AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPT No. 1362 of 2009

1. Grasim Cement (Unit of Grasim Industries Ltd.), Village Rawan, Tehsil Simga, District Raipur (C.G.).
2. Mr. Pramod Tiberwala S/o Late Shri H.R.Tiberwala, aged about 43 years, working as Dy. G.M. Finance, R/o 1st Floor, Crystal Towers, G.E.Road, Telibandha, Raipur – 492006.

---Petitioners

Versus

1. Assistant Commissioner, Commercial Tax Vanijyik Kar Bhavan, Civil Lines Raipur (C.G.).
2. Commissioner of Commercial Tax, Vajijyik Kar Bhavan, Civil Lines Raipur (C.G.).
3. State of Chhattisgarh, through Secretary Department of Commercial Taxes, D.K.S. Mantralaya Bhavan, Raipur (C.G.).
4. Deputy Commissioner of Commercial Tax Vanijyik Kar Bhavan, Raipur (C.G.).

---Respondents

WPT No. 4174 of 2008

1. Grasim Cement (Unit of Grasim Industries Ltd.), Village Rawan, Tehsil Simga, District Raipur (C.G.).
2. Mr. Pramod Tiberwala S/o Late Shri H.R.Tiberwala, aged about 43 years, working as Dy. G.M. Finance, R/o 1st Floor, Crystal Towers, G.E.Road, Telibandha, Raipur – 492006.

---Petitioners

Versus

1. Assistant Commissioner, Commercial Tax Vanijyik Kar Bhavan, Civil Lines Raipur (C.G.).
2. Commissioner of Commercial Tax, Vajijyik Kar Bhavan, Civil Lines Raipur (C.G.).
3. State of Chhattisgarh, through Secretary Department of Commercial Taxes, D.K.S. Mantralaya Bhavan, Raipur (C.G.).
4. Deputy Commissioner of Commercial Tax Vanijyik Kar Bhavan, Raipur (C.G.).

---Respondents

WPT No. 7156 of 2008

1. Grasim Cement (Unit of Grasim Industries Ltd.), Village Rawan, Tehsil Simga, District Raipur (C.G.).
2. Mr. Pramod Tiberwala S/o Late Shri H.R.Tiberwala, aged about 43 years, working as Dy. G.M. Finance, R/o 1st Floor, Crystal Towers, G.E.Road, Telibandha, Raipur – 492006.

---Petitioners

Versus

1. Assistant Commissioner, Commercial Tax Vanijyik Kar Bhavan, Civil Lines Raipur (C.G.).
2. Commissioner of Commercial Tax, Vajijyik Kar Bhavan, Civil Lines Raipur (C.G.).
3. State of Chhattisgarh, through Secretary Department of Commercial Taxes, D.K.S. Mantralaya Bhavan, Raipur (C.G.).
4. Deputy Commissioner of Commercial Tax Vanijyik Kar Bhavan, Raipur (C.G.).

---Respondents

WPT No. 6268 of 2010

Nova Iron & Steel Limited, A company incorporated under the Companies Act, 1956, through authorized signatory B B Shrivastava S/o Shri O.B.L.Shrivastava, aged about 55 years, Assistant General Manager (Comm.) at village Dagori, Tehsil Belha, District Bilaspur (C.G.).

---Petitioner

Versus

1. State of Chhattisgarh, through Secretary Vanijyik Kar Vibhag, Mantralaya, D.K.S. Mantralaya Bhavan, Raipur (C.G.).
2. Commissioner of Commercial Tax, Chhattisgarh, Raipur, District Raipur (C.G.).
3. Additional Commissioner, Commercial Tax, Bilaspur, District Bilaspur (C.G.).
4. Assistant Commissioner, Bilaspur, Circle-II, Bilaspur (C.G.).

---Respondents

WPT No. 2725 of 2008

1. Uniworth Limited a company incorporated under the provisions of the companies act 1956 situate at 923-945 Urla Growth Centre Industrial Area, P.O. Sarrora, Raipur – 493221, through its authorized signatory A.P. Khetan.

