
(2025) 02 SC CK 0037

Supreme Court Of India

Case No: Civil Appeal Nos.13928 Of 2015 With Civil Appeal No. 13522, 13523 13524, 13525
13526, 13527 Of 2015

State Of Maharashtra &
Ors

APPELLANT

Vs

Prism Cement Limited
& Anr

RESPONDENT

Date of Decision: Feb. 12, 2025

Acts Referred:

- Bombay Sales Tax Act, 1959 - Section 38
- Central Sales Tax Act, 1956 - Section 8, 8(1), 8(2), 8(4), 8(5)
- Central Sales Tax (Registration & Turnover) Rules, 1957 - Rule 12

Hon'ble Judges: Pamidighantam Sri Narasimha, J; Pankaj Mithal, J

Bench: Division Bench

Advocate: Aaditya Aniruddha Pande, Anil Katiyar, Tushar Mehta, Deepanwita Priyanka, Punit Dutt Tyagi, Zoheb Hossain, Amarjit Singh Bedi, Surekha Raman, Shreyash Kumar, Yashwant Sanjenbam, Imlikaba Jamir, M/S. K J John And Co, V Sridharan, Sahil Parghi, S Sriram, Neha Choudhary, Umang Motiyani, Aayush Agarwal, Falguni Gupta, Ayush Agarwal, Charanya Lakshmikumaran, S. Ravi Shankar, Yamunah Nachiar, Meghna Mukherjee, M/S. Gagrath And Co, Ujjwal A Rana, Himanshu Mehta, K. Paari Vendhan, Rishabh Sancheti, Padma Priya, Paarivendhan, Anushree Prashit Kapadia, M. P. Devanath

Final Decision: Dismissed

Judgement

Pankaj Mithal, J

Civil Appeal No. 13928 OF 2015:

1. Heard learned counsel for the parties at length.
2. The assessee-respondent Prism Cement Limited, a public limited company, invoked the extraordinary writ jurisdiction of the High Court, challenging

the three trade circulars issued by the Commissioner of Sales Tax, Mumbai
on 27.05.2002, 20.07.2002 and 08.02.2007

respectively and various notices issued by the Deputy Commissioner of Sales Tax under
Section 38 of the Bombay Sales Tax Act, 1959

for revising the assessments of the assessee-respondent made for the
assessment years 2002-2003 to 2004-2005. Consequentially, calling

upon the assessee-respondent to pay/refund the exempted portion of the tax as per the
provision of Package Scheme of Incentives 1993

on the sale of goods effected in the course of inter-State trade or
commerce.

3. The above writ petition has been allowed by the Division Bench of the High Court by
the impugned judgment and order dated 30.08.2012 and it has

been held that even after the amendment of Section 8(5) of the Central Sales Tax Act
by the Finance Act, 2002 with effect from

11.05.2002, the State Governments are empowered to grant total or partial exemption
from tax payable on inter-State sales covered under Section

8(1) as also under Section 8(2) of the CST Act in public interest, subject to the fulfilment
of requirements of Section 8(4) of the CST Act.

Accordingly, the trade circulars and the notices impugned were quashed holding that the
State of Maharashtra incorrectly proceeded to issue the same

on the premise that the State Government had no power to grant total or partial
exemption in respect of transactions covered under Section 8(2) of the

CST Act after the 2002 amendment.

4. Under challenge in this appeal is the aforesaid judgment and order dated 30.08.2012
passed by the High Court allowing the above writ petition.

5. The State of Maharashtra introduced the PSI in 1993 so as to encourage the
establishment of industrial units in backward areas and for that

purpose envisaged to provide tax incentives, inter alia, including partial/total exemption
from payment of sales tax under the BST Act as well as CST

Act. This scheme was announced in exercise of powers under Section 8(5) of the CST
Act vide notification dated 05.07.1980. The scheme provided

a specified time period and the maximum amount up to which units were entitled to avail such incentives.

6. Undisputedly, the assessee-respondent was eligible for tax exemption under the said scheme and was duly issued the Eligibility Certificate dated

20.02.1998 and the Entitlement Certificate dated 24.03.1998 granting exemption from payment of tax under the BST Act and CST Act to the extent

of Rs.273.54 crores or up till 2012 whichever is earlier.

