

Binani Cement Ltd., Vs. State (Finance) and ors

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Court : Rajasthan Jodhpur

Decided On : Oct-11-2011

Appellant : Binani Cement Ltd.,

Respondent : State (Finance) and ors

Judgement :

S.B. CIVIL WRIT PETITION NO.9027/2011 AND 8985/2011 BINANI CEMENT LTD. V/S STATE OF RAJASTHAN Judgment dt:11/10/2011

1/24IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR. ..

1. S.B. CIVIL WRIT PETITION NO.9027/2011 (BINANI CEMENT LTD. V/S STATE OF RAJASTHAN AND ORS.)

2. S.B. CIVIL WRIT PETITION NO.8985/2011 (BINANI CEMENT LTD. V/S STATE OF RAJASTHAN AND ORS.) Date of Judgment : 11th October, 2011PRESENT HON'BLE DR. JUSTICE VINEET KOTHARI REPORTABLE Mr. Dinesh Mehta, for the petitioner. -----1.

2. Heard learned counsel for the petitioner at length. These two writ petitions have been filed by the the impugnedpetitioner Binani Cement Limited challengingrectification order and consequential demand notices issued against it for assessment year 2005-2006 and 2006-2007 in which demand of approximately Rs.64.30 lacs has been raised against the said company manufacturing cement, as a consequence of amendment brought in Section 8 of the CST Act, 1956

including section 8(5) of the said Act by Finance Act No.20/2002 with effect from 11.5.2002 prohibiting the State Government to dispense with requirement of furnishing declaration in form C/D for the dealers to avail concessional rate of CST under Section 8(4) of the Act. S.B. CIVIL WRIT PETITION NO.9027/2011 AND 8985/2011 BINANI CEMENT LTD. V/S STATE OF RAJASTHAN Judgment dt:11/10/2011 12/243. Admittedly, since alternative remedy is available to the petitioner company against the impugned rectification orders under Section 37 of the Rajasthan VAT Act, 2003, these writ petitions under Article 226 of the Constitution of India could have been summarily dismissed on the anvil of availability of alternative remedy to the assessee. However, since interpretation of certain notifications and amendment in law is also involved in the present case and to avoid any multiplicity of proceedings before the lower appellate forums below not only in the case of assessee, but in other similarly situated assessees also, it is considered expedient to decide the case on merits itself. Accordingly, the learned counsel for the petitioner was heard at considerable length on merits as well. 4. For the period in question, the assessee availed concessional rate of tax of 6% on the interstate sales of cement made by it on the strength of notification No. 1301 dtd. 21.1.2000 produced as Annex.P/1 with the writ petition, which is reproduced herein below in extenso.: S.No.1301 : F.4(1) FD/Tax.Div/99-266 dated 21.1.2000 S.O. - In exercise of the powers conferred by S.8(5), CST Act, 1956, the State Govt. hereby directs that the tax payable under sub-section

(1) and

(2) of the said section, by any dealer having his place of business in the State, in respect of sale of cement made by him from any such S.B. CIVIL WRIT PETITION NO.9027/2011 AND 8985/2011 BINANI CEMENT LTD. V/S STATE OF RAJASTHAN Judgment dt:11/10/2011 13/24 place of business in the State, in the course of interState trade or commerce, shall be calculated at the rate of 6% on the following conditions, namely: (1) That the dealer shall record the correct name with full and complete address of the purchaser in the bill or cash memorandum for such inter-State sale to be issued by him;

(2)

(3) That the burden of proof that the transaction was in That the dealer making inter-State sales under this the nature of inter-State sale shall be on the dealer; and notfn shall not be eligible to claim benefits provided by notfn No.F.4(72)FD/Gr.IV/81-18 dated 6.5.1986 as amended from time to time (S.No.625).5.Section 8 of the CST Act as amended by Finance ActNo.20/2002 with effect from 11.5.2002 is also reproduced herein below for ready reference:

PRIOR TO AMENDMENT AFTER AMENDMENT8.Rates of Tax on sales in the course of 8.Rates of Tax on sales in the course of inter-State trade or commerce inter-State trade or commerce

