(2013) 02 MP CK 0131

In the Madhya Pradesh High Court

Case No : Writ Petition No. 13832 of 2005

Western Coal Field Ltd. APPELLANT

Vs

Addl. Commissioner, Commercial and Others RESPONDENT

Date of Decision : 07-02-2013

Acts Referred:

Madhya Pradesh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976 — Section 10, 4A

Citation : (2013) ILR (MP) 1037

Hon'ble Judges : Krishn Kumar Lahoti, Acting C.J.;M.A. Siddiqui, J

Bench : Division Bench

Advocate : H.S. Shrivastava, for the Appellant; Rahul Jain, Dy. A.G., for the Respondent

Judgement

K.K. Lahoti, Actg. C.J.

1. This petition is directed against the order Annexure P-8, dated 4.2.2005, by which the respondents have imposed entry tax @ 2.5% on the petitioner for sale of the goods namely coal (not for cooking purposes). The aforesaid goods was sold to M.P. Electricity Board, Sarni to be used for the production of electricity, upon filing a declaration in Form I Rule 4(1)(iii) of the Rule namely Entry Tax Rules, 1976. The contention of the petitioner is that as per the notification Annexure P-9, which was made effective from 1.5.1997, the petitioner was liable to make payment of entry tax at the rate of 1% on the coal as the entry was effected into local areas by the registered dealer for use as raw material in the manufacture of other goods and the due declaration was filed by the Board in this regard.

It is also submitted that earlier vide Annexure P-1 dated 12.4.2001, the declaration was accepted and the petitioner was imposed entry tax at the rate of 1% on the coal but the matter was wrongly reopened by the respondents and higher rate of tax was imposed for which petitioner was not liable.

2. Shri Rahul Jain, Dy. A.G. supported the order and submitted that as per the rules the entry tax was payable @2.5% and rightly the earlier order was recalled and subsequent order was passed.

3. We have perused the record and find that vide order Annexure P-1 dated 12.4.2001, the Assessing Officer had accepted the declaration furnished by the petitioner under Rule 4(1)(iii) of M.P. Entry Tax Rules, 1976. Though the coal sold to M.P. Electricity Board, was purchased for the use as raw material and relying on the declaration, concessional rate of 1% was applied on the petitioner. It appears that thereafter vide Annexure P-2 dated 17.5.2004 the Divisional Commissioner, Commercial tax, Chhindwara directed the Assessing Officer to reassess the petitioner. The Divisional Commissioner had also directed the Assessing Officer that u/s 4 and Rule 4 under the Entry Tax Act there was no provision for sale of goods namely coal at the rate of 1% under declaration, the declaration was wrongly accepted, whereas it appears that because of the aforesaid letter matter was reopened and Assessing Officer vide order P-6 reassessed the entry tax and directed payment of entry tax at the rate of 2.5%.

4. To appreciate the rival contentions of the parties it would be appropriate if the relevant provisions are referred. Section 4(1) of the Entry Tax Act, 1976 reads thus:

The entry tax payable by a dealer under this Act, shall be charged on his taxable quantum relating to goods specified in Schedule-II and Schedule-III at the rates mentioned in the said Schedules:

Provided that notwithstanding anything contained in this sub section and subject to such conditions and restrictions as may be prescribed."

(i) the entry tax payable in respect of goods specified in Schedule -II other than iron and steel as specified in Serial No. 3 of the said Schedule which are consumed or used as raw material for the manufacture of other goods shall be one per cent, if the rate of tax specified in Schedule -II exceeds one per cent;

(ii) Where the dealer contravenes any of the conditions or restrictions or has not consumed or used the goods as raw material for the manufacture of other goods in any local area in Madhya Pradesh, he shall be liable to pay as entry tax amount equal to the difference between the entry tax payable at the full rate as mentioned in Schedule-II, and concessional rate of such tax mentioned in clause (i) above:

Provided further that where the goods specified in Schedule -II, other than iron and steel as specified in Serial No. 3 of the said Schedule which have already suffered entry tax at a rate exceeding one percentum or purchased by a registered dealer from another such dealer for consumption or use by him as raw material for the manufacture of other goods, he (the purchasing registered dealer) shall, subject to such restrictions and conditions as may be prescribed, be entitled to a set off or refund, as the case may be, of an amount equal to the difference between the amount of tax computed at the full rate of tax mentioned in Schedule -II and the amount of tax at one per cent, on such proportion of the price at which he had purchased the goods, as may be prescribed.

