(2002) 06 MP CK 0023

Madhya Pradesh High Court (Gwalior Bench)

Case No: Writ Petition No. 324/99

Guru Refractories		APPELLANT
	Vs	
State of M.P. and Others		RESPONDENT

Date of Decision: June 25, 2002

Acts Referred:

- Central Sales Tax Act, 1956 - Section 14
- Madhya Pradesh General Sales Tax Act, 1958 - Section 39, 8(1)
- Madhya Pradesh Vanijyik Kar Adhiniyam, 1994 - Section 39(2), 62, 62(3), 81

Citation: (2002) 4 MPHT 17

Hon'ble Judges: Rajendra Menon, J

Bench: Single Bench

Advocate: R.D. Jain and S.K. Jain, for the Appellant; J.D. Suryavanshi, Government Advocate, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Rajendra Menon, J.

Petitioner a registered partnership firm has filed the instant petition being aggrieved by the order, Annexure P-1 28-10-1997 by which the Deputy Commissioner, Commercial Tax, Gwalior Division, Gwalior in exercise of the powers of the revision has set aside the order passed by the Assessing Officer granting set off to the petitioner to the tune of Rs. 29,845/-. According to the petitioner, the firm is engaged in the business of processing of cast iron (rough) unfinished pipe fittings and manhole covers, for which it has its unit at Maharaj Pura, Industrial Area, Gwalior. According to the petitioner, the process of manufacturing of cast iron (rough) unfinished fittings which is being undertaken by the petitioner by processing pig iron and cast iron scrap are melted in cupole furnace. After melting

in cupole and after adding Ferro Selicon and Lime Stone, the molten iron is poured into different shapes and sizes of moulds and rough castings are obtained and sold at the primary stage to customers without finishing the same. It is stated that various other products are prepared out of melted iron, taken out from the moulds after cooling the casting. No finishing is done before the sale of the goods. The other orders are received from Madhya Pradesh Laghu Udyog Nigam, and supplies are made. Before casting, scrap iron and pig iron are purchased from a registered dealer and before purchasing sales tax is being paid to the registered dealer. After the sale of cast iron fittings, the amount of tax recovered from the purchaser is claimed as set off in terms of Section 8(1) of the Madhya Pradesh General Sales Tax Act. Accordingly, the assessment order dated 22-7-1995 vide Annexure P-3 was passed by which the set off has been permitted. After the orders were passed, the Commissioner issued a show-cause notice vide Annexure P-5 asking as to why the order should not be reviewed. A perusal of the order indicates that the order has been passed in exercise of the powers vested in him u/s 39 (2) read with Section 62 (3) of the Madhya Pradesh Sales Tax Act, 1994.

2. It may be relevant to mention here that the Madhya Pradesh General Sales Tax Act was repealed in the year 1994 and the Madhya Pradesh Commercial Taxes Adhiniyam, 1994 came into force.

3. The petitioner in its reply to the show-cause notice submitted that it is entitled to the set off as it is purchasing pig iron as raw material from the registered dealers for making cast iron castings the products being sold by them, they are entitled to the benefit of set off in view of the notification of the Government. However, placing reliance on a judgment of the Supreme Court in the case of Bengal Iron Corporation and Anr. v. Commercial Tax Officer and Ors. 1994 (Suppl.) SCC 310 and Vasantham Foundry Vs. Union of India and others, , the Commissioner held that the petitioner is not entitled to set off and directed for recovery of the amount.

4. Shri R.D. Jain, learned Senior Advocate appearing for the petitioner has raised two fold submission. It was the case of the petitioner that they were dealing in cast iron castings (rough) unfinished pipe fittings which are not processed as they were dealing with cast iron, they were entitled to the set off. However, the Commissioner without holding any enquiry and without giving them opportunity of producing evidence merely on the basis of the entries made in the supply order and the bills has decided the issue which according to the petitioner cannot be sustained. It is further submitted that the notification dated 28-5-1987 (Annexure P-6) issued in this regard was not considered properly by the Commissioner. It is also stated that the Commissioner has incorrectly applied the law laid down by the Supreme Court in the case of Vasantham Foundry (supra).

5. During the course of arguments, learned Senior Advocate also submitted that in view of the repeal Act of 1994, the proceedings could not be initiated by the Commissioner.

6. Shri J.D. Suryavanshi, learned Government Advocate appearing for the respondent-State refuted the aforesaid contention and submitted that the orders have been correctly passed. The Commissioner has power to exercise the powers of suo motu revision and in view of the law laid down in the case of Vasantham Foundry (supra) and Bengal Iron Corporation (supra), the orders perfectly justified.