(1) Every dealer, who in the course of

(1) Every dealer, who in the course of interinterest-State trade or commerceState trade or commerce sells to a (a) sells to the Government any goods; or registered dealer goods of the description referred to in sub-section (3), shall be liable (b) sells to a registered dealer other than the to pay tax under this Act, which shall be Government goods of the description three percent of his turnover or at the rate referred to in sub-section (3); applicable to the sale or purchase of such shall be liable to pay tax under this Act, goods inside the appropriate State under the which shall be four percent of his turnover. Sales tax law of that State, whichever is lower: Provided that the Central Government may, by notification in the official gazette, reduce the rate of tax under this subsection. (substituted by Act No.16 of 2007 w.e.f 1.4.2007) S.B. CIVIL WRIT PETITION NO.9027/2011 AND 8985/2011 BINANI CEMENT LTD. V/S STATE OF RAJASTHAN Judgment dt:11/10/20114/24 PRIOR TO AMENDMENT AFTER AMENDMENT8(2A). Notwithstanding anything contained Sub-section (2A) omitted by Act 20 of in sub-section (1A) of Section 6 or sub- 2002, sec.152 w.e.f. 11.5.2002. section

(1) or clause (b) of section

(2) of this section, the tax payable under this Act by a dealer on his turnover in so far as turnover or any part thereof relates to the sale of any goods, the sale or, as the case may be, the purchase of which is, under the sales tax law of the appropriate State, exempt from tax generally or subject to tax generally at a rate

which is lower than four percent (whether called a tax or fee or by any other name) , shall be nil or, as the case may be, shall be calculated at the lower rate. Explanation: For the purposes of this subsection a sale or purchase of any goods shall not be deemed to be exempt from tax generally under the sales tax law of the appropriate State if under this law the sale or purchase of such goods is exempt only in specified circumstances S.B. CIVIL WRIT PETITION NO.9027/2011 AND 8985/2011 BINANI CEMENT LTD. V/S STATE OF RAJASTHAN Judgment dt:11/10/2011 15/24 PRIOR TO AMENDMENT (4). The provisions of sub-section

(1) shall not apply to any sale in the course of interState trade or commerce, unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner :AFTER AMENDMENT (4). The provisions of sub-section

(1) shall not apply to any sale in the course of interState trade or commerce, unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority:(a) a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority; or Provided that the declaration is furnished (b) if the goods are sold to the Government, within the prescribed time or within such not a registered dealer, a certificate in the further time as that authority may, for prescribed form duly filled and signed sufficient cause, permit.by a duly authorized officer of the Government; (substituted by Act No.16 of 2007 w.e.f. 1.4.2007). clause (a) is furnished within the prescribed time or within such further time as that authority may, for sufficient cause, permit. S.8(5) Notwithstanding anything contained in this Section; if it is satisfied that it is necessary so to do in public interest, by notification in the Official Gazette, and subject to such conditions as may be specified therein, direct,S.8(5) Notwithstanding anything contained in this Section; (on the fulfillment of the requirements laid down in sub-section

(4) by the dealer) if it is satisfied that it is necessary so to do in public interest, by notification in the Official Gazette, and (a) that no tax under this Act shall be subject to such conditions as may be payable by any dealer having his place of specified therein, direct, business in the State in respect of the sales (a) that no tax under this Act shall be by him, in the course of from any such payable by any dealer having his place of place of business of any such goods or business in the State in respect of the sales classes of goods as may be specified in the by him, in the course of (to a registered notification, or that the tax on such sales dealer or the Government) from any such shall be calculated at such lower rates than place of business of any such goods or those specified in sub-section

(1) or sub- classes of goods as may be specified in the section

(2) as may be mentioned in the notification, or that the tax on such sales notification; shall be calculated at such lower rates than (b) that in respect of all sales of goods or sales of such classes of goods as may be specified in the notification, which are made, in the course of dealer having his place of business in the State or by any class of such 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 subsection

(1) or sub-section

(2) as may be mentioned in the notification. those specified in sub-section

(1) or subsection

(2) as may be mentioned in the notification; (b) that in respect of all sales of goods or sales of such classes of goods as may be specified in the notification, which are made, in the course of (to a registered dealer or the Government) dealer having his place of business in the State or by any class of such 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 S.B. CIVIL WRIT PETITION NO.9027/2011 AND 8985/2011 BINANI

