

Ideal Steel Rollers Pvt. Ltd. Vs Additional Commissioner of Commercial Tax and Others

Court: Madhya Pradesh High Court (Indore Bench)

Date of Decision: Aug. 23, 2005

Acts Referred: Constitution of India, 1950 " Article 226, 227
Madhya Pradesh General Sales Tax Rules, 1959 " Rule 20C
Sales Tax Act, 1958 " Section 8(l)

Citation: (2006) 144 STC 174

Hon'ble Judges: A.M. Sapre, J

Bench: Single Bench

Advocate: G.M. Chafekar and C.R. Pancholia, for the Appellant; A.S. Kutumble, A.A.G. and M. Parwal, Penal Lawyer, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

A.M. Sapre, J.

By filing this writ under article 226/227 of the Constitution of India, the petitioner seeks to challenge the order dated April

28, 1998 (annexure D), passed by the Additional Commissioner, Commercial Tax, Indore, in revision filed by the petitioner being Revision No.

155/Indore/2/97/State which in turn confirms the order dated March 17, 1997 (annexure C) passed by the Additional Assistant Commissioner of

Commercial Tax, Indore, as an assessing officer.

2. The short question involved in this writ is, whether assessing officer was justified in the facts of this case to impose penalty of Rs. 1,07,754 on

the petitioner for the assessment year April 1, 1993 to March 31, 1994? In other words, the question that arises for consideration in this petition is,

whether any case for imposition of penalty is made out ?

3. The petitioner is engaged in the business of manufacture and sale of steel items. During the assessment year in question (April 1, 1993 to March

31, 1994) the petitioner in their sales tax return claimed set-off in payment of sales tax u/s 8(l)(a) of the Sales Tax Act from the total tax payable by

them on the sale of goods manufactured out of goods which were used by them as raw material as per requirement of Rule 20-C of the Madhya

Pradesh General Sales Tax Rules, 1959. It is this question namely, whether petitioner is entitled to claim set-off as per Section 8(l)(a) which was

being probed in the assessment cases and reached to appellate/ provisional for at the instance of the assessee (petitioner). Eventually it was

decided against the petitioner by holding that the petitioner was not entitled to claim set-off in their return. As a consequence, the claim of set-off

was eventually disallowed.

4. It is this claim of the petitioner which gave rise to initiation of penalty proceeding against the petitioner which is now subject-matter of this

petition. The authorities below imposed a penalty of Rs. 1,70,754 on the petitioner on the ground that they wrongly claimed set-off which on being

challenged was upheld by the revision any authority by impugned order, giving rise to its challenge in this petition. A notice of this writ was issued

to the respondent. Return is filed.

5. Heard Shri G.M. Chafekar, learned Senior Counsel with Shri C.R. Pancholia, learned counsel for the petitioner and Shri A.S. Kutumble,

learned Additional Advocate-General with Shri M. Parwal, learned Penal Lawyer for the respondents.

6. 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

order.

7. In my view, looking to the nature of controversy involved in the case namely-whether petitioner is entitled to claim the set-off, it cannot be said

that the petitioner was in any way indulging in filing false return and/or made attempt to suppress any material fact, and/or filed wrong accounts

and/or exhibited any contumacious conduct to evade payment of tax. A right to claim set-off is recognised under the Act. What differs is only its

application-as to whether in the given case, such set-off could be availed of by the petitioner or not ? It may be relevant to mention that the

petitioner had claimed set-off on the basis of decision rendered by the High Court. So there was some legal basis to claim the set-off. It may be a

different aspect of the case that later on the authorities in course of assessment proceedings did not find the case of petitioner to be legally

acceptable so as to sustain the claim of set-off in their favour. In the facts appearing, in my humble view, no case for penalty as such was made out.

8. In view of aforesaid discussion, the petition succeeds and is allowed. Impugned order dated April 28, 1998 (annexure D) passed by the

Additional Commissioner (respondent No. 1) is set aside. As a consequence, the original order dated March 17, 1997, passed by the assessing

officer (annexure C) is also quashed being consequential in nature.