



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Civil Writ Petition No. 6501/2020

M/s. J.k. Lakshmi Cement Limited, Registered Office At Jaykaypuram , District Sirohi, Rajasthan, Through Its Authorized Signatory And Power Of Attorney Holder Mr. Alok Kumar Son Of Shri Arun Kumar Sing, Aged About 42 Years, Resident Of B-14/1, Lal Bahadur Nagar, Jln Marg, Jaipur 302017.

----Petitioner

Versus

1. State Of Rajasthan, Through The Commissioner, Commercial Tax Department, Kar Bhawan, Jaipur Rajasthan.
2. Assistant Commissioner, Commercial Tax Department, Anti Evasion, Pali, Rajasthan.
3. Assistant Commissioner, Commercial Tax Department, Special Circle, Pali, Rajasthan.
4. Assistant Commercial Tax Officer, Commercial Tax Department, Anti Evasion, Circle-I, Pali, Rajasthan.

----Respondents

Connected with bunch of petitions as per Appendix "A"

For Petitioner(s)	:	Mr. Ramit Mehta Mr. Tarun Dudia Mohd. Amaan
For Respondent(s)	:	Mr. Mahaveer Bishnoi, AAG Mr. Anirudh Singh Shekhawat

**HON'BLE MR. JUSTICE ARUN MONGA
HON'BLE MR. JUSTICE YOGENDRA KUMAR PUROHIT**

Order

Reportable

Judgment Reserved on :- 15.01.2026

Pronounced on :- 23.02.2026

By the Court (Per, Arun Monga, J.):-

1. The above bunch of petitions is being disposed of by this common order, as the facts therein are analogous and the questions of law and issues involved are also common.



2. Petitioner company has, inter alia, challenged the inspection/survey report dated 18.02.2020 (Annexure A-8) issued by respondent No. 4 i.e. Assistant Commercial Tax Officer and; the consequential show cause notices dated 05.03.2020 and 06.06.2020 Annexure-9 (erroneously marked as Annexure- 8 in the petition, instead of Annexure-9) and Annexure -10, respectively issued by respondent No. 2 i.e. Assistant Commissioner, Anti Evasion, Pali.

3. Case set up by the petitioner is that the said impugned notices have been issued to the petitioner company for reopening the assessment without any new material and incriminating evidences for the purpose of doing reassessment under Section 25 of the Act of 2003, on basis of misconception and change of opinion and by adopting absolutely illegal and illogical stand. More of it later.

FACTS

4. For sake of convenience and brevity, relevant facts and recitals are being taken from DB CWP No. 6501 of 2020 titled JK Lakshmi Cement v. State and others.

4.1. That the petitioner company is into the manufacture and processing of cement and clinkers and has got its own captive limestone mines.

4.2. Its integrated cement manufacturing plants are set up at Basantgarh, Rampura and Rohida and Basantgarhall in Dist. Sirohi. Also, the petitioner company has got its grinding units at Kalol, Surat and Jharli which use clinkers (an intermediate product in cement production process) as raw material manufactured at the petitioner company's plant.



4.3. The aforementioned limestone mines of the petitioner company are essentially meant for captive consumption at their respective locations wherein the crushing, grinding and manufacturing units of the petitioner company are set up.

4.4. To facilitate execution of the work, the petitioner company enters into arrangements with other outsourced agencies as per agreed terms and conditions.

4.5. Under the said agreed terms, the ancillary and other integrally connected work is executed by contractors/third parties. Same involves extraction of the limestone, transportation of the limestone to crushing, grinding and manufacturing platform of the cement/clinkers and processing units of the petitioner company.

4.6. High Speed Diesel (HSD) is used in aforesaid activities, which are integral to mining and manufacturing. In course of usual requirements, HSD is provided by petitioner company to its contractors and agencies.

4.7. That the petitioner company, as a matter of practice since its inception has been procuring High Speed Diesel (hereinafter to be referred as HSD) within the State of Rajasthan, from outside the State of Rajasthan against C form, issued under the CST Act of 1956, at concessional tax rate.

4.8. However, on 05.09.2019, Commissioner, Commercial Tax Department passed an office order requiring a survey to be carried out qua usage and supply of HSD by petitioner company. Pursuant thereto, a survey was conducted by the Respondent Department (Anti Evasion Team) on 06.09.2019.

4.9. Vide impugned survey report dated 18.02.2020, the authorities opined that the issuance High Speed Diesel (HSD) by



the petitioner to its contractors and agencies is "sale" under the Rajasthan VAT Act of 2003.

4.10. Basis thereof, a notice for appearance dated 11.03.2003 was issued to the petitioner company to explain the aforesaid survey.

4.11. In continuation, further show cause notices dated 05.03.2020 and 06.06.2020 were issued under the provisions of the CST Act 1956 and Rajasthan VAT Act 2003 by the Respondent no.2.

4.12. Hence the writ petition challenging the said show cause notices, as above.

5. We have heard learned counsel for the parties and with their able assistance, have gone through the record. Arguments have been addressed by both sides on the lines of their respective pleadings.

SUBMISSIONS ON BEHALF OF THE PETITIONER

6. The petitioner challenges the impugned survey/investigation report dated 18.02.2020 and the consequential show cause notices dated 05.03.2020 and 06.06.2020 on the ground that they are based on misconceptions, conjectures and surmises, issued without jurisdiction, and in violation of principles of natural justice. It is contended that the reopening of assessment is merely on a change of opinion without any new or incriminating material and therefore the impugned actions are arbitrary, illegal and liable to be set aside.

6.1. The petitioner submits that the impugned notices, though styled as show cause notices, are in substance orders as they reflect a concluded determination by the department that the petitioner is engaged in the sale of High Speed Diesel (HSD) to



other entities and has received consideration for such transactions. It is contended that the so-called inquiry proceedings are merely a formality because the authorities have already formed a final view on liability, rendering the petitioner's participation an empty and futile exercise. Accordingly, the notices are challenged as effectively amounting to pre-decisional orders rather than genuine opportunities to respond.