CEMENT LTD. V/S STATE OF RAJASTHAN Judgment dt:11/10/20116/246.On27.9.2005,videnotificationserialno.1358dtd.12.11.2001, expression without furnishing of declaration in form C or certificate in form D were deleted. However, the aforesaid notification serial No.1301 dtd.21.1.2000 came to be rescinded only later on vide notification No. F.12(20)FD/Tax/05-Pt-118dtd.1.12.2006 vide Annex.P/5. On 13.12.2005, the State Government interpreting the amendment made in CST Act w.e.f. 11.5.2002 issued a circular that to avoid unnecessary financial hardship, where traders have acted under bonafide belief that there is no requirement of furnishing these declaration forms to support their claim for concessional rate of tax under the relevant notifications and the following guidelines were issued for assessing authorities :S.No.2117:CCTCircularNo.F.11(13)/Tax/CCT/2005/2000 dtd.13.12.2005. The amendment in S.8 CST Act, 1956 made effective from 11.5.2002, has been interpreted in diversified manners so far as furnishing of the Form C or certificate in Form D is concerned for claiming benefit of concessional rate of tax in the inter-State transactions. One view is that unless the condition of dispensing with the requirement of these Forms is withdrawn specifically, the dealers would not be required to furnish such forms to claim the benefit of concessional rate of tax under such notfns. The other view is that the impact of S.B. CIVIL WRIT PETITION NO.9027/2011 AND 8985/2011 BINANI CEMENT LTD. V/S STATE OF RAJASTHAN Judgment dt:11/10/20117/24the aforesaid amendment is withdrawal of the power of the State Govt. to dispense with the requirement of Form C or D while providing for concessional rate of tax under S.8, CST Act. In absence of such forms, the dealers would not be entitled to claim benefit of concessional rate of tax under any of notfns. issued under S.8(5), CST Act, 1956. This has created a situation where insistence for furnishing such Forms is causing hardship to the dealers who had the bona fide belief that requirement of Form C/D was not necessary as per the existing notification where the requirement of furnishing these declaration forms have been dispensed with. Having considered various aspects of the issue and being satisfied that levy of higher amount of tax by the AA in absence of 'C'/D' Forms will not only adversely affect the trade and industry but will also cause financial hardship to them even when they have acted under the bona fide belief that there is no requirement of furnishing these forms to support

their claim for concessional rate of tax under the relevant notfns. Therefore, in the interest of justice and to free the trade from unnecessary financial burden, the following clarifications are hereby issued:1. From 11.5.2002 to 26.9.2005, there will be no requirement of furnishing Form 'C'/D' to support sales in the course of inter-State trade and commerce under the notfns. which S.B. CIVIL WRIT PETITION NO.9027/2011 AND 8985/2011 BINANI CEMENT LTD. V/S STATE OF RAJASTHAN Judgment dt:11/10/20118/24specifically (2)dispensedwithrequirementoffurnishing such forms in support of such sales; With effect from 27.9.2005, all the interState sales transaction should be supported by declaration Form 'C'/D' to claim benefit of concessional rate of tax under any notfn issued by the State Govt. under S.8, CST Act;

(3) and

(4) No refund shall be given to any dealer under S.56, RST Act, 1994 while initiating action under this circular; This bears approval of the finance department vide letter no.F.12(20)FD/Tax/05-pt, dated 6.12.2005. Any order passed in contravention with this circular shall be rectified in accordance with law;7.That the Finance Department (Tax Division) of the StateGovernment through the Principal Secretary issued another order on 16.4.2008 directing writing off of the tax liability on the interstate sale not supported by declaration in C form and the said administrative order is also reproduced herein below: () :.12(20) //2005- - 13 , 2002 25 ", 2005 # % & , " C-Form inter-sales *+ "# %, 1956 % 1 , : 16.4.2008 S.B. CIVIL WRIT PETITION NO.9027/2011 AND 8985/2011 BINANI CEMENT LTD. V/S STATE OF RAJASTHAN Judgment dt:11/10/20119/24 3 , 6/() 8 , ()8.In another case before this Court in the case of M/sDinesh Enterprise V/s CTO - STR No.83/2010 decided on 11.1.2011 while dealing with the effect of said amendment in the CST Act w.e.f. 11.5.2002 and the aforesaid administrative order dtd.16.4.2008, this Court in the aforesaid case of Dinesh Enterprises V/s CTO came down heavily on the said administrative order and quashed the same in the aforesaid case finding that by an administrative order the liability of CST could not be written off by the State Government and in this regard, the Division Bench judgment in the case of Jewel Classic Hotel Private Limited V/s State of Haryana and ors. reported in (2006) 145 STC 75 (P & H) was relied upon. The relevant

