

PETITIONER:
SHREE CEMENT LTD. & ANR.

Vs.

RESPONDENT:
STATE OF RAJASTHAN & ORS.

DATE OF JUDGMENT: 19/01/2000

BENCH:
S.P.Bharucha, N.S.Hegde

JUDGMENT:

BHARUCHA. J.

In W.P.(C) No.674/97:

The State of Rajasthan, the respondent, had Issued notifications dated 8th January, 1990, 27th June, 1990 and 7th March, 1994 In exercise of powers conferred by Section 8(5) of the Central Sales Tax Act. Broadly, the effect of these notifications was- to reduce the rate of sales tax payable by dealers having their place of business in that State in respect of inter-State sales. These notifications came to be challenged by cement manufacturers in the State of Gujarat. The writ petitions in this behalf, filed before the High Court of Rajasthan, were dismissed. The Gujarat cement manufacturers came to this Court in appeal by special leave, and a Bench of three learned Judges of this Court reversed the decision of the High Court and held that the three

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notifications were "void and, therefore, they are hereby quashed." (Shree Digvijay Cement Co. vs. State of Rajasthan, 1997 (5) SCC 406).

In the meanwhile, on 12th March, 1997, the respondent State issued another notification In much the same terms. That notification was challenged by way of a writ petition in this Court. When the writ petition came up for admission before a Bench of three Judges, the earlier decision of this Court in the case of Shree Digvijay Cement was cited and the Bench observed that It was required to be considered by a larger Bench. Accordingly, the writ petition was heard and disposed of by a Constitution Bench (Shree Digvijay Cement Company Ltd. vs. State of Rajasthan, JT 1999 (10) SC 201). The Constitution Bench held that the decision in Shree Digvijay Cement did not lay down the correct law and it was, therefore, over-ruled. It may be mentioned that the earlier judgment of this Court in one case of India Cement & Ors. State of Andhra Pradesh & Ors. (1988 (1) SCC 743) was also considered and over-ruled.

The petitioners are manufacturers of cement in the respondent State. They had been assessed to sales tax for the Assessment Years 1994-95 and 1995-96 on the basis of the reduced rate of sales tax payable on inter-State sales under the notification dated 7th March, 1994. For the Assessment

Year 1996-97 no assessment order had been passed. On 26th September,

1997 they were served with show-cause notices in relation to all the three assessment years. The show-cause notices stated that the notification dated 7th March, 1994 had been held void by order of this Court (In the case of Shree Digvijay Cement) and that, "(b)ecause Notification dated 7.3.1994 has become void, on Inter-State sale of cement full rate of 16% tax is payable; therefore show cause why differential tax 9 12% and Interest be not levied." These writ petitions impugned the show-cause notices.

Learned counsel for the petitioners has drawn our attention to the decision in the case of Shree Digvijay Cement, the Constitution Bench judgment which has held that that earlier judgment does not lay down the correct law and has over-ruled it, to the order of this Court dated 18th August, 1998 in Review Petitions arising out of Writ Petition (.c) No. 770/89 and connected matters (M/s Texmaco Ltd. vs. State of Andhra Pradesh) and to the decision in British Physical Lab India Ltd. vs. State, of Karnataka & Anr. (1999 (1) SCC 170). It is learned counsel's submission that the respondent State cannot, in law and in equity and good conscience, recover the differential rate of sales tax that is demanded by the three show-cause notices. Stress is laid on the fact that the respondent State had always contended that the three notifications were valid and had been issued in the public interest and that stand of the respondent State stood vindicated by the Constitution Bench judgment which had over-ruled

the decision in Shree Digvijay Cement, based upon which the show-cause notices had been Issued.

Learned counsel for the respondent State did not dispute that this had been the stand all through. His submission was that the show-cause notices had been issued implementing the judgment in the case of Shree Digvijay Cement.

In the case of British Physical Lab India Ltd. (ibid), a notification granting a reduced rate of tax was struck down. The State Government which had issued the notification then sought to recover the difference between the reduced rate and the rate generally applicable. This was challenged by the appellant. This Court relied upon the earlier decision in W.B.Hosiery, Assn. vs. State of Bihar (1988 (4) SCC 134) and the order in the case of M/s. Texmaco Ltd. It noted that, having regard to the concerned notification, Total manufacturers had been disentitled to recover the difference in the amounts of tax from their customers and would have been liable to penalties if they had done so, and held that they could not now be placed in a more disadvantage position than before. It was, accordingly, just and equitable not to permit the State to collect the differential amounts.

The very same position exists in this matter also. Additionally, the judgment (in the case of Shree Digvijay Cement) which quashed the notifications has been found not to have laid down the correct law and has been over-ruled by a Constitution

Bench. The submission that the State is Implementing the judgment In the case of Shree Digvijay Singh cannot be accepted. In the order therein all that was stated was that the notifications were void and were, therefore, quashed. There was no direction to the respondent Statfc to recover the difference in tax.

We think, in the circumstances, following the orders aforementioned and in the interest of justice and equity, that the respondent State should be directed not to collect the amount of sales tax that became payable only by reason of the order in the case of Shree Digvijay Cement quashing the notifications dated 8th January, 1990, 27th June, 1990 and 7th March, 1994.

The writ petition is allowed to the aforesaid extent. There shall be no order as to costs.

In W.P.(C) NOS. 604.605/97. 134. 312-315.
428.429.552/98 & 101 & 309/99:

The facts in these writ petitions are similar to those in W.P.(C) No. 674/1997 (Shree Cement Ltd. vs. State of Rajasthan). The writ petitions are, therefore, allowed to the same extent.

No order as to costs.