2. A.P. Khetan S/o R.P.Khetan, aged about 43 years, General Manager, Commercial Uniworth Limited, Heerapur, Raipur (C.G.).

---Petitioners

Versus

1. Commissioner of Commercial Tax, Vanijyik Kar Bhavan, Civil Lines, Raipur (C.G.).
2. Assistant Commissioner of Commercial Tax, Raipur (C.G.).

---Respondents

<u>WPT No. 7104 of 2009</u>

1. Uniworth Limited a company incorporated under the provisions of the companies act 1956 situate at 923-945 Urla Growth Centre Industrial Area, P.O. Sarrora, Raipur – 493221, through its authorized signatory A.P. Khetan.
2. A.P. Khetan S/o R.P.Khetan, aged about 43 years, General Manager, Commercial Uniworth Limited, Heerapur, Raipur (C.G.).

---Petitioners

Versus

1. Commissioner of Commercial Tax, Vanijyik Kar Bhavan, Civil Lines, Raipur (C.G.).
2. Assistant Commissioner of Commercial Tax, Raipur (C.G.).

---Respondents

<u>WPT No. 4274 of 2009</u>

1. Grasim Cement (Unit of Grasim Industries Ltd.), Village Rawan, Tehsil Simga, District Raipur (C.G.).
2. Mr. Pramod Tiberwala S/o Late Shri H.R.Tiberwala, aged about 43 years, working as Dy. G.M. Finance, R/o 1st Floor, Crystal Towers, G.E.Road, Telibandha, Raipur – 492006.

---Petitioners

Versus

1. Assistant Commissioner, Commercial Tax Vanijyik Kar Bhavan, Civil Lines Raipur (C.G.).
2. Commissioner of Commercial Tax, Vajijyik Kar Bhavan, Civil Lines Raipur (C.G.).
3. State of Chhattisgarh, through Secretary Department of Commercial Taxes, D.K.S. Mantralaya Bhavan, Raipur (C.G.).
4. Deputy Commissioner of Commercial Tax Vanijyik Kar Bhavan, Raipur (C.G.).

---Respondents

For petitioners	:	Shri Ashish Shrivastava and Shri Neelabh Dubey, Advocates.
For State	:	Shri Anand Dadariya, Dy.G.A.

Hon'ble Shri Justice P. Sam Koshy

C.A.V. Order

Delievered on 18/05/2018.

1. These are the six writ petitions where the issues involved in these cases being identical are being disposed of by this common judgment.

2. The basic challenge in all these writ petitions is to the circular issued from the office of the Commissioner, Commercial Tax-respondent No.2 dated 28/02/2008 wherein it has been ordered that in the light of the amendment made on 11.05.2002 to the provisions of Section 8(5) of the Central Sales Tax Act 1956 (in short "Act of 1956"), the authorities were directed to reopen the assessment already made and if the appeal or revisional order has also been passed then suo motu revision should be instituted. In a couple of writ petitions the authorities have issued show cause notices for reassessment and in rest of the cases re-assessment orders were passed relying upon the said circular which are also under challenge in these Writ Petitions.

3. The question that arises for consideration is whether the petitioner without any dispute has the benefit of exemption in respect of its sales turn over including the inter state sales turn over given to a new industrial establishment as per the industrial policy applicable at the time of establishment of the industries.

4. The controversy in the present case arose in the backdrop of the amendment brought to the provision of subsection 5 of Section 8 of the Act of 1956. It is the case of the respondents that as a consequence of the said amendment, the State Government has issued the circular dated 28/02/2008. That as per the circular the industry which wants to avail the benefit of exemption as per the Industrial Policy, can avail the same only by producing 'C' form and not otherwise.

5. According to the petitioners, the dispute cropped up in the light of the amendment made in the Act of 1956 on 11.05.2002. The petitioners herein while establishing the industry were granted eligibility certificate allowing exemption on the interstate sales on fulfillment of conditions pursuant to the then existing Industrial Policy. As per the then prevailing policy, the petitioner companies were entitled for the exemption under the Central Sales Tax Act for a period of 11 years with a cap of the total exemption being equivalent to the amount of investment that each of the petitioners' companies had made.