extract from the said decision in the case of Dinesh Enterprises V/s CTO (supra) is reproduced herein below for ready reference:3.The learned counsel for the petitionerassessee Mr. Dinesh Mehta at the outset fairly submitted that in view of amendment in law w.e.f. 11.5.2002 making furnishing of declaration in form C/D mandatory, since assessment period in question admittedly falls after such amendment, therefore, he S.B. CIVIL WRIT PETITION NO.9027/2011 AND 8985/2011 BINANI CEMENT LTD. V/S STATE OF RAJASTHAN Judgment dt:11/10/201110/24cannot assail the order of the Tax Board validly. However, one contention which is sought to be raised by the learned counsel for the petitioner on the strength of an administrative order passed by the Secretary (Revenue) of the Finance Department of the Government of Rajasthan, a copy of which is placed on record as Annex.7 and which is reproduced hereunder, is that since the inter-state tax liability under the said Act for the period between 13.5.2002 to 25.9.2005 was written off by the State Government, therefore, the Central Sales Tax recovered from the petitioner assessee for such inter-state sales made by him but not supported by the declaration form C/D deserves to be refunded back to him and notwithstanding no challenge to the order of the Tax Board, the said Tax recovered from the petitioner assessee deserves to be refunded back to him.4.The learned counsel for the Revenue Mr.Mathur strenuously opposed the said submissions and urged that by the administrative order, the amendment in the CST Act w.e.f. 11.5.2002 by Act No.20 of 2002 could not have been undone. He submitted that unrecovered tax liability on account of said amendment in law could only be written off by the said administrative order of the State Government and there is no question of refunding back the tax already so recovered from the assessee on the anvil of the said administrative order. The said administrative order Annex.7 is reproduced hereunder: S.B. CIVIL WRIT PETITION NO.9027/2011 AND 8985/2011 BINANI CEMENT LTD. V/S STATE OF RAJASTHAN Judgment dt:11/10/201111/24 () :.12(20) //2005- - 13 , 2002 25 " , 2005 # % & , " C-Form inter-sales *+ "# % , 1956 % 1 3 , 6/() 8 , () , : 16.4.20085.A bare perusal of the said administrativeorder reveals the contradiction in terms of said order. What could be written off as unrecoverable by the State Government could only be what stood as tax viz. CST still recoverable from the assessee. There is no question of writing off the tax liability itself as it is.

