(2012) 04 MP CK 0046

In the Madhya Pradesh High Court

Case No : Writ Petition No. 5413 of 2010

Ambika Refinery (M/s) APPELLANT

Vs

State of M.P. and Others RESPONDENT

Date of Decision : 24-04-2012

Acts Referred:
Madhya Pradesh Vanijyik Kar Adhiniyam, 1994 — Section 2(r)

Citation : (2012) ILR (MP) 1221 : (2012) 3 MPJR 190

Hon'ble Judges : M.A. Siddiqui, J;Krishan Kumar Lahoti, J

Bench : Division Bench

Advocate : Vivek Dalal, for the Appellant; Jaideep Singh, Dy. G.A., for the Respondent

Final Decision : Allowed

Judgement

Krishan Kumar Lahoti, J.—The petitioner has challenged validity of Notification (Annexure P/1) dated 12.04.2007 issued by Govt, of MP, Commercial Tax Department, Bhopal, by which exemption to crude edible oil from payment of entry tax was extended for the period between 1st of October, 1997 to 31st of March, 2004. The case of petitioner is that vide Annexure P/5, the petitioner, who was manufacturing vegetable and edible oil was exempted from payment of entry tax on all the raw material as defined u/s 2(r) of M.P. Vanijyik Kar Adhiniyam, 1994. The contention of the petitioner is that crude edible oil was used for manufacturing of vegetable and edible oil, and under Notification (Annexure P/5) which was extended up to 31st of March, 2007 was restricted vide Annexure P/1 up to 31st of March, 2004, meaning thereby that the petitioner was liable to make payment of entry tax from 1st of April, 2004 for which earlier he was granted exemption.

2. Shri Vivek Dalai, Learned Counsel appearing for petitioner submitted that such notification (Annexure P/l),issued on 12.04.2007 withdrawing the exemption with retrospective effect from 1.4.2004, is liable to be quashed as it was issued without any authority of law and is contrary to Section 10 of the Entry Tax Act.

3. Shri Jaideep Singh, learned Deputy Govt. Advocate, appearing for the State, supported the Notification (Annexure P/1) by saying that by this notification exemption was granted to crude edible oil from payment of entry tax between 1st of October, 1997 and 31st of March, 2004, so it does not have any effect on Annexure P/5 and cannot be quashed mainly on the ground that under Annexure P/1, petitioner is liable to make payment of entry tax from 1st of April, 2004. It was submitted by Shri Jaideep Singh that nowhere Annexure P/1 says that by this earlier notification, Annexure P/5 was withdrawn or modified, in absence of which, Annexure P/l dated 13.04.2007 cannot be quashed.

4. To appreciate the rival contentions of the parties, it would be appropriate if the factual position of the case is stated. Petitioner is a manufacturer of vegetable and edible oil. Petitioner is required crude edible oil as raw material for manufacture of the aforesaid goods. Vide Notification dated 6th of September, 2001 (Annexure P/5), the State Government, exercising powers u/s 10 of Entry Tax Act had allowed exemption on raw material used for manufacturing vegetable and edible oil. For ready reference, we quote Annexure P/5 which reads thus:-

Notification u/s 10 of Entry Tax allowing exemption on raw material.

No. A-3-10-2000-ST-V (82) dated 6th September, 2001--

In exercise of the powers conferred by Section 10 of the Madhya Pradesh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976 (No. 52 of 1976), the State Government hereby exempts the class of goods specified in column (11) of the schedule below from payment of entry tax under the said Adhiniyam for the period from the date of the publication of this notification * (31st March, 2005) to the extent specified in column (2) of the said schedule:-

Class of Goods

Restrictions and Conditions subject to which exemption is granted

Raw material as defined in Section 2(r) of the Madhya Pradesh Vanijyik Kar Adhiniyam, 1994 (No. 5 of 1995)

1. When the entry of the goods specified in column (1) is effected into a local area by a registered dealer:

(a) for use in the manufacture of following goods; or

(b) for sale and such goods are accordingly sold by the dealer to another such dealer against a declaration in the appended form for use in the manufacture of following goods:-

(i) All kinds of yarn including blended yarn or staple yarn, but excluding sewing thread

(ii) Hydrogenated Vegetable Oil

(iii) Vegetable & Edible Oil

(iv) Ceramic Tiles

2. The goods manufactured are sold in the State of Madhya Pradesh or in the course of inter-State trade or commerce or in the course of export out of the territory of India.

5. To understand the complete effect of Annexure P/5, it would be appropriate if relevant provision, as contained in Section 2(r) of M.P. Vanijyik Kar Adhiniyam, 1994 is also referred which reads thus:-

2(r): Raw material means an article used as an ingredient in any manufactured goods, or an article consumed in the process of manufacture and includes fuel and lubricants required for the process of manufacture.