The aforesaid provisions specifically provides that entry tax payable in respect of goods specified in Schedule-II which are consumed or used as raw material in the manufacture of other goods shall be 1%., if the rate of tax specified in Schedule II exceeds 1%. Schedule -II of the Entry Tax Act provides 2% of tax on coal including coke in all its forms but because of the aforesaid provision, coal was chargeable @1%, if it was to be consumed as raw material in the manufacture of other goods. Rule 4(1)(i) and (iii) of the Entry Tax Rules 1976 provides thus:

(i) The entry tax at the concessional rate shall be charged only if the entry goods specified in Schedule II or Schedule III, as the case may be, is effected by a dealer registered under the (Vanijyik Kar Adhiniyam)

(iii) entry tax at the concessional rate shall be charged by the selling registered dealer who sells good specified in the Schedule II to another, registered dealer for use as raw material in the certificate of registration under the (Vanijyik Kar Adhiniyam) of purchasing registered dealer and produce at the time of assessment a true declaration in Form I duly filled in and signed by the transaction of sale if the total sale price covered by the declaration does not exceed [rupees ten thousand.]

The aforesaid provisions specifically provides that entry tax on the concessional rates shall be charged only if the entry of goods specified in Schedule -II is effected by the registered dealer. Sub Section (iii) provides that if the goods specified in Schedule-Il is sold to another registered dealer as raw material, the declaration in Form I is required to be furnished by the registered dealer. In this case it is not in dispute that on furnishing such declaration, concessional rate of 1% was made applicable on the petitioner in respect of entry tax. Notification has also been issued by the State Government on 4.5.1999 which reads thus:

In exercise of the power conferred by Section 10 of the Madhya Pradesh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976 (No. 52 of 1976), the State Government hereby exempts the class of goods specified in column (2) of the Schedule below from payment of entry tax under the said Adhiniyam to the extent specified in column (3) subject to the restrictions and conditions specified in column (4) of the said Schedule for the period from 1st May, 1997 to 30th September, 1997. This exemption shall hot affect the tax liability created by any notification issued u/s 4-A of the said Adhiniyam:

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5. This notification also provides that the concessional rate of 1% was applicable for the goods excluding the cooking coal when entry was affected into local areas by registered dealers for use of raw material in the manufacture of other goods.

This notification was made effective by another notification dated 5.7.1999 which reads thus:--

In exercise of the power conferred by Section 10 of the Madhya Pradesh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976 (No. 52 of 1976), the State Government hereby makes the following amendment in this department Notification No. A-3-80-98-CT-V-(49) dated 4th May, 1999 namely:--

AMENDMENT

6. On the perusal of the aforesaid, it is apparent that from 1.5.1997, concessional rate on coal (excluding coal for cooking purpose), when entry was effected in local area by registered dealer for use of raw material in manufacture of other goods, was 1% and accordingly on the basis of the declaration submitted by M.P. Electricity Board, which was filed by the petitioner before the Assessing Officer, Assessing Officer vide order Annexure P-1 had rightly directed payment of entry tax @ 1% on the petitioner. Respondents wrongly reopened the matter, misconstruing the provisions, while by an earlier order dated 12.4.2001 correct rate was made applicable and petitioner was rightly assessed. In view of the aforesaid submission, order Annexure P-8 in so far as it relates to imposition of 2.5% entry tax on the petitioner in respect of the coal sold to the M.P. Electricity Board is hereby quashed and earlier order dated 12.4.2001 in that regard is maintained. Considering the facts of the case there shall be no order as to costs.