6. Till the proceedings under challenge were drawn, whatever tax, which the petitioners were paying, be it at the concessional rate or the rate fixed by the Government, the said amount had to be calculated for the purpose of quantifying the exemption available to the petitioners to the extent of the fixed assets investment made that to for a period of 11 years as per the notification dated 09.02.1991 i.e. notification No.15. However, it is this adjustment that was being now denied to the petitioners by misinterpreting

the circular dated 28.02.2008 issued by the respondent No.2, which has led to the filing of the present writ petitions.

7. According to the petitioner, the amendment brought to subsection 5 of Section 8 of the Act of 1956 was not with an intention or object of the assessee being denied the benefit of the claim to the extent of the fixed assets investment made, as was till now being provided to the petitioners under the industrial policy.

8. The contention of the State is that the inter state sales turn over made to all those dealers who are not registered dealers or the sale made to the Government, the petitioner would not be entitled for the benefit or exemption which they were otherwise entitled for under the industrial policy and which they were otherwise enjoying till now till the amendment to Section 8(5) of the Act of 1956 came into force.

9. It is also the contention of the State counsel that, all that the assessing officer has held is that, in the light of the amendment to subsection 5 of Section 8 of the Act of 1956. Even though the dealer might have been subjected to tax on the inter state turnover at the rate as indicated in Section 8(2) of the Act of 1956, yet the said tax liability cannot be claimed for reduction as against the investment of the fixed asset value which the petitioner were otherwise entitled for under the industrial policy.

10. Having heard the contentions put forth on either side and on perusal of record what clearly reflect is that there is absolutely no dispute or doubt created by any of the parties so far as the petitioner's establishment being entitled for the benefit as per the industrial policy. The only issue that has

cropped up is whether in terms of amendment to subsection 5 of Section 8 of the Act of 1956, the petitioner would be entitled for exemption that they were otherwise availing under the industrial policy.

11. As per section 8 of the Act of 1956, the rate of tax on the sales made interstate would be determined. Section 8(1) deals with a situation where the interstate sales has been made to a registered dealer and on the said sales made to the registered dealer, C-form has to be issued by the dealer/purchaser and on such sales, tax applicable would be at the concessional rate of 4%. Section 8(2) of the Act of 1956 deals with a situation where the sales are made interstate to those persons, who do not fall within the ambit of Section 8(1) and under the said situation, it is the full rate of tax that has to be paid.

12. For ready reference Section 8(1) and 8(2) is being reproduced herein under:-

> **"8(1). Every dealer, who in the course of inter-State trade or commerce, sells to a registered dealer goods of the description referred to in sub-section (3), shall be liable to pay tax under this Act, which shall be [6] [two per cent.] of his turnover or at the rate applicable to the sale or purchase of such goods inside the appropriate State under the 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 sub-section.**

8(2). The tax payable by any dealer on his turnover in so far 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), shall be at the rate applicable to the sale or purchase of such goods inside the appropriate State under the sales tax law of that State.

Explanation. —For the purposes of this sub-section, a dealer shall be deemed to be a dealer liable to pay tax under the sales tax law of the appropriate State, notwithstanding that he, in fact, may not be so liable under that law."

13. There has been no amendment made to the aforesaid two statutory provisions. The only amendment that was carried out was the one which was brought to Section 8(5) of the Act of 1956. For ready reference, the relevant portion of Section 8(5) is reproduced herein under:-

"8(5) Notwithstanding anything contained in this section, the State Government may on the fulfilment of the requirements laid down in sub-section (4) by the dealer 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, to a registered dealer 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) 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 to a registered dealer 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) as may be mentioned in the notification."

14. Plain perusal of the afore reflected provision of Section 8 would reveal that the said Section is not only a charging section but also provides for the rate of tax that would be applicable in respect of the nature of sales being effected to the different categories of purchaser outside the State. Subsection 1 of Section 8 deals with the inter state sales effected upon the registered dealers or Government and under such situation there is a concessional or lower rate of tax. Subsection 2 of Section 8 on the other hand deals with the situation where the inter state sales has been made to purchasers other than registered dealers and Government and where the rate of tax that would be charged was the rate fixed by the Government from time to time. Subsection 4 of Section 8 envisages a provision where the benefit of concessional rate of tax under subsection 1 of Section 8 could be claim only on the purchaser providing C-form.

