Section 21 of the Act would not enable the Government to rescind or amend the notification.

Section 21 embodies a rule of construction which should be applied only if the construction cannot be arrived at or determined with reference to the context on the subject matter of a particular statute. Its applicability has to be considered having regard to the scheme and object of the enactment as well as the context in which the power is conferred.

It is, therefore, necessary to examine the context in which the power to grant recognition certificate is created and conferred. The certificate is to be issued to enable the dealer to avail the concessional rate of tax prescribed in Section 6(2) (b). All dealers are not entitled to recognition certificate and the benefit of concessional rate of tax. The dealer must be a registered dealer; he must manufacture taxable goods; there must be likelihood of his suffering in view of provisions of Section 8 and this likelihood must be related to particular reasons mentioned in Section 16C of the Act. It is only where the Commissioner is satisfied with regard to these aspects that he may issue a recognition certificate. The Act which enables the grant of recognition certificate does not contain an express provision for rescinding the certificate. It cannot be the legislative intention that once recognition certificate is granted to a dealer, he must enjoy the fruits thereof for all time to come, irrespective of change in circumstances and irrespective of his conduct. The provision in Rule 16(3)(b) declaring that recognition certificate would stand cancelled from the date on which registration certificate ceases to be in force and the provisions in the Act requiring the holder of the certificate to pay tax or penalty in case of misuse of the certificate, are not sufficient to evidence any legislative intention to keep recognition certificate in force irrespective of change in circumstances or the conduct of the holder of the certificate. Such an intention would be wholly illogical and against the statutory scheme of providing concessions or benefits to certain categories of registered dealers in certain circumstances. The scheme and the object of provisions and the context in which the power is conferred are such that the power to rescind the certificate must necessarily be implied. The provisions of Section 21 of the General Clauses Act are clearly attracted in the instant case. The power cannot be regarded as exhausted on the grant of the certificate. We, therefore, hold that

sub-rule (4) of Rule 14 is not ultra vires the provisions of the Act and not beyond the rule making authority of the State Government.

The petitioner has challenged the notice issued to it to show cause why the certificate should not be cancelled. The challenge is based on the decision reported in *Kher Stone Crusher v. General Manager, District Industries Centre, Jabalpur and others* (1990) 79 STC 149 and analysis of the actual work being done in the establishment of the petitioner. Consideration of this question involves entering into disputed questions of fact which we do not think we should resort to at this stage. It is for the petitioner to reply to the notice and place his contentions before the authority concerned.

We direct that in case the petitioner submits a reply to the show cause notice within two months from today, the second respondent shall, after giving the petitioner an opportunity of being heard, take a decision under Rule 14C, sub-rule (4) of the Rules. Subject to this direction, the writ petition is dismissed.