Therefore, the use of words and 1 position translation of these words are in juxtaor contradiction in terms. The english liabilityobligation and write off or waiver respectively. The meaning of words Bad Debt as given in Black's Law Dictionary is as under:adebtwhich isuncollectible; a purposes impermissible deduction for taxarriving at taxable income. Different tax treatment is afforded business and non-business bad debts. A business debt is defined by the Internal Revenue Code as a debt created or acquired in connection with a trade or business of the S.B. CIVIL WRIT PETITION NO.9027/2011 AND 8985/2011 BINANI CEMENT LTD. V/S STATE OF RAJASTHAN Judgment dt:11/10/201112/24taxpayer, or a debt which becomes worthless in the taxpayer's trade or business. Loans between related parties (family members) generally are classified as non-business.6.The meaning of word liability as given inBlack's Law Dictionary is as under:an obligation which may or may not ripen into a debt; any kind of debt or liability, either absolute or contingent, express or implied; penalty for failure to pay tax when due, State v. Fischl, 94 Mont.92, 20 P.2d 1057, 1059; present, current, future, fixed or contingent debts, Erickson v. Grande Ronde Lumber Cop., 162 Or.56, 92 P.2d 170, 174; punishment, Holliman v. Cole, 168 Okl. 473, 34, P.2d 597, 599; responsibility for torts, Italiani v. MetroGoldwyn-Mayer Corporation, 45 Cal.App.2D, 464, 114 P.2d 922, 924; that which one is under obligation to pay, or for which one is liable.7.The word waiver has been defined inBlack's Law Dictionary is as under:Theintentionalorvoluntaryrelinquishment of a known right, or such conduct as warrants an inference of the relinquishment of such right, or when one dispenses with the S.B. CIVIL WRIT PETITION NO.9027/2011 AND 8985/2011 BINANI CEMENT LTD. V/S STATE OF RAJASTHAN Judgment dt:11/10/201113/24performance of something he is entitled to exact or when one in possession of any right, whether conferred by law or by contract, with full knowledge of the material facts, does or forbears to do something the doing of which or the failure of forbearance to do which is inconsistent with the right, or his intention to rely upon it. The renunciation, repudiation, abandonment, or surrender of some claim, right, privilege, or of the opportunity to take advantage of some defect, irregularity or wrong. An express or implied relinquishment of a legal right. A doctrine resiting upon an equitable principle, which courts of law will recognize. Atlas Life Ins. Co. v. Schrimsher, 179,

948. Waiver is essentially unilateral, resulting as legal consequence from some act or conduct of party against whom it operates, and no act of party in whose favour it is made is necessary to complete it.⁸ It appears that the concerned Secretary with the while issuing this administrative order contradiction in his administrative order. approval of Governor has remained oblivious of this⁹. Government While it is the choice of the State to write off the tax outstanding which remains unrecovered from the assessee for any reason, even though the relevant law makes that liability as enforceable liability and recoverable tax, having the S.B. CIVIL WRIT PETITION NO.9027/2011 AND 8985/2011 BINANI CEMENT LTD. V/S STATE OF RAJASTHAN Judgment dt:11/10/2011 14/24 sanction of law under Article 265 of the Constitution of India read with relevant provision of such enactment, what cannot be written off is 'liability' to pay the tax itself. It is well known accounting policy to write off bad debts i.e. the debt which cannot be recovered for any reason. Similarly unrecovered outstanding tax from assessee can also be written off by the State, but liability to pay tax itself cannot be written off, unless statute is amended or and power to exempt such tax liability is exercised by the State. A Secretary of Finance Department to the State by administrative order even with the approval of the Governor cannot exercise the power to exempt the tax liability. It is the legislative function to be exercised by the State Government as a subordinate legislative function.¹⁰ The liability to pay tax itself can only be exempted by invoking relevant provisions for grant of exemption under the relevant statute, like , Section 15 of the Rajasthan Sales Tax Act, 1994. That power can only be exercised by the State Government itself according to the Rules of Business and not by any Secretary concerned thereof. Obviously, Section 15 of the Act for exempting the tax liability invoked while passing the has not been order administrative dt.16.4.2008. Therefore, the contention of the learned counsel for the assessee that his liability itself stood written off and therefore, whatever was paid by him as due tax liability which was upheld right upto the Tax Board deserves to be refunded back to him on the anvil of such administrative order issued by the Secretary of the State Government with the approval of the S.B. CIVIL WRIT PETITION NO.9027/2011 AND 8985/2011 BINANI CEMENT LTD. V/S STATE OF RAJASTHAN Judgment dt:11/10/2011 15/24 Governor is

thoroughly misconceived and deserves to be rejected. The same is accordingly rejected.¹¹ There was no question of writing off the tax liability which was fixed and enforced against the petitioner assessee by amendment of Central Sales Tax Act, 1956 w.e.f. 11.5.2002 which clearly stipulates that no such inter-state sales unsupported by the declaration in form C/D enjoys concessional rate of tax. The assessee is not even disputing his tax liability on the inter-state sales of DEPB licence in the present case. The position relating to amendment in Section 8 of the Central Sales Tax Act by reproduction of comparative provisions before amendment and after amendment is given below in the form of a chart. The effect of these amendments on furnishing of declaration form C/D was explained by the Commissioner of Sales Tax in his Circular dtd.13.2.2005, which is also reproduced hereinafter:

PRIOR TO AMENDMENT	AFTER AMENDMENT
8. Rate of Tax on sales in the course of inter-State trade or commerce	8. Rates of Tax on sales in the course of inter-State trade or commerce.