6.2. It is submitted that the respondent authorities have grossly misconstrued the use of High Speed Diesel (HSD) in activities integral to mining and manufacturing by wrongly treating its issuance to contractors and agencies as "sale" under the Act of 2003. The petitioner asserts that there is no transfer of title, no separate contract of sale, and no consideration received, as the diesel is provided only to facilitate execution of work for the petitioner. Consequently, the essential ingredients of a sale are absent and the notices are founded on an erroneous understanding of law and facts.

6.3. The petitioner further contends that under the statutory definition of "sale," a transfer of property in goods for consideration is necessary, whereas in the present case diesel is issued without any charge and is consumed in the integrated process of mining, processing and manufacturing. The department's assumption that tariff differences or contractual arrangements amount to recovery of diesel cost is stated to be baseless, as payments are made to contractors for services and not collected from them. The arrangements merely provide



alternative mechanisms for reimbursement or supply of diesel for operational convenience and do not constitute a sale transaction.

6.4. It is also argued that the authorities have wrongly presumed that differences between “rate including diesel” and “rate excluding diesel” represent diesel charges and have alleged cash recovery without any evidence. The petitioner submits that contractual terms allow for rate revision due to escalation of inputs and that supply of ancillary materials to facilitate performance of work cannot be equated with a contract of sale. The diesel is used in execution of work and not transferred as a commercial transaction.

6.5. The petitioner emphasizes that tax can be levied only on completed sales and that diesel purchased is consumed in the petitioner’s own operations as part of an integrated process. The issuance of diesel to contractors is merely an internal arrangement to execute work and cannot be treated as a taxable sale. It is further submitted that statutory definitions must be applied as they stand and that the department has misapplied the law.

6.6. Without prejudice, the petitioner states that even from the impugned notices it is evident that diesel is used in activities integral to mining and manufacturing and there is no material indicating receipt of consideration. The entire exercise is alleged to be an attempt to create a demand without factual foundation. The petitioner also contends that the requirements under Section 25 of the Act of 2003, including existence of “reasons to believe” based on new material and granting of reasonable opportunity, have not been satisfied. The reopening of assessment for FY 2015-16 is



said to be illegal, particularly as reliance is placed on documents of subsequent years.

6.7. It is further submitted that the petitioner merely transfers the right to use diesel procured against C-forms without any element of consideration and therefore no sale transaction arises. The assessment for the relevant year had already been completed after full disclosure and the department was fully aware of the arrangements, making the reassessment a mere change of opinion. The survey and investigation are described as a fishing and roving inquiry conducted without proper basis.

6.8. The petitioner invokes the doctrines of legitimate expectation, promissory estoppel and contemporanea expositio, stating that the department had consistently accepted that supply of diesel for operational purposes does not constitute sale. The notices are also alleged to be violative of natural justice as they reflect a pre-determined mind and fail to provide adequate opportunity of hearing. It is contended that the notices lack material particulars, including reasons for penalty, and ignore that diesel has been accounted for as expense in the books.

6.9. The petitioner further submits that the use of HSD in activities integrally connected with mining and manufacturing is permissible under the CST framework and eligibility to procure against C-forms is settled by judicial precedents. There is no concealment or evasion, all transactions are recorded, and no consideration has been received. Once assessment is completed, a presumption of correctness arises which cannot be disturbed without lawful basis.



6.10. It is also argued that invocation of provisions relating to cess under the Rajasthan State Road Development Fund Act is erroneous as the petitioner is not engaged in sale of diesel. The department's actions are characterized as high-handed and intended to create an unwarranted financial burden, particularly in difficult economic circumstances, and therefore the impugned report and notices deserve to be quashed.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

7. The respondents submit that the present writ petition is not maintainable and is liable to be dismissed as it has been filed against notices dated 05.03.2020 and 06.06.2020, which merely call upon the petitioner to furnish information, explanations and documents for the purpose of inquiry under the CST Act, 1956 and the RVAT Act, 2003. It is contended that no adverse order has been passed against the petitioner and therefore there is no cause of action. The authorities are acting within their jurisdiction and the petitioner ought to have responded to the notices instead of approaching the Court, rendering the petition premature.

7.1. It is further submitted that the petitioner is required to participate in the proceedings before the competent authority and, if aggrieved by any eventual order passed under the relevant provisions, has an efficacious alternative remedy of appeal and revision. The petitioner cannot pre-empt the decision-making process or allege bias at this stage when the inquiry is ongoing. The respondents assert that the petitioner will be afforded full opportunity of hearing and its objections will be considered fairly and objectively before any order is passed.



7.2. The respondents state that the impugned notices were issued for further inquiry based on documents received from the investigating officer and that no prejudice has been caused to the petitioner, who is free to produce evidence before the authorities. It is also contended that the writ petition involves disputed questions of fact which require examination of evidence and therefore cannot be adjudicated in writ jurisdiction under Article 226, and the petitioner should pursue remedies before the statutory authorities.

7.3. The respondents further submit that it would not be appropriate to address the merits of the matter while the inquiry is pending, as doing so may prejudice either party, and that the proper course is for the petitioner to participate in the proceedings where appropriate orders will be passed in accordance with law after due hearing. Finally, it is contended that the writ petition is merely an attempt to stall the inquiry and that allegations of bias or prejudice are unfounded, as the authorities are bound to act fairly and in accordance with law.

DISCUSSION AND ANALYSIS

8. Adverting first to the impugned inspection/survey report dated 18.02.2020 (Annexure A-8), a plain reading thereof reveals that the inspection/survey was undertaken by respondent No. 4 in compliance with the directions contained in the order dated 05.09.2019 issued by the Commissioner, Commercial Tax Department, Rajasthan, Jaipur.

8.1. By way of the said report, respondent No. 4 recorded, inter alia, that the letter dated 15.04.2013 (Annexure-4), addressed by



the General Manager to the Senior Vice President of the petitioner, indicated that under the contract/agreement with M/s National Transport Company for the same service/job, the contractor was to be paid at a lower rate where diesel was supplied by the petitioner and at a higher rate where diesel was not supplied and had to be arranged by the contractor.