7. The assessee-respondent in the three assessment years 2002-2003, 2003-2004 and 2004-2005 availed the tax exemption benefits under the above

scheme but after the CST Act was amended by the Finance Act, 2002 with effect from 11.05.2002, the State of Maharashtra, on the basis of the

impugned trade circulars and the notices issued in the 4 month of February, 2009 under Section 38 of the BST Act, sought to revise the tax demand of

the assessee-respondent on the pretext that the assessee-respondent has failed to comply with the conditions of Section 8(4) of the CST Act with

regard to submission of declarations in Form $\tilde{A}$ or $\tilde{A}$.

8. In the above backdrop, the issue which arises for consideration is whether the exemption from tax granted under the PSI 1993 issued under Section

8(5) of the CST Act as it existed at the relevant time read with eligibility & entitlement certificate could be withdrawn by the subsequent amendment

to Section 8(5) of the CST Act by the Finance Act of 2002 with effect from 11.05.2002 as the assessee-respondent failed to fulfil the requirements of

Section 8(4) of the CST Act which mandated for submission of declaration in Form $\tilde{A}$ or $\tilde{A}$. Ancillary, whether the aforesaid

amendment could be applied retrospectively taking away the benefit which have accrued to the assessee-respondent prior to coming into force by the

Finance Act 2002.

9. In this context we had to first refer to Section 8(1) of the CST Act as it stood prior to its amendment by the Finance Act 2002 with effect from

11.05.2002. The Section 8 of the CST Act as a whole as it stood prior to the amendment by the Finance Act 2002 reads as under:

Section 8: Rates of tax on sales in the course of inter-State trade or commerce

1. Every dealer, who in the course of inter-State trade or commerce:

(a) sells to the Government any goods; or

(b) sells to a registered dealer other than the Government goods of the description referred to in sub-section (3); shall be liable to pay tax under this Act, which

shall be four percent of his turnover.

2. The tax payable by any dealer on his turnover insofar as the turnover or any part thereof relates to the sale of goods in the course of inter-State trade or

commerce not falling within sub-section (1):

(a) in the case of declared goods, shall be calculated at twice the rate applicable to the sale or purchase of such goods inside the appropriate State; and

(b) in the case of goods other than declared goods, shall be calculated at the rate of ten percent or at the rate applicable to the sale or purchase of such goods

inside the appropriate State, whichever is higher.

3. The goods referred to in clause (b) of sub-section (1):

(a) Omitted.

(b) are goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for resale by him or

subject to any rules made by the Central Government in this behalf, for use by him in the manufacture or processing of goods for sale or in mining or in the

generation or distribution of electricity or any other form of power;

(c) are containers or other materials specified in the certificate of registration of the registered dealer purchasing the goods, being containers or materials

intended for being used for the packing of goods for sale;

(d) are containers or other materials used for the packing of any goods or classes of goods specified in the certificate of registration referred to in clause (b) or for

the packing of any containers or other materials specified in the certificate of registration referred to in clause (c).

4. The provisions of sub-section (1) shall not apply to any sale in the course of inter-State trade or commerce unless the dealer selling the goods furnishes to the

prescribed authority in the prescribed manner:

(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

(b) if the goods are sold to the Government, not being a registered dealer, a certificate in the prescribed form duly filled and signed by a duly authorized officer of

the Government.

5. Notwithstanding anything contained in this section, the State Government may, if it is satisfied that it is necessary so to do in the public interest, by notification

in the Official Gazette and subject to such conditions as may be specified therein, direct:

(a) that no tax under this Act shall be payable by any dealer having his place of business in the State in respect of the sales by him in the course of inter-State

trade or commerce, from any such place of business of any such goods or classes of goods as may be specified in the notification; or that the tax on such sales shall

be calculated at such lower rates than those specified in sub-section (1) or sub-section (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 inter-state trade or

commerce, by any dealer having his place of business in the State or by any class of such dealers as may be specified in the notification to any person or to such

class or 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 sub-section (1) or sub-section (2) as may be mentioned in the notification.

10. Section 8(1) of the CST Act provides for a rate of tax for sales carried out by dealer to registered dealers of the other States or the sale of goods

to the Government in respect of specified goods. It inter-alia provides that every dealer who in the course of the inter-State trade or commerce sells to

the Government any goods or sells to the registered dealer other than the Government, the goods of the particular description, shall be liable to pay tax

at the rate of 4 per cent of its turnover.