7. I have heard the learned Counsel for the parties.

8. Vide notification dated 28-5-1999, Annexure P-6, issued under the provision of Section 8 (1) (a) of the Madhya Pradesh General Sales Tax, rates of taxes have been specified and item No. 9 of the same provides for iron and steel as specified in clause (iv) of Section 14 of the Central Sales Tax Act, 1956. By the said notification, rate of taxes of other concessional taxes were notified. Annexure P-7 is the extract of the provision of Section 14 of the aforesaid Act. Item No. (iv) (i) deals with pig iron and cast iron including ingot moulds, bottom plates, iron scrap, cast iron scrap, runner scrap and iron skull scrap. It is the case of the petitioner that cast iron is extracted and they are dealing with unfinished product, the material marketed by them is nothing but cast iron, therefore, they are entitled to the relief sought for. The question has to be dealt with in the light of the judgment of the Supreme Court in the case of Bengal Iron Corporation (supra) and Vasantham Foundry (supra). In both these cases, the question with regard to the granting exemption/sought for with regard to the ''cast iron'' product was directly in consideration.

9. In the case of Bengal Iron Corporation (supra) after considering the provisions of law, the Supreme Court came to the conclusion that ''cast iron castings'' manufactured by the appellant in the said case did not come within the expression "cast iron" as contained in the Andhra Pradesh General Sales Tax Act. Accordingly, the appeal was dismissed in the said case.

10. The law laid down in the case of Bengal Iron Corporation (supra) was again considered in detail by the Supreme Court in the case of Vasantham Foundry (supra) and it was observed that ''cast iron castings'' is in its basic and rough form. It was held by the Supreme Court that molten metal produced in a foundry cannot be described as ''cast iron''. The ''cast iron casting'' in its basic or rough form must be held cast iron. But, if thereafter any machining or polishing or any other process is done to the rough cast iron casting to produce things like pipes, manhole covers or bends, these cannot be regarded as ''cast iron casting'' in its primary or rough form. The said products cannot be treated as cast iron and declare the goods under Entry 14 (iv) of the Central Sales Tax Act, 1956. After considering the provisions in detail, in Paras 23 and 24, it was observed as under :--

"In our judgment, the molten metal produced in a foundry cannot be described as ''cast iron''. In particular having the purpose behind Sections 14 and 15 of the Central Sales Tax Act in mind, cast iron cannot be construed to mean anything but the solidified material which is bought and sold in inter-State trade or commerce.

The shape and size of the solidified materials is quite unimportant for the purpose of Section 14. If molten metal is poured into a mould, what comes out may be regarded as casting. Even then such iron casting in its solid form must be treated as ''cast iron'' in Section 14(iv) of the Central Sales Tax Act. To repeat, the test is whether the goods in question are being bought and sold, i.e., dealt with and understood, in commercial parlance as cast iron or as different goods, e.g., manhole covers, pipes, motor parts, etc.

Therefore, in our view ''cast iron casting'' in its basic or rough form must be held to be cast iron. But, if thereafter any machining or polishing or any other process is done to the rough cast iron casting to produce things like pipes, manhole covers or bends, these cannot be regarded as ''cast iron casting'' in its primary or rough form but products made out of cast iron castings. Such products cannot be regarded as ''cast iron'' and cannot be treated as ''declared goods'' u/s 14(iv) of the Central Sales Tax Act. This view is not in conflict with the view taken in the case of Bengal Iron Corporation (supra), but it is in consonance with the decision in that case."

Prior to this, after considering the definition of ''cast iron'' and ''casting'' as appearing in the Encyclopedia Americana, International Edition, Volume 5, the Supreme Court has observed that molten form is not regarded as ''cast iron''. It is produced by pouring the molten alloy into moulds. It is only after considering the definitions in the encyclopedia that the observations as indicated hereinabove were made in Paragraphs 23 and 24.

11. From the aforesaid it is clear that it has been clarified by the Supreme Court that ''cast iron casting'' is nothing but the basic or rough form which has to be held to be ''cast iron''. But, if thereafter any machining or polishing or any other process is done to the rough cast iron casting to produce things like pipes, manhole covers or bends, they cannot be regarded as cast iron casting in its primary or rough form, but it becomes a product made out of cast iron casting and accordingly it was ordered that such products cannot be treated as declared goods u/s 14(iv) of the Central Sales Tax Act.

12. In the instant case also the Commissioner has held that the cast iron casting is being sold by the petitioners after converting them into C.I.D. Joints, manhole covers etc., therefore, petitioner is not entitled to the benefit sought for.

13. Placing reliance on a judgment of the Supreme Court in the case of Dy. Commr. (Law), Board of Revenue (Taxes) Vs. MRF Ltd., , certain arguments with regard to finished products were advanced. In the opinion of this Court, as the matter in dispute in the present case is squarely covered by the decision of the Supreme Court in the case of Vasantham Foundry (supra), the law laid down in this case is not applicable.

