IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE PRADEEP MITTAL

ON THE 17th OF APRIL, 2026

WRIT PETITION No. 27748 of 2003

M/S DIAMOND CEMENT A UNIT OF MYSORE CEMENTS LTD. NARSINGHGARH DISTT. DAMOH

Versus

ADDITIONAL COMMISSIONER COMMERCIAL TAX JABALPUR AND OTHERS

Appearance:

Shri A.K. Shrivastava - Advocate and Shri Amit Shrivastava - Advocate for the petitioner.

Shri Rajvardhan Dutt Pararha - Government Advocate for the respondents/State.

Reserved on : 01.04.2026

Pronounced on : 17.04.2026

ORDER

Per*: *Justice Vivek Rusia

The present petition, filed under Article 226/227 of the Constitution of India, challenges the legality of tax assessment for the period 01.04.1995 to 31.03.1996.

Facts of the case, in short, are as follows:

2. The petitioner, M/s Diamond Cement, is a manufacturing unit of Mysore Cements Ltd. with its registered office situated at Bangalore. The Petitioner is a registered dealer under the Madhya Pradesh Commercial Tax

Act, 1994, and engaged in the manufacture and sale of cement. The present dispute arises from the assessment year 1995-1996.

3. During the assessment proceedings, the respondent No. 2 (Assessing Authority) disallowed various claims for set-off and exemptions, leading to a tax demand on items including iron scrap, coal, and canteen sales. The petitioner initially filed tax returns claiming a set-off on various items. However, during the assessment process, respondent No. 2 questioned the taxability of iron scrap, coal, and canteen sales, while also proposing to disallow set-off for purchases of tyres, tubes, lubricants, and batteries. The Assistant Commissioner of Commercial Tax, Sagar (respondent No. 2), rejected the petitioner's contentions via an assessment order dated 26.04.1999. The petitioner's revision application under Section 62(1) of the Madhya Pradesh Commercial Tax Act, 1994 was subsequently dismissed by the Additional Commissioner of Commercial Tax, Jabalpur (respondent No. 1) on 01.02.2003. Aggrieved by these concurrent findings, the petitioner has approached this Court seeking relief under its extraordinary writ jurisdiction.

Submissions of the petitioner

4. The petitioner contends that it purchased iron and steel goods (rods, rounds, angles, flats, and sheets) from registered dealers after paying the full tax. These materials were utilised for the construction of the plant. The "scrap" in question is merely the leftover or cut pieces resulting from the sizing of these rods. The petitioner submits that the process of cutting or slitting does not amount to "manufacture" under the Act, but is an incidental remainder of the tax-paid materials used in factory construction.

Consequently, the scrap retains its character as tax-paid iron and steel, and imposing tax again upon its disposal is illegal and amounts to double taxation. Therefore, further taxes should not be levied. The reliance was placed on the judgment of the High Court of Madhya Pradesh, in ***M.P. Traders and Agents vs. C.S.T. (1996) 29 VKN 440***, wherein it was held that unused portions of tax-paid steel and cuttings are not liable to tax.

5. The petitioner submits that coal was purchased from M/s Vikas Trading Company, Rajnandgaon, a registered dealer. At the time of purchase, payments were made via account payee cheques and bank drafts, and the seller held a valid registration number, which was displayed on all invoices. The petitioner argues that they cannot be penalised for the retrospective cancellation of the seller's registration. It is submitted that the Department failed to provide public notice of such cancellation, and therefore, the denial of tax-paid benefits to a bona fide purchaser is arbitrary and contrary to the principles of natural justice. The petitioner strongly contests the levy of tax on food and beverages supplied in the workers' canteen. The counsel contended that under Section 46 of the Factories Act, 1948, the petitioner is legally mandated to maintain a canteen for its employees. This is a welfare requirement rather than a commercial choice, and the canteen was operated on a "no-profit-no-loss" basis. Food is provided at highly subsidised rates as a welfare measure. The petitioner argues that the dominant object of the activity is to discharge a statutory duty toward labour welfare, not to engage in the "business" of selling food. The petitioner placed reliance on ***C.S.T. vs. Hukumchand Mills Limited, (1996) 29 VKN 62*** and

Dayabhai Kashi Bhai Patel vs. State of M.P. , *1996 MPLJ 22* to support the claim that such canteen sales are not liable to sales tax. He has also placed reliance on the judgment of the Apex Court passed in the case of ***Ashirwad Ispat Udyog and others vs. State Level Committee and others,*** reported in *(1998) 8 SCC 85*.