8.2. The aforesaid letter also contains a tabular statement demonstrating that, for identical services/jobs, the rates payable to the contractor with supply of diesel were lower than the rates payable where diesel was not supplied. The said table/data is as below :-

Sr.	Job Description	Quantity	Existing rate including diesel price @ Rs. 26.83/30	Additional amount of 2% given on 1.4.11	Diesel consumed (Qty. in Ltr)	Diesel consumption P/MT/Hr.	Difference amount of diesel	Revised rate P/MT/Hr	Rate without diesel which is payable to the contractor
1	2	3	4	5	6	7	8	9	
1.	Shifting/handling of screen reject in mines area	846327.800	15.90	269132	131087	0.155	3469873	20.32	12.06
2.	Shifting/handling of face reject in mines area	601065.334	50.00	66165	198352	0.300	4621602	58.00	42.00
3.	Shifting off line stone from mines to crusher-II	2170548.930	50.00	2170549	463831	0.213	10807262	56.00	44.50
4.	Supply of water tanker for water spraying within mining area on monthly	21	74350.00	3127 (sic)	27747 (sic)	1321	734463	110811	40388
5.	Internal handling of various raw material required for cement production. Payment on cement dispatch quantity	3306090.472 (sic)	9.00	605896	233779 (sic)	0.069	6187931 (sic)	11.02 (sic)	7.32
6.	Internal handling of various raw material	1294385.46	6.25	0	62530 (sic)	0.052	1787519	7.63 (sic)	4.85



	required for clinker production. Payment on clinker dispatch quantity				सत्यमेव जयते				
7.	Shifting & feeding of filter	70158.35	54.00	75771	07073 (sic)	0.391	727210	65.45	44.58
8.	Running of rock breaker	2819.7	1792.00	---	51674	18	1204004	2219	1242
9.	Internal shifting of material without Weighment	809912.057	33.00	0	191014	0.236	5056141	39.24	26.67
10.	Internal Shifting of Material after Weighment	210496.4	35.00	0	60161	0.236	1592462	42.57	27.34
11.	Mixing of TPP Fly Ash with Coal	29384	26.00	0	5697	0.194	150800	31.13	20.80
12.	Clinker Loading in Trucks	469633.477	18.00	0	62674	0.133	1658981	21.53	14.42
13.	Dosing of Petcoke & Coal in Coal Gantry	447837.45	18.00	0	62440	0.139	1652787	21.69	14.26
14.	Shifting of Clinker from Shaft Silo to Gantry, Dosing & Loading in Rakes	380967.65	33.50	0	62620	0.164	1657551	37.85	29.09
15.	Shifting of Clinker within Plant other than Shaft Silo without Weighment for loading in rakes	67462.542	21.00	0	12546	0.186	332093	25.92	10.00
16.	Shifting of Clinker within Plant other than Shaft Silo for Loading in Rake after Weighment	3856.47	23.00	0	597	0.155	15803	27.10	18.85
	Dosing & Shifting of Gypsum received by Rail	19442.97	32.00	0	3510	0.180	92910	36.78	27.16
	Feeding of Clinker, Fly Ash etc. at Feeding Point	77584.68	19.00	0	13517	0.174	357795	23.61	14.33
RUNNING OF EQUIPMENTS ON HOURLY BASIS									
sr	Name of equipment	Running hour							
1.	JCB	1760.50	700		12490	7.00	3306010	888	510
2.	Loader	223.10	620		2289	10.00	53334	859	230



3.	Showel	1980.70 (sic)	1000		32313 सन्तुलित जयपुर	17.00	752893	1396	354
4.	Dozzer	133.20	2440		5329	40.00	124166	3372	920
5.	Dumper	98.00	3000		2125	21.68	61986	3505 (sic)	2350
	Total				1730794		43430223		

8.3. It was thus, that on the basis of the tabular data/factual particulars, *ibid*, relating to supply of diesel by the petitioner that the respondent No. 4, in the inspection/survey report, proceeded to propose/recommend initiation of appropriate proceedings by the competent authority for determination and assessment of tax, cess and penalty in accordance with the applicable Rules.

8.4. Pertinently, the aforesaid letter dated 15.04.2013 also bears the signature of the contractor (M/s National Transport Company) in token of acceptance, thereby evidencing concurrence with the arrangement recorded therein.

9. The impugned inspection/survey report dated 18.02.2020 further records that M/s National Transport Company had also raised invoices in respect of jobs for which diesel had not been supplied by the petitioner. The report proceeds on the premise that supply of diesel by the petitioner, being adjusted against part payment of transportation charges, falls within the ambit of "sale" as defined under Section 2(35) of the Rajasthan Value Added Tax Act, 2003. It is further noted therein that, in terms of Section 4 of the said Act, sale of diesel brought from outside the State of Rajasthan would also attract liability to cess under Section 3 of the Rajasthan State Road Development Fund Act, 2004.

10. Significantly, the Commissioner, Commercial Tax Department, Rajasthan, Jaipur, at whose instance respondent No. 4 undertook



the inspection/survey and submitted the report, has not been impleaded as a party to the proceedings. Equally, the order dated 05.09.2019 directing conduct of the inspection/survey has not been placed on record.

10.1. These omissions, supra, taken cumulatively, create a serious procedural gap and render the record incomplete, thereby leaving us also non plussed, apart from being an impediment to the prayer seeking quashing of the impugned inspection/survey report dated 18.02.2020.

11. In view of the foregoing facts and circumstances, we are constrained to hold that no case is made out for interference for quashing of the impugned inspection/survey report on the ground of alleged illegality or otherwise, as urged on behalf of the petitioner.

