

Vikram Cement Vs. Additional Commissioner of Commercial Tax and anr.

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SooperKanoon Citation : sooperkanoon.com/507993

Court : Madhya Pradesh

Decided On : Feb-06-2009

Reported in : (2009)26VST592(MP)

Judge : A.M. Sapre and; Prakash Shrivastava, JJ.

Appellant : Vikram Cement

Respondent : Additional Commissioner of Commercial Tax and anr.

Advocate for Pet/Ap. : Shri. C.M. Pancholi

Judgement :

A.M. Sapre, J.

1. The decision rendered in this writ shall also govern the disposal of other connected writ petitions being W.P. Nos. 419 of 2003, 1484 of 2002, 1485 of 2002, 896 of 2006 and 2047 of 2006, because all these writs are filed by same petitioner and secondly, these petitions involve identical points.

2. By filing this writ under Article 226/227 of the Constitution of India, the petitioner seeks to challenge the revisionary order dated November 18, 2002 passed by Additional Commissioner, Commercial Tax, Indore in Revision No. 13/02/Ujjain/Entry Tax (annexure C), which in turn arises out of assessment order dated October 19, 2001 passed by the Assistant Commissioner, Commercial Tax

(Assessing officer) in case No. 10/99) (Annexure B).

3. The petitioner is engaged in the business of manufacture and sale of cement. The petitioner is registered as a dealer under the provisions of the M.P. General Sales Tax Act, 1958 (since repealed and replaced by Commercial Tax Act) and is assessed to State sales tax, Central sales tax and entry tax as per provisions of Central and State sales tax laws.

4. This bunch of petitions relate to payment of entry tax payable by the petitioner as dealer for different periods from 1998 onwards under the provisions of M.P. Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976 (for short called 'the Entry Tax Act') read with M.P. General Sales Tax Act, 1958 since repealed (for short, called 'the MPGST Act') and M.P. Vanijyik Kar Adhiniyam, 1994 (for short, called 'the MPVK Adhiniyam').

5. By assessment order dated October 19, 2001 (annexure B) the petitioner was assessed to payment of entry tax for the period in question (1998-99) to the tune of Rs. 8,90,549 payable on consumption of limestone used by the petitioner in the manufacture of cement. The petitioner felt aggrieved of this order, filed revision to upper Commissioner being Revision No. 13/02/Ujjain/Entry Tax. By order dated November 18, 2002 (Annexure C), the revisionary authority dismissed the revision and in consequence, upheld the assessment order. It is against these two orders, the petitioner has filed this writ. Notice of this writ was issued to respondents (Revenue). Return is filed.

6. Heard Shri G.M. Chafekar, learned senior counsel with Shri C.M. Pancholi, learned Counsel for the petitioner and Shri Umesh Gajankush, learned Government Advocate for the respondent.

7. The learned Counsel for the petitioner assailed the impugned orders mainly on two grounds. In the first place, he contended that assessing officer erred in proceeding to make the assessment only on the basis of one general circular dated August 11, 1993 issued by State (Mining Department) in relation to consumption of limestone in manufacture of cement, which has no application to the case of petitioner. In other words, the submission was that the circular dated

August 11, 1993 had no application to the case of petitioner in any manner nor it could be made basis for making assessment under sales tax laws or/and entry tax in relation to cement/limestone. In the second place, he contended that when admittedly the legality of the said circular is under challenge before the High Court in writ petitions then in such event, such circular should not have been made basis till its legality had been upheld in court of law and its applicability is established for making assessment. Lastly, learned Counsel contended that assessment in question should have been made independent to the circular dated August 11, 1993 and depending upon the outcome of the decision in pending writ petitions in relation to circular, the assessment made could be reopened on the strength of decisions so rendered in those case by taking recourse to the provisions of Section 29 of the Commercial Tax Act.

8. In reply, learned Counsel for the State supported the impugned assessments.

9. Having heard the learned Counsel for the parties and having perused the record of the case, we find some force in the submission of learned Counsel for the petitioner and hence, are inclined to allow these writs in part as indicated infra.

10. In substance, the main question that arises for consideration in this writ so also in all connected writ is whether the assessing authority was justified in making an assessment in question solely on the basis of one circular dated August 11, 1993 issued by State (Mining Department) in relation to use of limestone in particular proportion (1-6) in manufacture of cement regardless of case of petitioner.

11. It is not in dispute that legality and propriety of the circular dated August 11, 1993 is under challenge at the instance of several cement-manufacturers, firstly before the High Court and then before the Supreme Court. It is also not in dispute that the matter has been remanded by the Supreme Court to High Court for deciding afresh the issue raised in the writ petitions and the same is pending for final determination in High Court.

12. It is also not in dispute that the assessment in question was made by assessing officer essentially on the basis of the circular dated August 11, 1993, without first deciding as to whether, how and in what circumstances, the said

circular dated August 11, 1993, has application to the case of petitioner and if so, how and on what basis, it is applicable so far as sales tax and entry tax cases are concerned.

13. In our considered opinion, therefore, the proper course in the light of facts emerging from the record of the case would be to direct the assessing officer to make assessment in question on the basis of material/documents/account books relied on by the petitioner for the period in question independent of the circular dated August 11, 1993 and depending upon the final outcome of the cases pending in High Court in relation to circular dated August 11, 1993 and reopen the assessment made by taking recourse to the provisions of Section 29 of the Commercial Tax Act. In fact, Section 29 in such eventuality is attracted once the decision is rendered in relation to circular. Such course would not cause prejudice to any party and at the same time would safeguard the rights of the parties. It will be in accordance with the scheme of Section 29 *ibid* also.

14. We, therefore, allow these writs and while setting aside of the impugned orders, remand the case to assessing officer (R 2) for making fresh assessment as indicated *infra*.

1. The assessing officer shall make assessment for the period in question after affording an opportunity to the petitioner to produce all relevant material on which they rely to enable the assessing officer to complete the assessment and pass orders strictly in accordance with law.

2. The assessing officer while passing the assessment order would not take into consideration the circular dated August 11, 1993 but would make assessment on the basis of material placed on record by the petitioner. Needless to observe, the assessing officer shall not be bound to accept the material so placed by the petitioner and if, a case is made out for rejection of books of account or any other material on which the petitioner has placed reliance then in such event, the assessing officer shall be at liberty to proceed accordingly in accordance with law.

3. No sooner the decision is rendered in the matter of circular dated August 11, 1993 by the High Court in pending cases filed by several parties including

petitioner then in such eventually, the assessing officer shall be at liberty to take recourse to the provisions of Section 29 of the Act for reopening of the assessment already made pursuant to this order for passing fresh assessment orders in the light of the decision so rendered if occasion so arises.

4. The assessing officer shall complete the assessment proceedings as directed within six months from the date of this order.

5. The petitioner would not indulge in any delaying tactics and the assessment proceedings shall be completed within the time fixed by this court. The petitioner would be free to challenge the assessment orders in revision on merits in accordance with law but it will be subject to deposit of tax determined by assessing officer.

15. In view of foregoing discussion and subject to ensuring compliance, the petition is allowed in part. Impugned orders dated October 19, 2001 passed by assessing officer (annexure B) and order dated November 18, 1993 passed by revisionary authority (annexure 6) are quashed by writ of certiorari.

16. No cost.