15. A plain perusal of the aforesaid provisions would also reveal that Section 8(5) is a provision of law, which relates to Section 8(4) of the Act of

1956. So far as the interstate sales made by the petitioners' companies under Section 8(1) of the Act and the petitioners on obtaining C-form from the purchasers/registered dealers, they were entitled for payment of tax at a concessional rate and in all other cases, they were liable to pay tax on the rate prescribed by the Government from time to time.

16. Now the dispute having arisen only pursuant to the amendment dated 11/05/2002 brought in to Section 8(5) of the Act of 1956 we may consider as to the nature of amendment. It is the words "on the fulfillment of the requirement laid down in subsection 4 by the dealer" that has been inserted by amending the Act.

17. The plain reading of the contents of subsection 5 of Section 8 even after the amendment all that it reveals is that the said provision would be confined and restricted to subsection 4 of Section 8 which in turn deals with the provision of subsection 1 of Section 8.

18. Neither subsection 5 post amendment nor subsection 4 in any way affect the transactions carried out under subsection 2 of Section 8 nor does the amendment in any way reflect of taking away all the exemptions and benefits that the petitioners were otherwise enjoying under the industrial policy.

19. At this juncture it would be relevant to refer to a recent division bench judgment of the Karnataka High Court decided on 13/07/2012 in a bunch of appeal decided by a common judgment. In the said judgment in paragraph 32, 34 and 37 it has been held as under:-

"32. We have examined this submission in some detail. We find that the requirement of sub-section [4] of section 8 of CST Act in itself is for the purpose of claiming the benefit of the lower rate of tax as indicated in sub-section [1] of section 8 of CST Act. It is therefore that on a proper and harmonious reading of section 8[5] of CST Act after the amendment and even after inserting of the reference to the requirement of section 8[4] of CST Act by a dealer requirement in sub-section [4] of CST Act is one which is confined and restricted to a situation covered by the provisions of sub-section[1] of section 8 of CST Act and it cannot in any way affect or control the exemptions granted vis-à-vis tax liability and the rate of tax as indicated in section 8[2] of CST Act i.e., the amendment cannot have any bearing or effect in respect of exemptions granted to inter state sales turnover either the class of dealers with reference to the goods or otherwise who are not registered dealers and not Government. In other words, restriction brought about by the amendment cannot regulate or effect an exemption if has been granted or is to be given in respect of inter state sales turnover effected in favour of non registered dealers and other Governments.

34.We are not inclined to accept the contentions urged on behalf of the State to read the changes brought about by the amending Act of 2002 as one which governs both clauses [a] and [b] for the reason that insofar as clause [a] is concerned, we notice that the sales are all in favour of registered dealer and the Government in clause[b] pertains to inter state sales in favour of other persons other than registered dealers and Governments are also covered. It is therefore we have to attribute a meaning to the legislature having made a conscious distinction between the clauses [a] and [b] of section 8[5] of CST Act from which we can understand is that restriction imposed will have a bearing and proper meaning if it is only with reference to inter state sales effected in favour of registered dealers and the Governments.

37.As we are expressing the view as above, on a reading of the plenary legislation and the notification issued being only to effectuate that, we do not find any conflict in the view expressed by the division Bench earlier upholding the notification and the present view taken by us in this Judgment. We are of the view that, this is the only possible way of giving full effect to the exemption provision under section 8[5] of CST Act and at the same time effectuating the restrictions imposed therein insofar as inter state sales turnover effected in favour of registered dealers and the Governments, are concerned, while the benefit of exemption is claimed."