12. Moving on now to the impugned show cause notices. Quashing thereof is sought primarily on the grounds, as canvassed by the learned counsel for the petitioner, that :

- (a) the impugned notices which are for the transactions of financial year 2015-16 also contain references to subsequent agreements dated 01.04.2017 and 27.03.2019;
- (b) the assessment for the financial year stood already completed and could not be re-opened;
- (c) the petitioner had not concealed anything;
- (d) the respondent department through out all these years since inception of the company, was aware about the similar arrangements between the petitioner and it's contractors/service providers;



and

(e) respondent No. 2 has already decided in his mind and taken an illegal unilateral decision holding that the petitioner is engaged in the sale of HSD to work agency;

(f) having thus pre-decided the petitioner's liability and respondent No.2 is unwilling to consider the matter objectively.

13. Before we advert to the merits of the arguments, it is pertinent to note that impugned Notice dated 05.03.2020, Annexure P-9, required the petitioner to appear before respondent No. 2 on 11.03.2020 to show cause why the amount of Rs. 11,35,90,985 on account of supply of diesel by the petitioner to the contractor, during financial year 2015-16, be not treated as its taxable turn over and as to why the tax, cess, interest and penalty be not assessed accordingly. However, on petitioner's request the matter was adjourned.

13.1. Later, a fresh notice dated 06.06.2020, Annexure P-10, was issued requiring the petitioner to appear before respondent No. 2 on 11.03.2020 qua the aforesaid proposed action. Thus, the subject matter of both the notices i.e. one dated 05.03.2020 (Annexure P-9) and the other dated 06.06.2020 (Annexure P-10) is the same.

14. For appreciation of the rival contentions in the proper perspective qua legality of the impugned show cause notice dated 06.06.2020, Annexure P-10, (mainly in Hindi), translated version thereof is reproduced hereunder for ready reference :

1. Name of the Dealer/Person: M/s J.K. Lakshmi Cement Limited

2. Registration No. (TIN) (if any): 08453300051



3. Address of Principal Place of Business: J.K. Puram, Tehsil Pindwara,
District Sirohi

4. Email: mjain@lc.jkmail.com

Financial Year: 2015–16

5. (A) You are directed to submit:

With reference to the previously issued notice for appearance dated 11.03.2020.

In compliance with Order No. Addl.Commr./Pali/TA/Establishment/2019-20/14 dated 24.02.2020 passed by the Additional Commissioner (Administration), Commercial Taxes, Pali, the case file was received by the undersigned from the Investigating/Prosecution Officer, Assistant Commercial Taxes Officer, Anti-Evasion, Circle-I, Pali, along with recommendation for initiation of proceedings under Sections 25(1), 55 and 61(1). As per the investigation report of the Prosecution Officer, the main activity of the plant of M/s J.K. Lakshmi Cement Limited situated at JK Puram, Pindwara, Sirohi is the manufacture of cement. According to the investigation report, all mining activities and work related to Internal Handling in respect of your plant have been carried out by M/s National Transport Company, GSTIN 08ABAPB8891MIZ8, since 01.04.2018. Prior to this, the said company was carrying out Raw Material Shifting/Reject Material Shifting work and also partially mining work. At present, all mining work related to your plant has been carried out by M/s NTC Ventures Pvt. Ltd., GSTIN 08AAGCN6372B1ZI, since 01.09.2019. After comprehensive examination of the documents obtained during inspection/survey by the Prosecution Officer, copies of contracts, various reports and correspondence, the following facts have emerged:

- *M/s J.K. Lakshmi Cement Limited has, for all mining work related to the plant at present, entered into a contract dated 27.08.2019 with M/s NTC Ventures Pvt. Ltd. (GSTIN 08AAGCN637281ZI). As per Clause No. 24 of the original agreement dated 01.09.2008 referred to in the said contract, “The Calculation of rate per ton is based on Diesel Prices as on 28-08-2008. The Impact of change in diesel prices will be reviewed quarterly and necessary amendment in rate will be approved by Shri G.M. (Accounts).” Accordingly, a provision was added for quarterly review of the prescribed rates in accordance with changes in diesel prices. In this sequence, in the letter dated 15.04.2013 written by the then General Manager (Accounts) to the Senior Vice President (Works), J.K. Lakshmi Cement, two different rates payable by your company in respect of various contract-based works executed by M/s National Transport Company, namely ‘rates inclusive of diesel’ and ‘rates exclusive of diesel’, have been mentioned, which is confirmed from the sample*



copies of bills (invoices) issued by M/s National Transport Company in support of the various contract-based works.

- *On perusal of Contract No. JKCL/Civil/2017/40577 dated 01.04.2017 and Contract No. JKCL/Civil/2019/40038 dated 27.03.2019, details are found regarding the supply of diesel by M/s J.K. Lakshmi Cement for execution of the various contract-based works mentioned in the said contracts.*
- *At the time of inspection, in the separate inquiry conducted at the declared place of business of M/s National Transport Company, from the Diesel and Requisition Slips and Diesel Reports of Various Months obtained from the business premises of the firm, evidence is also found that J.K. Lakshmi Cement Ltd., J.K. Puram had supplied diesel for the operation of various equipment of National Transport Company.*
- *On analysis of the records relating to diesel usage for various financial years submitted by M/s J.K. Lakshmi Cement, it is also found that diesel was being supplied by your company for the equipment of M/s National Transport Company used in mining, plant machinery and internal operations, which is also confirmed from the records of diesel received by National Transport Company during various financial years.*
- *On analysis of the letter dated 15.04.2013 of the Rate Committee Meeting of M/s J.K. Lakshmi Cement Ltd., J.K. Puram, it is also revealed that the rates for various contract-based works executed by M/s National Transport Company without diesel are lower than the rates for various works executed with diesel, which again indicates that the business firm M/s J.K. Lakshmi Cement Ltd., J.K. Puram, in lieu of the differential amount between the diesel-inclusive rate and the diesel-exclusive rate payable for various contract-based works to M/s National Transport Company, is supplying diesel instead of making cash payment of such differential amount, which, upon comprehensive analysis under Section 2(35) of the Rajasthan Value Added Tax Act, 2003 and the Indian Contract Act, 1872, is covered within the definition of “sale.”*
- *Along with this, the business firm has, in various financial years, supplied diesel to the contracted transport companies for the transportation of clinker for the manufacture of cement to different grinding units located outside the State, such as Kalol, Jhajjar, Surat, etc. The freight rates payable to the transport companies are determined by the company management, and the amount of freight to be paid in cash as well as the quantity of diesel to be provided are also decided by the company*



management. This fact is also substantiated during the survey by the examination of various transport companies and by the documents and facts on record. Furthermore, in lieu of partial cash payment of freight payable as consideration for the transportation services received by the business firm, providing diesel to the service provider is covered under the definition of “sale” after a comprehensive analysis of Section 2(35) of the Rajasthan Value Added Tax Act, 2003 and the Indian Contract Act, 1872.