6. The counsel for the petitioner further submitted that since the supply of food is an integrated part of the service conditions and welfare schemes, it does not constitute a "sale in the course of business" as defined under the Tax Act. The petitioner relies on the principle that activities undertaken purely as a statutory obligation for worker welfare lack the commercial character required for the eligibility of sales tax. The petitioner claims set-off on the purchase of tyres, tubes, lubricants, and batteries. These items are fitted into dumpers and heavy machinery used exclusively in the captive mines for the extraction and transport of limestone—the primary raw material for cement. The petitioner submits these are "incidental goods" as they are essential to the continuous process of manufacture. The denial of set-off on the ground that these are used in vehicles is contested, as the vehicles themselves are integral to the industrial production chain. They clarify that these items are not used for construction, business or general transport vehicles, but specifically for the manufacturing process.

7. The petitioner asserts that there is no alternative efficacious remedy available other than approaching the High Court under Article 226/227 of the Constitution. They claim the denial of their deductions and exemptions by the respondents is arbitrary, unjustified, and "bad-in-law", and

the impugned orders deserve to be set aside.

Submissions of the respondents

8. The respondents contend that the definition of "sale" under the Act is wide enough to include the supply of food and beverages for consideration. They argue that even in the absence of a profit motive, the transfer of property in goods (food/drinks) to the workers for a price constitutes a taxable sale. The respondents maintain that the statutory obligation under the Factories Act does not grant immunity from the fiscal liability arising under the Commercial Tax Act.

9. The counsel for the respondents argued that there is a failure to prove Tax-Paid Status by the petitioners. Regarding the iron scrap and coal, the respondents submit that the burden of proof lies strictly with the assessee. It is contended that the petitioner failed to produce sufficient documentary evidence, including accounts books or "Form 14" to conclusively prove that the scrap originated from tax-paid goods. The petitioner failed to produce the specific supply contract to prove that otherwise the freight is legally part of the sale price. In the absence of such proof, the items are liable to be treated as first-time sales in the hands of the petitioner.

10. The counsel for the respondents contended the Legality of Registration Cancellation. Regarding the coal purchase, the counsel for respondents asserts that once a dealer's registration is cancelled, even if the effect is retrospective, any transactions associated with that registration lose their "tax-paid" character, and any transaction with them is legally categorised as a purchase from an “Unregistered Dealer” (URD). The

respondents argue that the Department is within its rights to recover tax if the selling dealer's credentials are found to be non-existent or fraudulent. The respondents argue that tyres, tubes, and lubricants are consumables related to the maintenance of vehicles/dumpers and do not qualify as "incidental goods" directly used in the manufacture of cement. They argue these are maintenance items for vehicles and do not qualify as "raw materials" or "incidental goods" under the strict definitions provided in the Tax Act. It is submitted that these items are used for transportation and not in the actual chemical or mechanical process of cement production, thereby falling outside the scope of Section 11 of the Act.

11. The respondents argued that the definition of "Dealer" and "Sale" under the Act is broad enough to include canteen transactions. They contend that the "subsidised" nature or "welfare" intent does not exempt the petitioner from the statutory liability to pay commercial tax on those sales. The respondents submit that the assessment and revision orders are "just, legal, and proper," and the petition, lacking merit, deserves to be dismissed.

12. We have heard the learned counsel for the parties.

Appreciations and Conclusions

13. The petitioner is engaged in the manufacturing and sale of cement from the Narsinghgarh plant. The respondent No.2, being a assessment officer under Madhya Pradesh Commercial Tax Act, 1994, called upon petitioner to explain as to why the tax be not charged on the scrap steel, iron rods, rounds, angles, flats, sheets etc., and also on coal and canteen sales and set-off claimed on purchase of tyres, tubes, lubricants and batteries be

not disallowed.

14. The petitioner came up with the plea and explanation that iron steel goods are purchased from the registered dealer on payment of full tax. The rods, rounds, angles, flats, sheets usable in the construction of plants and buildings are taken out, leaving the non-usable portion by way of cutting or slitting were sold as scrap, which does not amount to manufacturing. The scrap remains the sale item of the iron steel, which has not undergone any manufacturing process to be called a new identity or to attain a new identity or product. The coal was purchased from the registered dealers. The bill indicates the sale tax registration certificate and payment of tax. Regarding the canteen sale, the sale is being maintained in the factory premises under the requirements of the Factories Act for supplying food to the workers at a subsidised rate. The petitioner is not engaged in the canteen, restaurant or hotel to make a living out of it. It is further submitted that the tyres, tubes, lubricants and batteries were purchased for the use of dumpers and heavy earth-moving machines used in the mines, which is directly related to the production of cement.

15. The aforesaid contentions were disbelieved by the assessing officer, and the assessment order was passed. Thereafter, the petitioner filed a revision, which was also dismissed by the learned revisional authority. The petitioner sold scrap item in Rs.73,81,789/- to Jagdamba Castings Private Limited and Quality Welding. The learned revisional authority discussed in detail the entry No.16 in the Act. There are 15 categories of iron steel, which include defective, rejected, cutting and piece and iron scrap. The scrap is a

product after undergoing the manufacturing process. It may not be useful for the petitioner, but that iron steel rod, sheets, angle of a particular length and size will be used for other small-scale industries as a raw material. The petitioner admittedly sold these scraps to small industries, namely Jagdamba Castings Private Limited and Quality Welding. Therefore, it was rightly treated as a sale. Hence, we do not find any ground to interfere such a finding.