(Already reproduced above, hence omitted here)¹² As fairly contended by the learned counsel for the petitioner assessee himself, he could not validly assail the imposition of such tax liability in view of amendment in law which has the effect of assessee not being entitled to avail concessional rate of tax without S.B. CIVIL WRIT PETITION NO.9027/2011 AND 8985/2011 BINANI CEMENT LTD. V/S STATE OF RAJASTHAN Judgment dt:11/10/2011¹⁶/24 declaration in Form C/D and rightly so, but having paid that tax liability, seeking refund thereof on the strength of the aforesaid administrative order passed by the Secretary to the State Government is indeed an ingenious argument of the learned counsel for the assessee, which has no legal substance in it. The same is, therefore, liable to be rejected.¹³ The contention of the learned counsel for the petitioner assessee that since by aforesaid administrative order dtd.16.4.2008, the tax liability of assessee has been waived/written off and therefore, the assessee is entitled to refund of excess tax already assessed and realized from him, is also negated by the Circular dtd.13.12.2005 issued by the Commissioner of Sales Tax himself produced as Annex.3 by the petitioner himself and which is reproduced below clearly stipulates that no refund would be granted in these circumstances vide para

(4) thereof. S.No.2117: CCT Circular No.F.11(13)/Tax/CCT/2005/2000 dtd.13.12.2005. (Already reproduced above, hence omitted here)

16. This Court also feels concerned at the issuance of such administrative orders by the Secretary concerned even though of Finance Department of the State Government where instead of clearly determining the quantum of such outstanding tax and tax due against the specified assessee to be written off which could not be recovered for particular reasons, the said Secretary S.B. CIVIL WRIT PETITION NO.9027/2011 AND 8985/2011 BINANI CEMENT LTD. V/S STATE OF RAJASTHAN Judgment dt:11/10/2011 17/24 has chosen to use the words tax liability written off (1). The same not only by far surpasses the Circular issued by the Commissioner on 13.12.2005 but also renders the amendment in CST Act w.e.f. 11.5.2002 nugatory for the State. This Court expresses its anguish and concern about such loosely drafted administrative orders which have far reaching implications. The same is liable to be quashed and is accordingly hereby quashed. 17. Consequently, while the Tax Board Order not assailed by the assessee in the present revision petition and rightly so, but against which only on a question of law arising therefrom, a revision petition under section 86 of the Rajasthan Sales Tax Act, 1994 could be maintained by the petitioner assessee, this revision petition filed for seeking refund of tax already so paid and recovered on the strength of the administrative order Annex.7 dtd.16.4.2008 quoted above is also liable to be dismissed as not maintainable. 18. Accordingly, the present revision petition is dismissed. No order as to costs. A copy of this order be sent to the Chief Secretary of the State for information. Sd/(Dr.VINEET KOTHARI) J.9. That superseding the earlier administrative orders dated 16/4/2008, which was quoted by this court in aforesaid case of M/s S.B. CIVIL WRIT PETITION NO.9027/2011 AND 8985/2011 BINANI CEMENT LTD. V/S STATE OF RAJASTHAN Judgment dt:11/10/2011 18/24 Dinesh Enterprises (supra), the Finance Department had issued two more such administrative orders on 13/5/2008, which are also reproduced hereunder: -12 9(20) //2005- -6 13 2008 -12

(20) //2005- 16 3 2008 < = 13 , 2002 25 " 2005 # % & " C-Form InterState Sales +
"# % 1956 # % 8 # %

(5) " 6 % < # 1 3 & S. No. 2370 12

(20) //2005- -6 13-5-2008 -12

(20) //2005- 16 3 2008 < = 26 25 " 2005 31 8, 2007 "68 + "# % 1956 , " C-Form Inter-state sale %, 1994/ G D % 2003 1 3 % < #10.The impugned rectification orders dated 25/3/2011 were passed in the present case in view of Clause