- *In the course of the investigation proceedings, according to the documents submitted by you, during the financial year 2015–16, the business firm supplied 860,924 liters of diesel to M/s National Transport Company under Internal Handling Work for equipment used in Internal Feeding Work (Code No. 210110). Further, for equipment of M/s National Transport Company used in Mining Work, a total of 1,145,224 liters of diesel was supplied for the following works: Water Spray Work (Code No. 210111); Material Shifting Work (Code No. 210112); Face Material Shifting Work (Code No. 210113); Lime Stone Shifting Mines to Crusher (Code No. 210114); and Rock Breaker Work (Code No. 210143). Additionally, for the work of transportation of clinker to various grinding units of M/s JK Lakshmi Cement Ltd., the business firm supplied 901,223 liters of diesel to various transport companies.*
- *In the course of the aforesaid sale of diesel made by you during the financial year 2015–16, as per the provisions of Section 4 of the Rajasthan Value Added Tax Act, 2003, tax liability is determined at the first point on the sale within the State of diesel brought from outside the State, and liability of cess is also determined under Section 3 of the Rajasthan State Road Development Fund Act, 2004. Therefore, on this escaped turnover of sales, it is required to assess the tax payable under Section 25(1) of the Rajasthan Value Added Tax Act, 2003 and the cess payable under Section 3 of the Rajasthan State Road Development Fund Act, 2004, in accordance with law. Further, on the unpaid tax, consequential interest as calculated under Section 55 of the Rajasthan Value Added Tax Act, 2003, and penalty under Section 61 of the Rajasthan Value Added Tax Act, 2003, are also payable as per the established legal position.*

In the relevant financial year 2015–16, on the taxable turnover of sales amounting to Rs. 113,590,985/-, tax amounting to Rs. 24,990,017/- at the rate of 22% has been calculated. Under Section 3 of the Rajasthan State Road Development Fund Act, 2004, on 2,907,371 liters of diesel consumed during the relevant financial year 2015–16, cess amounting to Rs. 5,087,899/- has been calculated at the rate of Rs. 1.75 per liter. It has



also been recommended to levy interest under Section 55 and to impose penalty under Section 61(1).

You are hereby directed to appear before the undersigned on the scheduled date and explain why, on the basis of the recommendation of the prosecuting officer, the taxable amount of Rs. 113,590,985/- should not be treated as taxable turnover of sales and tax be levied under Section 25(1), cess under Section 3 of the Rajasthan State Road Development Fund Act, 2004, and interest under Section 55 along with double penalty of tax under Section 61(1) be imposed in accordance with law.

You are hereby summoned to appear in person before me on 12-06-2020 Assistant Commissioner, C.T.D., Anti-Evasion, Pali At 11.00 am Hours, in the Office of undersigned and not to depart hence until permitted by me.

Please take notice that failure to furnish the above required information/documents or non appearance, without sufficient cause, will render you liable to penalty under Section 64 of the Rajasthan VAT Act, 2003.

Given under my hand and seal, this 06 Day of June., 2020

Sd/-

(Surendra Singh Rathore)

Assistant Commissioner

Anti-evasion, Pali

15. Before proceeding further, Section 25(1) of the Rajasthan Value Added Tax Act, 2003 be seen which is as under:

“25. Assessment in case of avoidance or evasion of tax.- (1)
Where the assessing authority or any officer authorized by the Commissioner in this behalf has reason to believe that a dealer has avoided or evaded tax or has not paid tax in accordance with law or has availed input tax credit wrongly, he may after giving the dealer a reasonable opportunity of being heard, determine at any time and for any period, that taxable turn over of such dealer on which tax has been avoided or evaded or has not been paid in accordance with law or wrong input tax credit has been availed and assess the tax to the best of his judgment.

xxx xxx xxx ”

16. At this stage, it is pertinent to note that under section 26(2) of the 2003 Act, where the Commissioner has reason to believe that a dealer has escaped assessment to tax in any manner provided in sub-section (1), he may at any time, subject to the time limit specified in sub-section (3), either direct the assessing



authority or the officer authorized by the Commissioner, to assess the tax or the fee or other sum or himself proceed to assess the same.

16.1. Vide section 91 of the 2003 Act, the Commissioner is authorized to issue administrative instructions for carrying out the purposes of the Act and to call upon any dealer to furnish information, statement or return. Under Rule 60 of the Rajasthan Value Added Tax Rules, 2006, the Commissioner, while exercising his powers, may also take help from the subordinate officers working under him.

17. There is no statutory provision laying down an absolute bar against the re-opening of assessment already completed.

17.1. We are of the opinion that in absence of any bar, powers of the assessing authority in terms of section 25(1) include the power to re-open the assessment already completed, inter alia, provided, if in his prima facie opinion, the dealer has not paid tax in accordance with law.

17.2. This position would not be affected merely because, as asserted herein by learned counsel for the petitioner, that nothing had been concealed; the respondent department through out all these years since inception of the company, was aware about the similar arrangements between the petitioner and its contractors/service providers.

18. Obviously, in present case, the exercise of inspection/survey carried out by respondent 4 in compliance with the orders of the Commissioner was a precursor to the process for initiating proceedings for assessment of the tax which had earlier escaped



assessment. On the basis of inspection/survey report, proceedings for assessment of the tax were commenced by respondent No. 2 with the issuance of the impugned show cause notices to the petitioner.

