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Unitech Limited Vs. Additional Commercial Tax Officer and anr.

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Court : Madhya Pradesh

Decided On : Sep-14-2004

Reported in : [2006]146STC648(MP)

Judge : A.M. Sapre, J.

Acts : Madhya Pradesh Commercial Tax Act, 1994 - Sections 6 and 45(3); Madhya Pradesh General Sales Tax Act, 1958 - Sections 4A; [Constitution of India](#) - Articles 226 and 227

Appeal No. : Writ Petition No. 1496 of 1996

Appellant : Unitech Limited

Respondent : Additional Commercial Tax Officer and anr.

Advocate for Def. : A.S. Agrawal, Government Adv.

Advocate for Pet/Ap. : G.M. Chafekar, Sr. Counsel and ;D.S. Kale, Adv.

Disposition : Petition allowed

Judgement :

ORDER

A.M. Sapre, J.

1. By filing this petition under article 226/227 of the [Constitution of India](#), the petitioner seeks to challenge the notices issued Under Section 6 read with Section 45(3) of the Madhya Pradesh Commercial Tax Act, 1994 (annexures C and E) and order dated June 7, 1996 (annexure H).

2. The challenge to the impugned notice is essentially on the ground that similar notice Under Section 4-A of the former Act, i.e., Madhya Pradesh General Sales Tax Act, 1958 (since repealed and replaced by the Madhya Pradesh Commercial Tax Act, 1994) was issued to the petitioner for the very cause in past and on an inquiry being made a detailed order dated June 6, 1994 (annexure B) was passed withdrawing the notice. It is on this basis, the petitioner has contended that once the similar notice had been issued in respect of the same cause and the issue stands decided by holding an inquiry resulting in passing of the order (annexure B), the respondent (C.T.O) has no jurisdiction to again issue same show cause notice by taking recourse to the provisions of Section 6 of the Madhya Pradesh Commercial Tax Act, 1994. The State has been noticed. Reply is filed.

3. Heard Shri G.M. Chafekar, learned Senior Counsel with Shri D.S. Kale, learned Counsel for the petitioner and Shri A.S. Agrawal, learned Government Advocate for the respondents.

4. Having heard learned Counsel for the parties and having perused record of the case, I am inclined to allow the writ and quash the impugned notice.

5. Once it is not disputed by the State that similar notice on the same issue was issued under the repealed Act, i.e., Under Section 4-A of the Madhya Pradesh General Sales Tax Act, 1958 and it resulted in its discharge by passing a reasoned final order (annexure B) then no second notice on the same issue can be issued under the new Act, i.e., Section 6 of the Madhya Pradesh Commercial Tax Act, 1994. When the object of Section 4-A of the former Act and that of Section 6 of the new Act is the same, then in such event, the C.T.O. does not acquire any jurisdiction to issue same notice under the new Act only because the former Act is repealed and replaced by new Act. An action taken under the old Act attained finality because the order (annexure B) was not set aside or recalled or quashed by any other authority. In this view of the matter there did not arise any

fresh cause of action to again start the inquiry into the same facts again under the new Act. What is saved by repeal and saving clause is the action which is initiated under the old Act is pending on the date when the old Act stood repealed and replaced by the new Act. It is such action which can be continued notwithstanding the old Act being repealed. But where the action stood attained finality under the old Act long before the date on which the new Act came into force, the accomplished action cannot be again revived under the garb that new Act has come into force. In other words, if the same action could not have been taken under the old Act while it was in force then it follows that the same cannot be taken under the new A Act as well.

6. Learned Counsel for the State could not dispute the aforementioned legal position nor could he point out any factual distinction in the two notices, i.e., the one sent under the old Act which was withdrawn after inquiry by order (annexure B) and the impugned notice issued under the new Act. In this view of the matter, the impugned notices cannot be sustained in law, they being totally without jurisdiction.

7. Accordingly and in view of aforesaid discussion, I do not wish to go into the factual issues of the case which were sought to be made subject-matter of the two notices because no attempt was made by the parties to show any distinguishable facts in two.

8. In view of foregoing reasons, petition succeeds and is allowed. Impugned notices (annexures C and E) and order dated June 7, 1996 (annexure H) issued/passed by respondents are hereby quashed by writ of certiorari.

9. No costs.