
(2004) 08 MP CK 0027

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1698 of 2003, M.P. No's. 1699 and 1700 of 2003

Union of India (UOI) and Another

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 31-08-2004

Acts Referred:

Constitution of India, 1950 — Article 285
Sea Customs Act, 1878 — Section 20(2)

Citation : (2006) 146 STC 213

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

Bench : Single Bench

Advocate : Y.J. Mehta and Patel, for the Appellant; Amit Agrawal, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Sapre, J.—The decision rendered in this case shall also govern disposal of other two petitions being M.P. No. 1699 and W.P. No. 1700 because, all these cases arise out of common impugned order and secondly, they arise between the same parties.

2. The challenge in this writ is to a revisional order, dated December 3, 2002 (annexure P-I), passed by the Additional Commissioner, Commercial Tax, Indore, whereby the revision filed by the petitioner against an order of reassessment dated April 16, 1996 passed by an assessing officer (Assistant Commissioner of Commercial Tax) for the period April 1, 1990 to March 31, 1991 has been dismissed which was originally assessed by order dated December 30, 1993 by the assessing officer.

3. Petitioner No. 2 is one of the departments of petitioner No. 1--which is a Railway. The petitioner is running a Departmental Catering Services for the passengers. It is in the course of this activity the petitioner sells in open market "coal ash". The petitioner No. 1 is being assessed under the provisions of the Madhya Pradesh General Sales Tax Act, 1958 (since repealed) and is also

registered as dealer.

4. One of the questions that arose for consideration in assessment proceeding was whether "coal ash" is a taxable commodity under the Act and secondly, whether petitioner could be assessed at all under the Act they being a Union of India. Both these issues were decided against the petitioner, the same is reiterated in these writ petitions which are filed for the different periods. Notice of the writ is issued to respondents. They are served and represented.

5. Heard Shri Y.I. Mehta, learned Senior Counsel with Shri Patel for the petitioners and Shri Amit Agrawal, learned Government Advocate for the respondents.

6. Placing reliance on article 285 of the Constitution of India, the submission of learned Counsel for the petitioner was that petitioners cannot be subjected to any tax under taxing law. According to learned Counsel, the petitioner being Union of India, they are immune from any taxation. It is his submission, that imposition of sales tax on the sale of commodity "coal ash" under the State Sales Tax Act is not legally permissible in view of mandate contained A under article 285 of Constitution. It is on the strength of this submission learned Counsel for the petitioner contended that impugned order is not legally sustainable and deserve to be quashed. In reply, learned Counsel for the State placing reliance on law laid down in two decisions of the Supreme Court reported in AIR 1963 SC 1760 [Sea Customs Act (1878), Section 20(2) In re] and 1998 (102) ELT 513 (SC) contended that the issue sought to be raised by the petitioner is no longer available to the petitioner to urge and stands decided against the petitioner in these two decisions.

7. Having heard learned Counsel for the parties and having perused record of the case, I am of the view that what is urged by the State Counsel in reply appears to have force. As a consequence, the petition has no merit.

8. As rightly urged by learned Counsel for the State, the issue involved in this case no longer remains res integra and stands answered by the two decisions of the Supreme Court, referred supra. Indeed, it is clear when I read the facts of the case reported in the case of 1998 (102) ELT 513 (SC) . This is what is held by the Supreme Court in this case:

ORDER

1. The Union of India is in appeal against the judgment and order of the West Bengal Taxation Tribunal, which is reported in Collector of Customs v. State of West Bengal [1992] 85 STC 121. The Tribunal upheld the contention of the respondent-State that the Collector of Customs was a "dealer" within the meaning of the definition of that word in the Bengal Finance (Sales Tax) Act, 1941, when he sold goods confiscated under the provisions of the Customs Act, 1962 because of non-payment of customs duty thereon.

2. Only one contention is advanced before us by learned Counsel on behalf of the

appellants, and it is that article 285 of the Constitution debars the imposition of tax upon property belonging to the appellants.

3. Reliance in this behalf is placed on the judgment of two learned Judges of this Court in *State of Punjab v. Union of India* [1990] 79 STC 437. The Punjab High Court in that matter had answered the two questions before it in favour of the Union of India. The second question was whether no sales tax could be levied in view of the provisions of article 285 of the Constitution on goods purchased by the Railways and sold by the Railways in their catering department. This Court said that at the time of their sale the goods belonged to the Railways. The tax had been imposed on such sale. In view of the provisions of article 285, such sale was immune from taxation under the State law.

4. It would appear that no real arguments was advanced before this Court by the appellant-State and the judgment of this Court in *Sea Customs Act, 1878, Section 20(2), In re In Re: The Bill To Amend S. 20 of The Sea Customs Act, 1878 and S. 3 of The Central Excises and Salt Act, 1944*, , was not pointed out, In *Sea Customs Act* case a 9-Judge Bench of this Court opined, by a majority, that article 285 envisaged immunity from direct taxes and not from indirect taxes such as sales tax. With specific reference to sales tax, this Court said:

We may in this connection contrast sales tax which is also imposed with reference to goods sold, where the taxable event is the act of sale. Therefore, though both excise duty and sales tax are levied with reference to goods, the two are very different imposts; in one case the imposition is on the act of manufacture or production while in the other it is on the act of sale. In neither case therefore can it be said that the excise duty or sales tax is a tax directly on the goods for in that event they will really become the same tax.

5. The decision in the *Sea Customs Act* case *In Re: The Bill To Amend S. 20 of The Sea Customs Act, 1878 and S. 3 of The Central Excises and Salt Act, 1944*, was considered by another 9-Judge Bench in the case of *New Delhi Municipal Committee Vs. State of Punjab, etc. etc.*, , and was affirmed.

6. In the circumstances, the Tribunal was right in the view that it took. The appeal is dismissed. No order as to costs.

S.L.P. (C) No. 13393 of 1997:

7. For the reasons given in the judgment in *Collector of Customs v. State of West Bengal* case the SLP is dismissed.

9. What is thus ruled by the Supreme Court in the case of 1998 (102) ELT 513 (SC) is sales tax being a tax in the nature of indirect taxation; it does not fall within the net of article 285 of the Constitution so as to enjoy the exemption from payment. In other words, the law is that article 285 cannot be pressed in service in a case where the sales tax is being charged because it is not in the nature of direct taxation but it is in the nature of indirect one. In the light of aforementioned law laid down, the submission pressed in service by the learned

A counsel for the petitioner on the strength of article 285 of Constitution of India for challenging the imposition of sales tax on the sale of "coal ash" by the petitioner No. 1 in the course of their catering activity must fail.

10. So far as imposition of sales tax on the commodity in question, the same is also covered against the petitioner by a decision rendered in *Hukumchand Mills Ltd. Vs. Commissioner of Sales Tax*, and it is also not available for being urged.

11. Yet one another submission that no case was made out to reassess the petitioner once the assessment was complete, had no merit. Firstly, this objection was not taken before the revisionary authority. Secondly, a case for reassessment was made out because it was noticed that petitioners were wrongly assessed in the entry.

12. In view of aforesaid discussion. I find no merit in the writ. It fails and is dismissed.

13. No costs.