19. On merits also, as already noted by us in the preceding part here in above, we do not find any reason for quashing the said inspection/survey report. On it's overall reading, we are of the considered opinion that by no stretch of imagination, can it be treated as a pre-decision of the respondent No. 4 to the effect that the supply of diesel by the petitioner to the contractor amounted to it's sale and/or that, thereby, he had already determined the demand for tax etc. Show cause notice is merely a sequel to the survey report and in the normal cause of prudence right thing to do before making up the mind qua any finality.

20. On the other hand, perusal of the survey report also shows that respondent No.4 had tangible material before him and on it's basis, he had only expressed his own opinion/view that the case required appropriate inquiry by the competent authority for assessment of demand for tax, cess, penalty in accordance with Rules. His recommendation/proposal, at the most, was an expression of his opinion/view in the matter by respondent No.4. He had only proposed/recommended the institution of an appropriate inquiry for that purpose. This makes it abundantly clear that respondent No. 4 had not taken any decision in the said inspection/survey report to the effect the supply of diesel by the petitioner to the contractor amounted to it's sale to the latter and/



or that thereby he had also assessed/determined the demand for tax, cess, penalty.

21. True, as vehemently emphasized and pointed out by learned counsel for the petitioner, the impugned notices which are for the transactions of financial year 2015-16 also contain references to subsequent agreements dated 01.04.2017 and 27.03.2019. In our opinion, their reference by itself does not invalidate the impugned notices, as there was/is other material before the competent authority to sustain the notices.

22. As noted above, letter dated 15.04.2013, Annexure-4, written by the General Manager to the Senior Vice President of petitioner; revealed that the contract/agreement with M/s National Transport Company for the same service job, the contractor would be paid by the petitioner at lower rates if diesel was supplied by the petitioner and; at a higher rate if diesel was not supplied by the petitioner, but had to be arranged by the contractor. The tabular chart in the said letter shows, inter alia, that for the same services/jobs, the rates payable to contractor including the diesel price are lower than the rates payable without diesel payable. The letter purports to have been signed in token of acceptance on behalf of the contractor (M/s National Transport Company). It may, therefore, be taken an agreement between the petitioner and the contractor. This document has been duly referred to and relied upon by competent authority while issuing the impugned notices. It is further mentioned in the inspection/survey report dated 18.02.2020 that National Transport Company had also raised bills in respect of the jobs, for which the petitioner had not



supplied diesel. This materially relevant and tangible material before respondent No. 2 would justify the issuance of the impugned show-cause notice. Mere reference of the agreements dated 01.04.2017 and 27.03.2019 (subsequent to the relevant financial year 2015-16) in the impugned notices does not invalidate them.

23. Referring to the contents of the show cause notice, learned counsel for the petitioner's contention is that the very language therein per se reflects that respondent No.2 has already decided in his mind and taken an illegal unilateral decision holding that the petitioner is engaged in the sale of HSD to work agency; pre-decided the petitioner's liability and is unwilling to consider the matter objectively.

23.1. Refuting these contentions, the learned counsel for the respondents argued that at this stage the subject matter is under a lawful inquiry by the competent authority, who has not yet taken any decision in the matter. It is only for and during the course of the inquiry that the impugned notices have been issued to the petitioner calling for his explanation in order to complete the inquiry and arrive at a decision and that no decision has yet been taken in the matter. As asserted in the respondents' preliminary reply, the petitioner's objections, if raised during the inquiry, shall be considered by the respondent authority objectively, fairly and in an unbiased manner without any prejudice against the petitioner; he shall be afforded equitable opportunity of hearing while considering his submissions, reply etc., objectively and



without any prejudice in the matter and only thereafter the respondent authorities shall pass any order in the matter.

24. On careful reading of the notice, we are inclined to agree to the contention of the learned counsel for the respondents that at this stage the subject matter is under a lawful inquiry by the competent authority; that the competent authority has not yet taken any decision in the matter; that it is only for and during the course of the inquiry that the impugned notices have been issued to the petitioner calling for his explanation, in order to complete the inquiry and arrive at a decision and that no decision has yet been taken in the matter by the competent authority. Petitioner does not claim to have any super human powers to know the state of mind of respondent No.2. Nothing on record has been brought to our notice which would show that respondent No. 2 has already decided in his mind and taken an illegal unilateral decision holding that the petitioner is engaged in the sale of HSD to work agency; has pre-decided the petitioner's liability and is unwilling to consider the matter objectively. The contentions to that effect raised by the petitioner's learned counsel are, therefore, rejected.

25. Moving on now to the next argument of the learned counsel for petitioner that reassessment proceedings cannot be initiated merely on the basis of change of opinion. In support of his contention, he relies upon the judgments in **CIT vs. Keelvinator of India Ltd¹** and **M/s NawlaIspat Pvt. Ltd vs. Additional Commissioner &Ors²** decided on 01.03.2019. We are unable to accept this contention too.

¹ (2010) 2 SCC 723

² Writ Tax No. 1350/2018 (Allahabad High Court)



25.1. In present case, the petitioner has not produced any document showing that a clear/categorical decision had been taken or opinion had been given/expressed or a view favouring the petitioner had been taken by the competent authority in respect of the same matter and that the impugned notices have been issued merely on the basis of change of such earlier opinion. We find no merit in the contention that the show-cause notice has been issued merely on the basis of change of opinion. Reliance on the judgments *ibid* is, therefore, misplaced.

26. Learned counsel for the petitioner also pointed out that the interim order dated 02.03.2021 was passed by the learned Single Judge dismissing the respondents' applications under Article 226(3) of the Constitution of India for vacation of an interim order dated 24.07.2020 also passed by a learned Single Judge, whereby the effect and operation of the impugned notices dated 26.03.2020, 06.07.2020 and summon dated 27.12.2019 were stayed. In the said order dated 02.03.2021, the court had held that the respondents had failed to show that in the given circumstances, the supply of diesel by the petitioner to the contractor amounted to its sale.