20. It would also be relevant at this juncture to refer to another decision of the Gujarat High Court reported in 2017 (97) VST 186 (GUJ) in the case of Kataria Automobiles Limited v. State of Gujarat wherein again the division bench of Gujarat High Court in paragraph 7 dealing with similar situation has held as under:-

"7. For applying the rate of tax on interstate sales, two conditions have been laid down in Section 8. Section 8(1) lays down the condition that if sales are supported by 'C Forms', then concessional rate is supposed to be applied and Section 8(2) lays down that if sales are not supported by 'C Forms', then higher rate is supposed to be applied. The amendment dated 11.05.2002 has inserted the condition in Section 8(5) that the State Government can exercise the powers vested in them subject to condition laid down in Section 8(4). Section 8(4) lays down the condition that benefit of concessional rate as provided for u/s.8(1) is allowable subject to the submission of 'C Forms'. In other words, the condition laid down in Section 8(4) are in relation to Section 8(1) meaning thereby, that on fulfillment of condition laid down in Section 8(4), the sale would be accepted and treated as sale under Section 8(1), otherwise, it would be considered as sale covered and governed by Section 8(2). Thus, the amendment, in any way, does not affect Section 8(2) and is in connection with Section 8(1)."

21. The division Bench of Bombay High Court also in the case of Prism Cement Limited & Anr. v. State of Maharashtra & Ors. reported in 2012 (54) VST 104 (BOM) dealing with similar situation in paragraphs 54 & 55 has held as under:-

"54. The very fact that the legislature even after the 2002 amendment has retained in Section 8(5), the words that relate to the power of the State Governments to grant total / partial exemption from tax payable under Section 8(2), clearly show that the said amendment was not intended to affect the power of the State Governments to grant total / partial exemption from the tax payable in respect of the transactions covered under Section 8(2).

55. Apart from the above, by retaining the words 'any person or class of persons' in the amended Section 8(5)(b) it is made clear that even after the 2002 amendment, the State Governments under Section 8(5) are also empowered to grant total / partial exemption in public interest in respect of inter-State sales to any person or class of persons covered under Section 8(2) of the CST Act. Thus, when Section 8(5) as amended by Finance Act 2002 specifically provides that the State Governments, subject to fulfiling the 38 of 43 aswp6475-09 requirements of Section 8(4) by a dealer, may in public interest grant total / partial exemption in respect of all sales of goods or class of goods as may be specified in the notification, which are made in the course of inter-State trade or commerce by any dealer or class of dealers as may be specified in the notification to a registered dealer or the Government covered under Section 8(1) or to any person or class of persons specified in the notification obviously covered under Section 8(2), it is reasonable to hold that the requirement of fulfilling the conditions of Section 8(4) would apply only to sales covered under Section 8(1) and not to sales covered under Section 8(2), because, fulfilling the requirements of Section 8(4) apply only in respect of sales covered under Section 8(1). We draw support for the above reasoning from the decision of the Apex court in the case of

K.V. Kamath (supra) wherein it is held that where there are general words of description followed by enumeration of particular things and the general words apply to some things and not to others, then, by applying the principle of REDDEONDO SINGULA SINGULIS, it must be held that the general words would apply only to those thing to which they apply and not to other things."

22. To give more support of the contention to the submission made by the petitioner they have brought before this Court a couple of orders passed by the Chhattisgarh Commercial Tax Tribunal wherein the Tribunal has in the recent past relying upon the judgments in this field are not applying the view as is being contended by the State in this set of Writ Petitions and are granting benefit which they were otherwise enjoying so far as the sales made under subsection 2 of Section 8 in the same manner as they were availing prior to the amendment of the Act of 1956.

23. Now that the Tribunal of State itself also not applying the same, the respondents cannot be permitted to apply the same against the petitioners in the present bunch of Writ Petitions.

24. For all the aforesaid reasons and also taking note of the judicial pronouncement, the notices as well as the assessments under challenge in each of these Writ Petitions would not be sustainable and the same deserve to be and are accordingly set aside.

25. As a consequence, the circular of respondents dated 28/02/2008 also under challenge in these Writ Petitions would not be sustainable and the same also deserve to be and is accordingly set aside/quashed with consequences to follow.

26. All these Writ Petitions accordingly stands allowed.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit