

(2014) 06 MP CK 0092
Madhya Pradesh High Court
Case No: W.P. No. 8622/2014

Bhilai Jaypee Cement Limited

APPELLANT

Vs

State of MP

RESPONDENT

Date of Decision: June 18, 2014

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Madhya Pradesh Value Added Tax Act, 2002 - Section 46

Hon'ble Judges: S.K. Gupta, J; Rajendra Menon, J

Bench: Division Bench

Advocate: Avinash Zargar, learned counsel, Advocate for the Appellant; K.S. Wadhwa, learned Additional Advocate General, Advocate for the Respondent

Judgement

1. Even though, the petition is listed today for orders on admission but keeping in view the short controversy involved in the matter and the peculiar facts of the case, we deem it appropriate to dispose of the petition at this stage itself with the following orders :

2. Petitioner has filed this writ petition being aggrieved by order Annexure-P21 dated 30th of April, 2014 passed by the appellate authority exercising jurisdiction u/s 46 of the M.P. Value Added Tax Act. By the impugned order, a prayer made by the petitioner for waiver of the pre-deposit amount has been rejected, as a consequence thereof, an appeal u/s 46 itself has been rejected, therefore, this writ petition.

3. Petitioner established an industry in the State of MP and as per the policy of the State Government, was entitled for exemption from payment of entry tax for a period of five years. The petitioner submitted an application seeking exemption, the matter was pending and in the meanwhile, proceedings were initiated by the Assessing Officer for assessment of entry tax and payment of the same. For the period from 1.4.2010 to 31.3.2011, the Assessing Officer passed an order on

14.8.2013 assessing the liability of the petitioner/company to pay the entry tax of Rs. 6,60,55,154/- and an penalty of Rs. 1,000/- apart from tax. On 14.8.2013, when this assessment order was passed, the proceedings of the petitioner/company for grant of exemption was pending before the competent authority of the State Government and two days thereafter, i.e. on 16.8.2013, exemption for a period of five years from payment of entry tax i.e. from 1.12.2009 to 20.11.2014 was granted to the petitioner. However, the notification in this regard was only issued, subsequently, as a result, the Assessing Officer did not take consequence of the exemption and passed the assessment order. Challenging the assessment order passed on 14.8.2013 and claiming exemption from payment of entry tax, petitioner approached this Court in W.P. No. 18825/2013 and a coordinate bench of this Court considered the matter on 25.10.2013 vide Annexure-P14. An objection was raised in the said writ petition by the learned Government Advocate to the effect that against the assessment order, petitioner has a remedy of filing an appeal u/s 46 of the M.P. Value Added Tax Act and, therefore, the writ petition should not be entertained.

4. On behalf of the petitioner, this objection was apposed and it was said that for filing an appeal u/s 46, 1/4th of the amount of tax assessed, which come to Rs. 1.65 crore will have to be paid and as the petitioner is a new industry, it may not be able to pay the pre-deposit amount. When this assertion was made, the learned Writ Court disposed of the writ petition with the following directions :

In view of the aforesaid, we dispose of this petition with following directions :

(i) Petitioner may avail remedy of appeal against order Annexure-P/10 u/s 46 of the Madhya Pradesh VAT Act. Before the appellate authority, along with an appeal, the petitioner may file an application for seeking exemption of payment of pre-deposit.

(ii) The Respondent No. 3 shall consider the aforesaid prayer as an exceptional case and after considering the facts of the case, the Respondent No. 3 shall pass an order on the aforesaid application, for exemption of pre-deposit.

(iii) For a period of 30 days, the recovery under order dated 14.8.2013 (Annexure-P/10) shall remain stayed. No order as to costs.

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(Emphasis Supplied)

5. However, before issuing the aforesaid direction, certain observations were made in the preceding paragraph, which reads as under :

Considering the peculiar facts of the case, it is apparent that if the contention of the Govt. Advocate is accepted, it may cause serious financial hardship to the petitioner. The petitioner appears to be a new industry and to promote such an industry, exemption of payment of entry tax has been granted so that the industry may be set up and may not face financial crises.

(Emphasis Supplied)

6. Petitioner, therefore, preferred an appeal and also sought exemption from pre-deposit. However, the exemption was rejected vide order Annexure-P21 dated 30th of April, 2014 only on the ground that the petitioner has to comply with the statutory requirements and as the petitioner has accepted that he will deposit the pre-deposit before the High Court, it is held by the appellate authority that no exemption shall be granted. That apart, the appellate authority has indicated that turnover of the company is such that they can deposit the pre-deposit amount.

7. Shri Avinash Zargar, learned counsel for the Company indicated that the petitioner is a new industry and merely on the basis of the turnover, financial capacity of the petitioner/company could not be assessed. That apart, as exemption from payment of entry tax was granted to the petitioner/company for a period of five years, a strong prima-facie case is made out, therefore, in the light of the observations made by the High Court in the earlier writ petition, the appellate authority should have granted exemption.

8. Shri K.S. Wadhwa, learned counsel refuted the aforesaid and after referring to the impugned order Annexure-P21 dated 30th of April, 2014 passed by the appellate authority, argued that in the light of the discretion exercised by the appellate authority, which is in accordance with law, no further indulgence should be made.

9. We have considered the rival contentions and we find that when the matter was dealt with by this Court on 25.10.2013 in W.P. No. 18825/2013, this Court had given liberty to the petitioner to take recourse to the alternate remedy and considering the peculiar facts and circumstances of the case, certain observations were made with regard to grant of exemption from payment of pre-deposit amount. Be it as it may be, the facts that have come on record now show that as a consequence of the impugned order passed, that the appeal filed by the petitioner challenging the order of assessment dated 14.8.2013 is rejected, therefore, the petitioner, inspite of exemption having been granted for a period from 1.12.2009 to 20.11.2014, will be required to pay the entry tax. This aspect of the matter, if considered, in the light of the facts of the present case, clearly indicates that it would cause a great hardship to the petitioner/company, therefore, the matter should be evaluated on merit and a decision taken by the appellate authority, as the Assessing Officer has passed the order of assessment without the exemption notification being available at that point of time, when the assessment was undertaken.

10. That being so, it's a case where the appellate authority should have adapted a more pragmatic and liberal view in deciding the appeal on merit, instead of dismissing the appeal for non-deposit of pre-deposit amount. We are of the considered view that in case, as a decision on merit with regard to the liability of the petitioner to pay tax after the exemption was granted is not decided, it would cause serious hardship to them. Accordingly, this is a fit case, where we deem it

appropriate to interfere exercising our discretionary jurisdiction under Article 226 & 227 of the Constitution. Prima-facie, the documents available on record and the order of exemption clearly show that the petitioner was granted exemption from 1.12.2009 to 20.11.2014. However, this question has to be considered by the appellate authority. That being so, we allow this petition in part and pass the following directions :

In case, the petitioner/company deposits Rs. 50 Lacs within a period of 30 days" from today along with certified copy of this order, the appellate authority shall accept the deposit of Rs. 50 Lacs and restore the appeal to it's original file and decide the same in accordance with law.

As far as, grant of exemption is concerned, the observations made by us with regard to exemption granted is only a, prima-facie observation, for considering the question of interference in this petition and the appellate authority is free to proceed in the matter in accordance with law after considering the facts and circumstances of the case.

Till the appeal is not decided, as directed hereinabove, no coercive steps for recovery of the entry tax shall be initiated against the petitioner/company.

11. With the aforesaid, the petition stands allowed and disposed of.

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