26.1. Basis as above, learned counsel for the petitioner contended that the respondents are barred by the principle of *res-judicata* from again raising any such plea. Reliance for the contention is placed on Single Bench of this court in **M/s Ultratech Cement Limited and another vs. The State of MP and others**³. In our opinion, the contention is untenable.

3 WP No. 18026/2020 Rajasthan High Court decided on 12.08.2024



26.2. Firstly, the respondents have not yet set up any specific plea in the instant pleadings that the supply of diesel by the petitioner to the contractor amounted to its sale. At this stage, it is premature for the petitioner to set up the bar of res judicata against a non-existent plea.

26.2.1. The broad stand taken by the respondents in the interim reply/ preliminary objections is that no adverse order has yet been passed whereby the petitioner can be said to be aggrieved; the show cause notice has been to the petitioner in accordance with law, only seeking certain information, explanation and documents before taking any decision/passing any order. At the stage of filing their interim reply/ preliminary objections, it was not appropriate to enter into the arena of making submissions on the merits of the issues as inquiry proceedings in the matter were pending consideration before the respondent authorities and any submission on merit might prejudice the case of the parties and even otherwise would not be in the interest of the parties. It was nowhere pleaded by the respondents in their interim reply/ preliminary objections whether or not the supply of diesel by the petitioner to the contractor amounted to its sale to the contractor.

26.2.2. Secondly, perusal of the interim the order dated 02.03.2021 does not show if, at the time of its passing, the respondents had even contended that the supply of diesel by the petitioner to the contractor amounted to its sale to the contractor. Further the order ibid shows that therein the learned Single Judge did not record even an opinion, let alone hold or record any



finding, that the supply of diesel by the petitioner to the contractor did not amount to it's sale.

26.2.3. In **M/s Ultratech Cement Limited** supra, at the time of admission of the writ petition, a preliminary objection was raised by the respondents with regard to alternative remedy which was rejected. It was held that since the respondents did not challenge the order rejecting their preliminary objection with regard to alternative remedy, therefore, the principle of *res-judicata* would apply and the respondents could not re-agitate the question of alternative remedy in the same proceedings. There are no such facts and circumstances in the instant case and the judgment *ibid* has not applicability here.

26.2.4. The learned single Judge, while passing the order dated 02.03.2021, no doubt, recorded the court's prima facie opinion that the exercise undertaken by the respondents on the allegation that the petitioner-company had sold diesel was not based on any cogent evidence or material; that the respondents were attempting to conduct a fishing and roving enquiry; that the powers of reassessment or escaped assessment cannot be exercised in the manner attempted by the respondents No. 2 to 4. With due deference to the learned Single Judge, we express our reservations about the aforesaid prima facie opinion recorded in the case.

26.2.5. As noted above, in the impugned inspection/survey report dated 18.02.2020 (Annexure A-8) and show cause notices, it is mentioned, inter alia, that letter dated 15.04.2013 (Annexure -4) written by the General Manager to the Senior Vice President of



petitioner revealed that the contract/agreement with M/s National Transport Company for the same service job, the contractor would be paid by the petitioner at lower rates if diesel was supplied by the petitioner and at a higher rate if diesel was not supplied by the petitioner but had to be arranged by the contractor; this letter contains a tabular chart showing, inter alia, that for the same services/jobs, the rates payable to contractor including the diesel price are lower than the rates payable without diesel; the document also purports to have been signed in token of acceptance on behalf of the contractor (M/s National Transport Company).

26.2.6. It is further mentioned in the impugned inspection/survey report and show cause notices that National Transport Company had also raised bills in respect of the jobs, for which the petitioner had not supplied diesel; that the supply of diesel by the petitioner in lieu of the part payment of charges for transport of goods fell within the definition of 'sale' under section 2(35) of the Rajasthan Value Added Tax Act, 2003; under section 4 of the Act *ibid*, in case of diesel brought from outside the State of Rajasthan, its sale in this State (Rajasthan), would also attract liability for cess under section 3 of the Rajasthan State Road Development Fund Act, 2004.

26.2.7. The order dated 02.03.2021 does not contain any reference to the aforesaid facts/material available on record. It appears that the same were not brought to the notice of the learned Single Judge, when the said order was passed.



26.2.8. In view of the aforesaid facts/material available on record, we respectfully differ with the prima facie opinion expressed by the learned Single Judge to the effect that the exercise undertaken by the respondents on the allegation that the petitioner-company had sold diesel was not based on any cogent evidence or material; or that the respondents were attempting to conduct a fishing and roving enquiry and that the powers of reassessment or escaped assessment could not be exercised in the manner attempted by the respondents No. 2 to 4. In our opinion there is cogent and actionable evidence/material on record justifying the submission of impugned inspection report by respondent No. 4 and the issue of impugned show cause notices by respondent No. 2.

27. In **Radha Krishan Industries vs. State of Himachal Pradesh**⁴, the Apex Court observed (in para 27) that exceptions to the rule of alternate remedy arise where:-

- (a) the writ petition has been filed for the enforcement of a fundamental right protected by part III of the Constitution;
 - (b) there has been a violation of the principles of natural justice;
 - (c) the order or proceedings are wholly without jurisdiction
- or
- (d) the vires of a legislation is challenged.

28. In this case, as of now, only the impugned show cause notice has been issued requiring the petitioner submit his explanation against the action proposed therein. If/when an order of assessment is actually passed, the statutory remedy of appeal



against the same would be available to the petitioner. We are of the opinion that it cannot be said in the instant case impugned proceedings of the inspection/survey report and show cause notices are wholly without jurisdiction. Vide section 82(1) read with section 86 of the 2003 Act, appeal against the order of Assistant Commissioner lies before the appellate authority excepting a notice or summons issued under the Act for the purpose of assessment or for any other purpose including the recording of statements etc. We are also of the opinion that in the event of an assessment order being passed against the petitioner, an effective alternate remedy of appeal under the Act is available to the petitioner and that the case does not fall within any of the aforesaid any of the exceptions laid down by the Apex Court to the rule against entertaining of writ petition by this Court.

