

Expert Engineers Vs. Commissioner of Commercial Tax

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Court : Madhya Pradesh

Decided On : Aug-05-2004

Reported in : (2008)11VST177(MP)

Judge : R.V. Raveendran, C.J. and ;K.K. Lahoti, J.

Appellant : Expert Engineers

Respondent : Commissioner of Commercial Tax

Disposition : Application allowed

Judgement :

ORDER

R.V. Raveendran, C.J.

1. These applications are filed by the assessee under Section 70(2) of the Madhya Pradesh Vanijyik Kar Adhiniyam, 1994 seeking a direction to the Madhya Pradesh Commercial Tax Tribunal to state the case and refer the following substantial questions of law to this court:

(a) Whether in the circumstances of the case and the fact that the cement was purchased from Madhya Pradesh Electricity Board, which was a registered dealer and in whose hands full tax was realised at 12 per cent, there is justification in law to hold that the applicant is entitled to a set-off only to the extent of 0.5 per cent and not 8 per cent as claimed by him?

(b) Whether in view of the fact that MPEB was liable to pay sales tax at the full rate in accordance with Section 14A and, on that analogy, the entire sales tax at full rate was paid, there is justification in law in restricting the set-off only to the extent of 0.5 per cent?

(c) Whether the disallowance of the claim of set-off as claimed renders the order of the Board of Revenue erroneous in law?

2. These petitions relates to the assessment periods April 1, 1985 to March 31, 1986, to April 1, 1990 to March 31, 1991. The assessee is a manufacturer of PCC poles which were supplied to the Madhya Pradesh Electricity Board ('Board' for short). The Board was a registered dealer under the Madhya Pradesh General Sales Tax Act, 1958. Under Section 6(1) read with Entry No. 19 of Part III of Schedule II to the MPGST Act, 1958, the rate of tax in regard to sale of cement was 12 per cent. By virtue of a notification dated April 1, 1986 issued by the State Government, the Board was entitled to purchase cement at a concessional rate of 4.5 per cent in regard to cement meant for their own departmental use between April 1, 1985 to March 31, 1991. (The concessional rate was earlier 4 per cent as per Notification dated April 1, 1982 for the period April 1, 1982 to March 31, 1985). The Board in violation of the notification, sold cement purchased at concessional rate to the applicant. For the said violation, the Board was penalised under Section 14A of the MPGST Act, 1958. As a result of the aforesaid order, the Board had to pay full rate of sales tax on the quantity of cement purchased under Section 6(1) of the MPGST Act, 1958 and also pay penalty under Section 14A of the MPGST Act, 1958.

3. The applicant-assessee had claimed set-off under Section 8(1) of the MPGST Act, 1958 at the full rate of tax which was paid by the Board. The claim was rejected by the Assessing Authority and decision of the Assessing Authority was affirmed in first and second appeals. Thereafter the assessee approached the Tribunal for making a reference under Section 70(1) of the Madhya Pradesh Commercial Tax Act, 1994. The said applications seeking reference have been dismissed by common order dated December 16, 2003 (in Ref. Nos. 75 to 81/CTT/2003) on the ground that set-off was available to the applicant as per the

tax borne and paid under Section 6(1) of the MPGST Act, 1958 and not at the rate of tax paid by the Board under Section 14A of that Act. The Tribunal was of the view that the tax originally paid by the Board was under Section 6(1) of the MPGST Act, 1958 and the excess paid was not under Section 6(1) but under Section 14A of the MPGST Act, 1958. As a consequence, the application for reference has been rejected. We find from Section 14A of the MPGST Act, 1958 that if the registered dealer purchased the goods at concessional rates and used such goods contrary to the declaration or certificate (of self use), he shall be liable to pay the tax on the purchase price of such goods at full rate mentioned in column (3) of Schedule II. Therefore, apparently it cannot be said that the tax paid in excess of 4.5 per cent is paid under Section 14A and not under Section 6(1) of the MPGST Act, 1958. The effect of Section 14A of the MPGST Act, 1958 is that on contravention by the registered dealer, he becomes liable to pay the full rate of tax under Section 6(1) plus penalty, under Section 14A of the MPGST Act, 1958. Therefore, we are satisfied that the substantial questions of law raised by the applicant arise for consideration.

4. We accordingly allow these applications and direct the Tribunal to refer the aforesaid questions of law under Section 70(2) of the Madhya Pradesh Vanijyik Kar Adhiniyam, 1994.