16. In case of ***Ashirwad Ispat Udyog (supra)***, the Apex Court has held thus:

> *"8. Decisions construing the meaning of the word "manufacture" as used in other statutes do not apply unless the definition of that word in the particular statute under consideration is similar to that construed in the decisions. The plain construction of the special definition of the word in a particular Act must prevail. In the special definition given in Section 2(j) of the said Act "manufacture" has been defined as including a process or manner of producing, collecting, extracting, preparing or making any goods. There can be no doubt whatsoever that "collecting" goods does not result in the production of a new article. There is, therefore, inherent evidence in the definition itself that the narrow meaning of the word "manufacture" was not intended to be applied in the said Act. Again, the definition speaks of "the process of lopping the branches (of trees), cutting the trunks". The lopping of branches and the cutting of trunks of trees also, self-evidently, does not produce a new article. The clear words of the definition, therefore, must be given due weight and cannot be overlooked merely because in other contexts the word "manufacture" has been judicially held to refer to the process of manufacture of new articles.*
> *9. The appellants treat iron and steel scrap of considerable bulk by cutting it down by mechanical processes into pieces that may be conveniently utilised in rolling mills and foundries. Such treatment, making saleable goods, would, in our opinion, fall within the wide definition of "manufacture" under Section 2(j) of the said Act."*

17. In case of ***TVL K.A.K. Anwar and Co. vs. State of T.N., (1998) 1 SCC 437***, the Apex Court has held thus:

> *"19. The words "hides and skins, whether in a raw or dressed state" in Section 14(iii) of the Central Sales Tax Act clearly seem to indicate that the legislature recognised that raw hides and skins was an item different from dressed hides and skins. As has already been noticed hereinabove it is after undergoing a manufacturing process involving various stages that raw hides and skins become dressed hides and skins. As observed in the State of T.N. v. Pyare Lal Malhotra (SCR at pp. 173-74) that: (SCC p. 840, para 10)*
> *"[S]ales tax law is intended to tax sales of different commercial commodities and not to tax the production or the manufacture of particular substances out of which these*

commodities may have been made. As soon as separate commercial commodities emerge or come into existence, they become separately taxable goods or entities for purposes of sales tax. Where commercial goods, without change of their identity as such goods, are merely subjected to some processing or finishing or are merely joined together, they may remain commercially the goods which cannot be taxed again, in a series of sales, so long as they retain their identity as goods of a particular type."

In the present case dressed hides and skins is a separate commercial commodity which emerges after raw hides and skins has been subjected to manufacturing process and, therefore, Section 14(iii) deals with two different types of goods which unlike the case of pulses referred to in Section 15(d), is not regarded by the Act as one and the same commodity."

18. So far the levy of commercial tax on canteen sale of Rs. 11,41,409/- is concerned, it is not the case of the petitioner that the sale of food in the canteen was free of cost or on the coupon given to the employees. The canteen provides food, tea, and snacks at the subsidised rate as a labour welfare measure under the statutory provision of the Factories Act as held by the Full Bench of this Court in ***Commissioner of Sales Tax (supra)***, and the petitioner is not engaged in the business of sale of food items by way of canteen or restaurant. Therefore, the levy of commercial tax is not permissible. Hence, to that extent, the petitioner is not liable to pay the tax and penalty under the head of canteen sale.

19. So far the levy of purchase tax on the coal of Rs. 27,48,270/- is concerned, the petitioner purchased the coal from M/s Vikas Trading Company, Rajnandgaon, carrying on a business of coal at Katni. The coal is a declared good and chargeable to the tax, but no documents were filed to show the registration of M/s Vikas Trading Company. Therefore, it cannot be presumed that M/s Vikas Trading Company purchased the coal from SECL or WCL after payment of tax, and further payment of the tax by the petitioner amounts to double taxation. Even otherwise, the registration of M/s Vikas Trading Company was cancelled on 06.03.1993. Therefore, the

sale in the year 1995-96 cannot be said to be a sale after payment of tax. Hence, on this count, no interference with the order passed by the assessment officer as well as the revisional officer is made out.

20. So far, the claim of set-off of Rs.1,38,325/- on the purchase of tyres, tubes, and lubricants is concerned, they are not directly related to the manufacturing of the cement. They are not a raw material to be used in manufacturing for building materials. Hence, the recovery under this assessment is maintained.

21. Therefore, in view of the above, the petition is ***partly allowed***. The recovery and demand of commercial tax and penalty in respect of the canteen sale of Rs.11,41,409/- is quashed, and the amount for the rest of the assessment is maintained.

(VIVEK RUSIA)
JUDGE

(PRADEEP MITTAL)
JUDGE

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