CONCLUSION

29. In the light of above discussion/observations, we are of the opinion that neither the impugned survey report dated 18.02.2020 nor the impugned show cause notices 05.03.2020 or 06.06.2020 are liable to be quashed.

29.1. Qua the impugned notices, in any case, an effective alternate remedy was/is available to the petitioner to submit its explanation with supporting material/documents, if any, against the action proposed to enable respondent No. 2 to complete the inquiry and take an appropriate decision. If aggrieved, by any adverse order in case it is actually passed, petitioner can avail the statutory remedy of appeal etc. under the 2003 Act or seek other legally available remedy. Instead of that, on receiving the show



cause notice, the petitioner straight away rushed to this court and filed the instant writ petition challenging the show cause notice without even submitting his reply to it, let alone completion of the inquiry and taking of any decision in the matter by respondent No.2.

30. We are of the view that aforesaid opportunity can be provided by the respondent even now, as the petitioner should not be penalized or deprived of justice merely because instead joining the inquiry and presenting his explanation, he filed the instant premature writ petition, obviously under some misunderstanding, challenging the issue of show cause notices for the inquiry.

31. In the premise, ends of justice would be met if the petitioner is relegated to the inquiry before respondent No. 2, to present his explanation to the show cause notice with supporting material/documents, if any, to enable the former to complete the inquiry and take an appropriate decision. Respondent No. 2 should communicate a fresh date and time to the petitioner for appearance in the inquiry proceedings for hearing including the presenting of his explanation to the show cause notice with supporting material/documents, if any.

32. If aggrieved by the decision so taken by respondent No. 2, the petitioner may avail the appropriate remedy under law. We refrain from expressing any opinion on the aforesaid remaining contentions raised before to avoid any prejudice to the parties.

RELIEF

33. Accordingly, the bunch of writ petitions is disposed of with the following directions:



- (a) the petitioner is relegated to the inquiry before respondent No.2, to present his explanation to the impugned show cause notices with supporting material/documents, if any, to enable the former to complete the inquiry and take an appropriate decision;
- (b) respondent No.2 should intimate a fresh date and time to the petitioner for appearance in the inquiry proceedings for hearing including the presenting of his explanation to the show cause notice with supporting material/documents, if any.
- (c) if aggrieved by the decision so taken by respondent No.2, the petitioner may avail the appropriate remedy under law.

(YOGENDRA KUMAR PUROHIT),J**(ARUN MONGA),J**

76-Devanshi/-

Appendix "A"

Sr. No.	Writ Petition Number	Case Details	Relief claimed
1.	5734/2020	M/S. J.K. CEMENT LTD. Vs. STATE OF RAJASTHAN & ORS.	Quashing of Summon dated 27.12.2019 issued by Respondent No. 2, Notice dated 06.07.2020 issued by Respondent No. 2 and Notice dated 06.07.2020 issued by Respondent No. 2.
2.	5699/2020	M/S J.K. CEMENT LTD. Vs. STATE OF RAJASTHAN & ORS.	Quashing of Summon dated 27.12.2019 issued by Respondent No. 2, Notice dated 20.03.2020 issued by Respondent No. 4, Notice dated 20.03.2020 issued by Respondent No. 4, Notice dated 06.07.2020 issued by Respondent No. 2 and Notice dated 06.07.2020 issued by Respondent No. 2.
3.	5724/2020	M/S J.K. CEMENT LTD. Vs. STATE OF RAJASTHAN & ORS.	Quashing of Summon dated 27.12.2019 issued by Respondent No. 2, Notice dated 06.07.2020 issued by Respondent No. 2 and Notice dated 06.07.2020 issued by Respondent No. 2.



4.	5725/2020	M/S J.K. CEMENT LTD. Vs. STATE OF RAJASTHAN & ORS.	Quashing of Summon dated 27.12.2019 issued by Respondent No. 2, Notice dated 06.07.2020 issued by Respondent No. 2 and Notice dated 06.07.2020 issued by Respondent No. 2.
5.	6596/2020	M/S J.K. CEMENT LTD. Vs. STATE OF RAJASTHAN & ORS.	Quashing of Investigation/Survey Report dated 18.02.2020 issued by Respondent No. 4, Notice dated 05.03.2020 issued by Respondent No. 2 and Notice dated 06.06.2020 issued by Respondent No. 2.
6.	6597/2020	M/S. J.K. LAKSHMI CEMENT LTD. Vs. STATE OF RAJASTHAN & ORS.	Quashing of Investigation/Survey Report dated 18.02.2020 issued by Respondent No. 4, Notice dated 05.03.2020 issued by Respondent No. 2 and Notice dated 06.06.2020 issued by Respondent No. 2.
7.	6598/2020	M/S. J.K. LAKSHMI CEMENT LTD. Vs. STATE OF RAJASHTAN & ORS.	Quashing of Investigation/Survey Report dated 18.02.2020 issued by Respondent No. 4, Notice dated 05.03.2020 issued by Respondent No. 2 and Notice dated 06.06.2020 issued by Respondent No. 2.
8.	6616/2020	M/S. J.K. LAKSHMI CEMENT LTD. Vs. STATE OF RAJASHTAN & ORS.	Quashing of Investigation/Survey Report dated 18.02.2020 issued by Respondent No. 4, Notice dated 05.03.2020 issued by Respondent No. 2 and Notice dated 06.06.2020 issued by Respondent No. 2.
9.	6620/2020	M/S. J.K. LAKSHMI CEMENT LTD. Vs. STATE OF RAJASTHAN & ORS.	Quashing of Investigation/Survey Report dated 18.02.2020 issued by Respondent No. 4, Notice dated 05.03.2020 issued by Respondent No. 2 and Notice dated 06.06.2020 issued by Respondent No. 2.