11. Section 8(2) of the CST Act prescribes the rate of tax in respect of sales carried by the dealer in other states, not covered by Sub Section 1. It

provides that the dealer shall be liable for payment of tax twice the rate applicable to the sale or purchase of such goods inside the state on the

declared goods and where the goods are other than declared goods the rate of tax shall be 10 per cent or at the rate applicable to the sale or purchase

of such goods inside the state whichever is higher.

12. Section 8(4) of the CST Act mandates that the sales under Section 8(1) are required to be supported by the prescribed declarations in the Form

Ã¢â¬Å or Ã¢â¬Å as provided under Rule 12 of the CST Rules; meaning thereby that exemption/lower rate of tax on inter-State sales or

commerce was permitted only in respect of the sales in the other state to the registered dealer or the Government subject to providing Form Ã¢â¬Å

or Ã¢â¬Å.

13. Section 8(5) of the CST Act is an overriding provision and it overrides Section 8(1) and Section 8(4). Sub Section (5) of 9 Section 8 of the CST

Act empowers the State Government to issue notification to grant partial or full exemption from taxes on inter-State sales or commerce in public

interest and to prescribe different grade of tax.

14. In view of the mandate contained in Section 8(4) of the CST Act that the inter-State sales or trade under Section 8(1) are required to be supported

by the declarations as envisaged in Form Ã¢â¬Å and Ã¢â¬Å as provided under Rule 12 of the CST Rules, the issue whether in granting

exemption/partial exemption on tax on such sales, the State Government is competent to dispense with the production of Form Ã¢â¬Å and

Ã¢â¬Å came to be considered in the case of Shree Digvijay Cement Co. Ltd. and Others vs State of Rajasthan and Others (2000) 1 SCC 688.

This Court in deciding the above case inter-alia held that as Section 8(5) starts with a non-obstinate clause and overrides Section 8(1) and 8(4) of the

CST Act, the power of the State Government to grant exemption/partial exemption from tax includes dispensing with the requirement of Form

Ã¢â¬Å and Ã¢â¬Å in respect of inter-State sales and trade. To put it simply it was held that when the State Government grants

exemption/partial exemption in tax in exercise of powers under Section 8(5) it impliedly has the power to dispense with the requirement of Form

Ã¢â¬Å and Ã¢â¬Å.

15. It was to overcome the decision of this Court in Shree Digvijay (Supra) that Section 8(5) of the CST Act was amended by Finance Act 2002

with effect from 11.05.2002. The amended Section 8(5) of the CST Act reads as under:

Ã¢â¬Å“Section 8(5) - Notwithstanding anything contained in this section, the State Government may, if it is satisfied that it is necessary so to do in the public

interest, by notification in the Official Gazette and subject to such conditions as may be specified therein, direct:

(a) no tax under this Act shall be payable by any dealer having his place of business in the State in respect of the sales by him, in the course of inter-State trade or

commerce, to a registered dealer or the Government from any such place of business of any such goods or classes of goods as may be specified in the notification,

or that the tax on such sales shall be calculated at such lower rates than those specified in sub-section (1) or sub-section (2) as may be mentioned in the

notification; or

(b) 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 inter-State trade or

commerce, to a registered dealer or the Government by any dealer having his place of business in the State or by any 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 sub-section (1) or sub-section (2) as may be mentioned in the notification.

16. The aforesaid amendment clearly reveals that the State Government though continues to have the power in public interest to grant

exemption/partial exemption of tax on inter-State sale, trade or commerce but the same is subject to fulfilment of the requirements laid down under

Sub-Section (4) of Section 8 of the CST Act which means that henceforth the exemption so granted would be admissible only if Form C-1 and

C-2 are supplied by the dealer in context with the aforesaid interstate sale, trade and commerce.

17. The aforesaid amendment regulates the power conferred upon the State Government under Section 8(5) of the CST to grant exemption/partial

exemption from tax to dealers on inter-State sales, trade and commerce subject to the fulfilment of the requirements laid down in sub-Section (4) of

the Section 8 i.e., of production of Form C-1 and C-2 as the case may be in contrast to the absolute power of exemption/partial exemption

that was permitted under the unamended Act. It is worth noting that the aforesaid amendment is prospective in nature and has been made applicable

with effect from 11.05.2002 and is not applicable from any anterior date or to transactions prior to the aforesaid date. In other words, the absolute

power initially conferred under Section 8(5) upon the State Government to grant exemption/partial exemption of tax in connection with inter-State sale,

trade or commerce with the amendment was circumscribed and restricted to the fulfilment of the requirement of Section 8(4) of the CST Act which

prescribes for the submission of Form C-1 and C-2 only w.e.f. 11.05.2002. However, such restrictions are prospective in nature and

would not apply retrospectively to cases where absolute exemption was permitted much prior to the amendment.

18. In the instant case, the assessee-respondent was granted tax benefits under the PSI 1993 issued in exercise of power under Section 8(5) of the

CST Act as per the eligibility and entitlement certificates dated 20.02.1998 and 24.03.1998 respectively and that said benefit was available to the

assessee-respondent up to the period of 2012 or to the extent of Rs.273.54 crore, whichever was earlier. The said benefit granted to the assessee-

respondent was not with any restriction, much less the condition of submission of Form A-1 and A-2. Thus, on the basis of such

exemption granted by the petitioner vide Eligibility Certificate dated 20.02.1998 and Entitlement Certificate dated 24.03.1998, a substantive right had

accrued to the respondent to claim the said benefit up to the year 2012 or to the extent of Rs.273.54 crore.

19. True it is that, in view of the amendment of Section 8(5) by the Finance Act, 2002, the State Government ceases to have power to grant

exemption in respect of sale of goods covered under Section 8(2) but that is not the issue herein. The precise issue in the present case is whether the

aforesaid amendment would take away the right which had accrued to the assessee-respondent under the Eligibility/Entitlement certificates wherein

absolute exemptions were granted without any condition of submission of Form A-1 and A-2.

20. It is to be noted that the circular, issued by the Commissioner under Section 8(5) of the CST Act after the amendment by the Finance Act, 2002,

though empowers the State Government to grant exemption, is restrictive in nature subject to the fulfilment of the conditions specified under Section

8(4) of the CST Act, but the issue is whether that restriction is retrospective or only prospective in nature. Therefore, the issue which remains is

whether such restriction would apply even to the transactions which had taken place earlier i.e. where Eligibility and Entitlement certificates were

issued much prior to the enforcement of the amending Act.

21. In the case at hand, the assessee-respondent was held eligible for absolute exemption under the PSI 1993 issued in exercise of power under

Section 8(5) of the CST Act as per Eligibility certificate dated 20.02.1998 and Entitlement certificate dated 24.03.1998 granting exemption to it from

payment of tax under the BST Act and CST Act to the extent 15 of Rs. 273.54 crore or up till 2012, whichever is earlier. The said exemption granted

to the assessee-respondent was much prior to the enforcement of the Finance Act, 2002 with effect from 11.05.2002. Therefore, by virtue of the

unamended Section 8(5) and the Notification issued thereunder as well as under the aforesaid Eligibility and Entitlement certificates, a substantive right

of exemption from payment of tax had accrued to the assessee-respondent. The contention is that though after the amendment, the right of the

Government to grant absolute exemption has ceased to exist, but that is only prospective in nature and would not apply to cases where an absolute

exemption without any restriction has already been granted. The amended Act nowhere stipulates that rights previously accrued stand nullified or all

previous exemptions stand cancelled or revoked. The requirement for fulfilling the condition of Section 8(4) of the CST Act for getting the benefit of

tax exemption came subsequently after the amendment of Section 8(5) with effect from 11.05.2002 and would apply prospectively to transactions in

respect of which eligibility and entitlement certificates are issued subsequently.

22. In support of the above contention, reliance has been placed upon Darshan Singh v. Ram Pal Singh and Anr. AIR 1991 SC 1654 :: 1992 Supp (1)

SCC 191 which provides that the benefits conferred earlier to the amendment would remain unaltered, however, the availment of the said benefit in

future would be restrictive to conditions imposed by the amended provision.

23. It is a cardinal principle of construction that every statute is prima-facie perspective in nature unless it is expressly or by necessary implication

made to have retrospective operations. Unless there are words in the statutes sufficient to show the intention of the legislature to affect existing rights,

it is deemed to be prospective only.