14. It is submitted by the learned Counsel for the petitioners that unless necessary enquiries should have been held and on the basis of the entries made in the bills,

impugned order could not be passed.

15. A perusal of the impugned order, Annexure P-1 indicates that the Commissioner in page 4 of the said order given particulars of 9 items which are being sold by the petitioners. These includes C.I.D. Joints, C.I. Pipe Fittings, Joints and other products and it is held that they are doing the same process. Accordingly, it is held that benefit of exemption sought for cannot be granted and in this regard heavy reliance is placed on the judgment of the Supreme Court in the case of Vasantham Foundry (supra).

16. The question is whether on facts enquiry was necessary. Admittedly, the Supreme Court has held that if the cast iron is subjected to some process and the product obtained are things like Pipes, manhole covers, etc., they cannot be regarded as cast iron castings. In the petition also, it is the case of the petitioners that they are engaged in the process of cast iron (rough) unfinished pipe fittings and manhole covers. Even though the petitioners have used cast iron (rough) unfinished fittings and pipes etc., but in para 5.3 of the petition it has been stated that pig iron and cast iron scrap are melted in cupole furnace. After melting in cupole and after adding Ferro Selicon and Lime Stone the molten iron is poured into different shapes and sizes. Even though rough castings are obtained and sold in the primary stage but the product issued is not sold as cast iron rough but it is sold as pipes, fittings and manhole covers. Therefore, the initial product even though is cast iron (rough), it cannot be said to be cast iron casting, what is sold is pipes, fittings and manhole covers etc. Accordingly, the argument of the learned Counsel for the petitioners cannot be accepted. There was no necessity for conducting any enquiry. The petition itself indicates the product which is being marketed by the petitioners and viewed in the light of the observations made by the Supreme Court in the case of Vasantham Foundry (supra) in paras 23 and 24, there cannot be any doubt that what is being marketed by the petitioners is not rough cast iron but manhole covers, pipe fittings, and joints etc. Therefore, the Commissioner has rightly refused to grant the exemption as sought for to the petitioners.

17. In the opinion of this Court, on the basis of the material on record, assessment can be made with regard to the products manufactured by the petitioners. It was not necessary to record any evidence in this regard. The order passed by the Commissioner, therefore, cannot be said to be illegal and no error can be found in the order.

18. During the course of hearing, learned Counsel for the petitioners has argued with regard to the powers of the Commissioner to exercise the power suo motu in view of the repeal of the Madhya Pradesh General Sales Tax Act by the Madhya Pradesh Vanijyik Kar Adhiniyam, 1994. In this regard, it may be relevant to mention that initially the assessment proceedings culminated in passing of the order dated 22-7-1995 were under the provisions of the Madhya Pradesh General Sales Tax Act. Under the provisions of Section 39 of the said Act, the Commissioner can exercise

the powers of revision within a period of 3 years from the date of the order sought to be reviewed. Further Section 81 of the Madhya Pradesh Vanijyik Kar Adhiniyam, 1994, provides for repeal and savings. Proviso (II) to the said section reads as under :--

"Unless it is otherwise expressly provided anything done or any action taken (including any appointment, notification, notice, order, rule, form, regulation certificate or licence) in the exercise of any power conferred by or under the said Act shall, in so far as it is not inconsistent with the provisions of this Act continue to be in force and be deemed to have been done or taken in the exercise of the powers conferred by or under the provisions of this Act as if this Act were in force on the date on which such thing was done or action was taken unless and until it is superseded by or under this Act and shall arrears of tax and other amount due at the commencement of this Act may be recovered as if they had accrued under this Act."

19. From the aforesaid it is clear that nothing done in the exercise of the powers conferred under the Madhya Pradesh General Sales Act, if it is not inconsistent with the provisions of the Act shall continue to be in force and it is deemed to have been done in exercise of the powers conferred under the provisions of the Madhya Pradesh Vanijyik Kar Adhiniyam. As far as the powers of revision are concerned, both the Acts have the same provision. Section 62 of the Madhya Pradesh Vanijyik Kar Adhiniyam is analogous to Section 39 of the Madhya Pradesh General Sales Tax Act. Therefore, by virtue of proviso to clause (II) of Section 81 of the Adhiniyam, 1994 as there was no inconsistency between both the Acts, on this ground no interference can be called for. Even otherwise, Sub-section (1) provides that the repeal shall not have any affect on any pending proceeding.

20. In view of the aforesaid, argument of the learned Counsel for the petitioners cannot be accepted. The order impugned is legal and proper and no interference is called for.

21. Accordingly, there being no merit in the submissions made by the learned Counsel for the petitioners, the petition is dismissed.

Parties to bear their own costs.