(3) of Circular dated 13/12/2005, reproduced above, since in the original assessment orders passed for the said period allowed the said concessional rate of 6% to the assessee even though not supported by the declaration in form C/D, which period admittedly fell after the amendment in the CST S.B. CIVIL WRIT PETITION NO.9027/2011 AND 8985/2011 BINANI CEMENT LTD. V/S STATE OF RAJASTHAN Judgment dt:11/10/201119/24Act w.e.f. 11.5.2002 were passed on account of said amendment in law.11.The contentions of the learned counsel for the petitioner Mr.Dinesh Mehta that the notification Annex.P/1 dtd.21.1.2000 did not require furnishing of declaration form C/D is misconceived, in the first instance because the said notification dated 21/1/2000 as reproduced above itself does not specifically exclude the said requirement of furnishing of declaration form C/D. In the said notification only the three conditions mentioned in the said notification for availing rate of 6% do not /cannot and could not have superseded the requirement of obtaining such declaration in form C from the purchasing dealer and furnishing the same to the assessing authority of the present assessee i.e. selling dealer in view of binding provisions of Section 8(4) of the Act. The subsequent rescission of the said notification dated 21/1/2000 by Notification Annex.P/6 dtd.1.12.2006 does not mean that by necessary implication the rescinded notification dtd.21.1.2000 dispensed with such requirement of furnishing declaration in Form C. The three conditions mentioned in the said notification dtd.21.1.2000 are obviously in addition to already existing statutory requirement in Section 8 of the CST Act and therefore, for availing the benefit of 6% rate of tax of CST was subject to in fact four conditions; one statutory condition of furnishing C form and three conditions mentioned in the notification S.B. CIVIL WRIT PETITION NO.9027/2011 AND 8985/2011 BINANI CEMENT LTD. V/S STATE OF RAJASTHAN Judgment dt:11/10/201120/24dtd.21.1.2000, namely, (i) the selling dealer shall record the correct name with full an complete address of the purchaser in the bill or cash memorandum for such inter-State sale; (ii) the burden of proof that the transaction was in the nature of inter-State sale shall be on the dealer and (iii) that such selling dealer shall not be eligible to claim benefits provided under notification

dtd.6.5.1986 regarding set off (serial No.625).The said notification dtd.21.1.2000 (Annex.1) does not talk of furnishing of C-form anywhere nor the same was required to do. It is only when the State Government specifically chose to dispense with said requirement of furnishing declaration in C form, it clearly and categorically stated so, but even such statement of dispensing with requirement of furnishing of C-form could not have been made after amendment w.e.f. 11.5.2002 in the CST Act, 1956. Therefore,raising this contention that for the period falling after 11.5.2002 said requirement was not there and concessional rate having been allowed obviously under mistaken belief of fact and law both cannot be rectified, is liable to be rejected as misconceived and same is accordingly rejected.¹²The clarification issued by theState Government on13.12.2005 also clearly stated that for the period from 11.5.2002 to 26.9.2005, there will be no requirement of furnishing form C and D S.B. CIVIL WRIT PETITION NO.9027/2011 AND 8985/2011 BINANI CEMENT LTD. V/S STATE OF RAJASTHAN Judgment dt:11/10/2011^{21/24}consequent to the amendment made in CST Act w.e.f. 11.5.2002 under the notification which specifically dispensed with the requirement of furnishing such declaration in support of such interstate sales. Clause 2 of the said clarification dated 13/12/2005 further stipulates that w.e.f. 27.9.2005, all the inter-State transactions should be supported by declaration form C/D. Clause 3 of Circular which is applicable in the present case of assessee further stipulates that any order passed in contravention with this Circular shall be rectified in accordance with law and clause 4 stipulates that no refund shall be given to any dealer as a consequence of this circular.¹³While the case of M/s Dinesh Enterprises (supra) wasthe case of refund claimed which was hit by Clause