24. In S.L. Srinivasa Jute Twine Mills (P) Ltd. vs. Union of India & Anr. 2006 (2) SCC 740 this Court has quoted the observations of Lopes L.J.:

“every statute, it is said, which takes away or impairs vested rights acquired under existing laws, or creates a new obligation or imposes a new

duty, or attaches a new disability in respect of transactions already past, must be presumed to be intended not to have a retrospective effect”.

25. This Court, while relying upon the above observation in reference to Section 6 of the General Clauses Act, 1897 which provides for the effect of

the repeal, observed that in term of clause (c) of Section 6, unless a different intention appears the repeal shall not affect any right, privilege or liability

acquired, accrued or incurred under the repealed enactment. The effect of the amendment would be the same as the repeal of the Act. Accordingly, it

was held that a person would be entitled to protection, as had accrued to him prior to the amendment of the Act, for the period such right had accrued

to him under the unamended Act.

26. This Court in the case of MRF Ltd. Kottayam vs. Asstt. Commissioner (Assessment) Sales Tax and Others 2006 (8) SCC 702 was dealing with

an exemption from Sale Tax granted for a fixed period under the eligibility certificate. During the currency of the exemption period, State Government

issued another notification which had an effect of discontinuing such an exemption. The Court held that premature deprivation of the benefit of

exemption is arbitrary, unjust and unreasonable and that the State Government did not have the power to issue a notification to take away or affect the

rights already accrued in favour of a person/ assessee. It was held that the persons/units eligible for exemption prior to the issuance of the subsequent

notification would have the benefit of the exemption for the full period of exemption already granted.

27. In another case Southern Petrochemical Industries Co. Ltd. vs. Electricity Inspector & Etio and Others 2007 (5) SCC 447, while dealing with a

privilege of exemption from payment of tax, this Court held that in a case where the right of exemption of tax for a fixed period has accrued and the

conditions for exemptions have been fulfilled, the withdrawal of the exemption cannot affect the rights already accrued, unless the statutes provide

otherwise.

28. Moreover, the law is settled that if a substantive right has accrued to a person, it cannot be taken away unilaterally without notice or an opportunity

of hearing to the said person. Thus, after the amendment of Section 8(5), the Government was not authorised to pass a unilateral order affecting the

rights of the assessee-respondent for claiming absolute exemption from payment of tax. The assessee-respondent was not given any notice either

cancelling the Eligibility Certificate or the Entitlement Certificate. Therefore, without revoking the said certificates, the substantive right which had

accrued to the assessee-respondent thereunder continues to subsist and does not get impacted by the subsequent amendment of Section 8(5)

inasmuch as there is nothing in the amended provision which provides for taking away such a right granted to the assessee-respondent.

29. The State Government while applying the aforesaid amended Section 8(5) was not justified in taking away such a right accrued to the assessee-

respondent on mere prospective amendment of Section 8(5) without revoking the Entitlement Certificate dated 24.03.1998 without notice or

opportunity of hearing.

30. In view of the above facts and circumstances, on the above short point, the State Government was not competent to issue the impugned notices

for revising the assessment of the assessee-respondent and to demand the exempted tax only for the reason that the assessee-respondent has not

submitted Form $\tilde{A}$ and $\tilde{D}$ in support of inter-State sale, trade & commerce. The requirement of submission of Form $\tilde{A}$ and $\tilde{D}$ and

$\tilde{D}$ would apply prospectively after 11.05.2002 i.e., after the Finance Act of 2002. Accordingly, in our opinion the appeal lacks merit and hence

dismissed.

Civil Appeal No. 13523 of 2015, Civil Appeal No. 13524 of 2015, Civil Appeal No. 13525 of 2015, Civil Appeal No. 13526 of 2015, Civil

Appeal No. 13527 of 2015, Civil Appeal No. 13522 of 2015 and Civil Appeal Nos. of 2025 arising out of S.L.P. (C) Nos. 11314-11320 of

2018:

31. Leave granted in Special Leave Petition (C) Nos. 11314-11320 of 2018.

32. In view of the order passed in Civil Appeal No. 13928 of 2015 today, these appeals are dismissed without any order as to costs.