2025 INSC 199

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.13928 OF 2015

THE STATE OF MAHARASHTRA
& ORS. ...APPELLANT(S)

VERSUS

PRISM CEMENT LIMITED & ANR. ...RESPONDENT(S)

WITH
Civil Appeal No. 13522 of 2015,
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,
and
Civil Appeal Nos. of 2025
(@ S.L.P. (C) Nos. 11314-11320 of 2018)

J U D G M E N T

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[1] 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[2] 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[3] 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

[1] In short 'Commissioner'
[2] In short 'BST Act'
[3] Hereinafter referred to as 'PSI 1993'

the amendment of Section 8(5) of the Central Sales Tax Act[4] 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

[4] In short 'CST Act'

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

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 'C' or 'D'.

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 'C' or 'D'. Ancillarily, 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 'C' or 'D' 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 'C' or 'D'.

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

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 'C' and 'D' 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 'C' and 'D', came to be considered in the case of ***Shree Digvijay Cement Co. Ltd. and Others vs State of Rajasthan and Others***[5]**.** 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 'C' and 'D' in respect

[5] (2000) 1 SCC 688

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 'C' and 'D'.

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:

> ***"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' and 'D' 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' and 'D' 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' and 'D' 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 'C' and 'D'. 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 'C' and 'D'.

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

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.**[6] 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.**[7] 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

[6] AIR 1991 SC 1654 :: 1992 Supp (1) SCC 191
[7] 2006 (2) SCC 740

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**[8] was dealing with an exemption from Sale Tax granted for a fixed period under the eligibility certificate. During the currency of

[8] 2006 (8) SCC 702

the exemption period, State Government issued another notification which had an effect of discontinuing such an exemption. The Court held that premature deprivement 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**[9]**,** 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

[9] 2007 (5) SCC 447

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 'C' and 'D' in support of inter-State sale, trade & commerce. The requirement of submission of Form 'C' and '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.

..... J.
(PAMIDIGHANTAM SRI NARASIMHA)

..... J.
(PANKAJ MITHAL)

NEW DELHI;
FEBRUARY 12, 2025.