(4) of aforesaid Circular dtd.13.12.2005 and consequently, the revision petition of M/s Dinesh Enterprises was dismissed by this Court on 11.1.2011, here in the present case, the assessee is obviously hit by clause 3 of the Circular dtd.13.12.2005 which clearly stipulates that any order passed in contravention with this Circular shall be rectified in accordance with law. The period in question before this Court in these two writ petitions is 1.4.2006 to 30.6.2006 and 1.7.2006 to 30.9.2006 in CWP No.8985/2011 vide Annex.18 and19 and from 1.4.2005 to 31.3.2006 in CWP No.9027/2011 vide Annex.15. From these impugned rectification assessment orders dated 25/7/2011 only S.B. CIVIL WRIT PETITION

NO.9027/2011 AND 8985/2011 BINANI CEMENT LTD. V/S STATE OF RAJASTHAN Judgment dt:11/10/2011 22/24 part of assessment year 2005-2006 (1.4.2005 to 25.9.2005) can be said to be covered by administrative order of Finance Secretary dtd.13.5.2008, Annex.P/11 and Annex.P/12, which benefit has been given to the assessee in the impugned rectification order dated 25/7/2011 (Annex.P/15) itself. The rest of the subsequent period is obviously after the said dated 25/9/2005 & for that the assessee is not entitled to any relief because the full rate of tax under the RST Act in absence of declaration in C form for the period from 26/9/2005 to 1/12/2005 was 19% and from 2/12/2005 to 31/3/2006, it was 28%, therefore, the petitioner assessee cannot contend that his tax liability over 6% CST is waived by order dtd.13.5.2008 Annex.P/12 because the said orders only purports to write off the demand of CST only if the rate applied under the CST Act in absence of declaration form is in excess of rates prescribed by the State Government under RST Act and only such excess was sought to be written off under the said administrative order dtd.13.5.2008 of Finance Secretary.

14. Without prejudice to the fact that the said two administrative orders dtd.13.5.2008 were issued quoted herein above, superseding the administrative order dtd.16.4.2008 which was quashed by this Court in the case of M/s Dinesh Enterprises (supra), the said orders dtd.13.5.2008 (Annex.P/12 and P/13 issued separately for the period from 13.5.2002 to 25.9.2005 (Annex.P/12) and 26.9.2005 to 31.3.2007 (Annex.P/13) only purport to write off the excess tax imposed over and above the rate prescribed under the RST Act for S.B. CIVIL WRIT PETITION NO.9027/2011 AND 8985/2011 BINANI CEMENT LTD. V/S STATE OF RAJASTHAN Judgment dt:11/10/2011 23/24 the same commodity. From the impugned rectification orders dtd.25.7.2011 passed in the present case, it would be clear that for the period from 26.9.2005 to 1.12.2005, the rate of tax under the State on sale of cement was 19% and for the period from 2.12.2005 to 31.3.2006, it was 28%. The assessing authority was therefore, correct and justified in holding that for these periods, since there was no imposition of tax on the assess in excess over the rates of tax applicable under the RST Act, there was no question of writing off any such tax liability of any such excess in the case of present assessee and therefore, he was not covered by the Write Off orders Annex.P/12 and P/13 both dtd.13.5.2008. Therefore, the assessing authority rightly, in

pursuance of amendment in CST Act w.e.f. 11.5.2002 supported by the circular issued by the Commissioner on 13.12.2005 vide Annex.4, was perfectly justified in undertaking the rectification proceedings against the present assessee and creating the said demand of difference tax and interest against the assessee. The learned assessing authority was also justified in rejecting the contention of the assessee that since the notification dtd.21.1.2000 (Annex.P/1) was rescinded only on 1.12.2006 and therefore, for the period upto 30.11.2006, the benefit of 6% rate of tax should be given to it even in absence of declaration in C form because the said notification dated 21/1/2000 firstly does not dispense with the requirement of C form specifically and even if the such position was to be presumed even for the argument's sake, the same stood S.B. CIVIL WRIT PETITION NO.9027/2011 AND 8985/2011 BINANI CEMENT LTD. V/S STATE OF RAJASTHAN Judgment dt:11/10/2011 24/24 impliedly superseded by amendment in the CST Act w.e.f. 11.5.2002.15. Consequently, this Court is of the opinion that there is no force in both the present writ petitions and the same are liable to be dismissed and same are accordingly dismissed. No order as to costs. Copy of this order be sent to the respondents immediately. [DR. VINEET KOTHARI], J.

item No. ss/-

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