**(1981) 02 MP CK 0007**

**In the Madhya Pradesh High Court**

**Case No :** Miscellaneous Petition No. 263 of 1980

Vijay Dal Mill, Durg APPELLANT

Vs

State of M.P. RESPONDENT

**Date of Decision :** 05-02-1981

**Acts Referred:**
Central Sales Tax Act, 1956 — Section 8(5)

**Citation :** (1984) JLJ 382

**Hon'ble Judges :** G.P. Singh, C.J;K.K. Dube, J

**Bench :** Division Bench

**Advocate :** S.C. Pandey, for the Appellant; S.L. Saxena, Government Advocate for State, for the Respondent

**Final Decision :** Allowed

## Judgement

G.P. Singh, C.J.—The facts leading to this petition under Article 226 of the Constitution are as follows : M/s. Vijay Dal Mill, the petitioner in this petition is a dealer in pulses. The petitioner is a partnership concern and is a registered dealer under the M.P. General Sales Tax Act, 1958 as also under the Centra! Sales Tax Act, 1956. For the period from 12th November 1977 to 31st October 1978 the petitioner was assessed to sales tax on inter-State sales under the Central Act at 2% u/s 8(2) read with notification dated 1st April 1966 issued u/s 8(5). The assessment order was passed on 31st March 1979. As the petitioner had paid excess tax, refund was ordered to the extent of Rs. 16,126 30. By notification dated 1st April 1966 the State Government had directed that the rate of tax in respect on inter-State sales of all kinds of grains, cereals and pulses shall be calcultated at the rate of 2% By notification dated 1st April 1978 issued u/s 5, the notification dated 1st April 1966 was cancelled with effect from 1st April 1978 Another notification was then issued by the State Government on 6th July 1979. By this notification the notification dated 1st April 1078 was amended and the cancellation of the notification dated 1st April 1966 was made effective from 21st May 1975 A second notification was issed on 6th July 1975 by which the rate of tax on inter-State sales of pulses with effect from 21st May 1975 to 31st August 1976 was specified at 4%. A third notification was issued on the same date by which the rate of tax on inter-State sales of pulses was specified at 4% for the period from 1st September 1976 to 31st March 1978. All these notifications were issued u/s 8(5) of the Central Act. A notice dated 3rd August 1979 was then issued to the petitioner for for reassessment on the basis of the aforesaid notifications. The petitioner then filed this petition.

2. The argument of the learned counsel for the petitioner is that the notification dated 1st April 1978 withdrawing the concession granted under the notification dated 1st April 1966 could not be given retrospective effect from 21st May 1975 by the notification issued on 6th July 1979. In our opinion, this contention must be accepted. Section 8(5) of the Central Act reads as follows:

(5) Notwithstanding anything contained in this section, the State Government may, if it is satisfied that it is necessary so to do in the public interest, by notification in the Official Gazette, and subject to such conditions may be specified therein, direct--

(a) that no tax under this Act shall be payable by any dealer having his place of business in the state in respect of the sales by him, in the course of inter-State trade or commerce, from any such place of business of any such goods or classes of goods as may be specified in the notification, or that the tax or such sales shall be calculated at such lower rates than those specified in sub-section (1) or sub-section (2) as may be mentioned in the notification;

(b) that in respect of all sales of goods or sales of such classes of goods or may be specified in the notification, which are made, in the course of inter-State trade or commerce, by any dealer having his place of business in the State or by any class of such dealers as may be specified in the notification to any person or to such class of persons as may be specified in the notification, no tax under this Act shall be payable or the tax on such sales shall be calculated at such lower rates than those specified in sub-section (1) or sub-section (2) as may be mentioned in the notification.

3. The first notification granting concession to the dealers dealing in pulses was issued on 1st April 1966. Under that notification the rate of tax was fixed at 2%. This notification was withdrawn on 1st April 1978 by a notifiction issued on that date. There is no difficulty so far. The difficulty arises because of the notifications issued on 6th July 1979 by which the notification dated 1st April 1978 was given retrospective effect from 2lst May 1975 and the rate of tax was enhanced to 4%. The State Government may grant retrospective exemption or concession to a dealer by notifications issued u/s 8(5). This question is not before us. But we are clear that section 8(5) does not authorise the State Government to withdraw an exemption or concession retrospectively so as to increase the rate of tax retrospectively. The effect of the notifications issued on 6th July 1979 was that the rate of tax on inter-State of pulses which was 2% up to 1st April 1978 was

 

enhanced to 4% from 21st May 1975. This retrospective enhancement of rate and withdrawal of consession to the dealers, in our opinion, was unauthorised. The result is that the petitioner would be liable to pay tax at 2% under the notification 1st April 1966 up to 1st April 1978 and from 1st April 1978 the rate of tax would be 4%. The first and second notifications dated 6th July 1979 (Annexure-I) will not have the effect of increasing the rate of tax to 4% for the period from 21st May 1975 to 1st April 1978. To that extent the petition will have to be allowed

4. The petition is partly allowed. We direct that the first and second notifications dated 6th July 1979 (Annexure-I) will not be given effect to so as to enhance the tax for the period from 21st May 1975 to 1st April 1978. The rate of tax for this period of inter-State sales of pulses would be 2% in accordance with the notification dated 1st April 1966. There will be no order as to costs. Security amount be refunded to the petitioners.