6. The aforesaid provision defines raw material used as an ingredient in any manufactured goods meaning thereby, that the crude edible oil which was used for manufacturing of vegetable edible oil could be treated as raw material, and under Notification (Annexure P/5) it was exempted from payment of entry tax.

7. Vide Annexure P/5, aforesaid exemption was given up to 31st of March, 2005, and by a subsequent Notification dated 31.03.06 bearing no. FA-3-60-05-1-V(14) such exemption was extended up to 31st of March, 2007 by Entry No. 9 of such notification. Net result of the aforesaid two notifications was that up to 31st of March, 2007, petitioner was not liable to make payment of entry tax on the raw material used for manufacturing of vegetable edible oil.

8. On 12th April, 2007, the State Government had issued another notification u/s 10 of the M.P. Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976 (hereinafter referred to as "Entry Tax Act") by which exemption on crude oil, when the crude oil is brought into a local area by a registered dealer for use in refining and after refining, the refined edible oil is sold in the course of inter-State trade or commerce or transferred outside the State of M.P. for sale, the exemption was granted/restricted for the period between 1st of October, 1997 and 31st of March, 2004,meaning thereby, that the earlier exemption which was available to the petitioner vide Annexure P/5 up to 31st of March, 2007 was restricted up to 31st of March, 2004, and petitioner was liable to make payment of entry tax from 1st of April, 2004 till 31st of March, 2007.

9. The contention of the petitioner is that when the State Government had granted exemption to the petitioner u/s 10 of Entry Tax Act till 31st of March, 2007 then such exemption could not have been restricted vide another Notification dated 12th of April, 2007 till 31st of March, 2004, that too with retrospective effect. Reliance is placed by the petitioner to a judgment of Apex Court in State of Uttar Pradesh and Ors.,, AIR 2007 SC 2123) (supra) and submitted that such notification may be quashed.

10. Section 10 of the Entry Tax Act provides thus:-

Power to exempt : The State Government may, by notification, and subject to such restrictions and conditions as may be specified therein, exempt, whether prospectively or retrospectively, in whole or in part:

(i) any class of dealers or persons, or any goods or class of goods, from the payment of entry tax under this Act in respect of all or any of the local areas, for such period as may be specified in the notification;

(ii) any dealer or class of dealers, from any provision of the Act as may specified in the notification:

Provided that in respect to the period during which the Ordinance repealed u/s 24 was in force, the retrospective effect may be given from the date of the commencement of the said Ordinance as if the liability to pay tax arose under this Act and for that purpose it shall and shall always be deemed that the provisions of this Act to the extent they correspond to the provisions of the said Ordinance were in force during the material times.

The aforesaid provision specifically provides that State Government may exempt whether prospectively or retrospectively any goods or class of goods from payment of entry tax by issuing a specific notification. The State Government was empowered to exempt such goods from payment of entry tax. It is apparent that vide Annexure P/5 initially such exemption was granted up to 31st of March, 2005, and thereafter the State Government had extended such benefit by another notification dated 31.03.2006 up to 31st of March, 2007. On issuance of such a notification, a manufacturer could very well assess his liability in respect of payment of entry tax and could have assessed the cost for manufacturing of the goods, and during the period when the aforesaid notification remains in vogue, the petitioner could not have included entry tax to ascertain the cost of finished goods, meaning thereby, for assessing cost of manufactured goods, the entry tax part could not have been taken into consideration. The Apex Court in State of U.P. & Ors. Vs. Deepak Fertilizers & Petrochemical Corporation Ltd (supra), considering the similar position, held thus:-

10. For this aspect, proviso to Section 25 of the Act is important. A bare perusal of the proviso to Section 25 of the Act would clearly show that no notification having the effect of increasing the tax liability shall be issued with retrospective effect under the aforesaid section. In our view, the High Court was justified in holding that exemption could not be withdrawn with retrospective effect by issuance of subsequent notification dated 10th April, 1995, superseding the notification dated 2nd November, 1994. Restricting the exemption of tax to certain fertilizers in the same class of chemical fertilizers certainly amounted to increasing the liability to tax of the dealer with retrospective effect, which in our opinion, cannot be issued in view of the proviso to Section 25 of the Act. Accordingly, we hold that the notification dated 10th April, 1995, denying exemption to NPK 23:23:0 retrospectively is illegal and invalid and are in agreement with the view expressed by the High Court on this question.

11. The position of the present case is similar. The exemption which was granted vide earlier notifications was available to the petitioner up to 31st of March, 2007, but vide notification dated 12th April, 2007 it was restricted up to 31st of March, 2004, meaning thereby, for a period near about 3 years, petitioner has been held liable for payment of entry tax for which, there was no power with the State Government to withdraw such exemption with retrospective effect. If an exemption was granted by the State Government by issuing continuous two notifications, then the aforesaid exemption could not have been withdrawn by the State Government vide Annexure P/1 with retrospective effect. Issuance of Notification (Annexure P/1) is having far reaching consequences on the petitioner, and in such a situation, the State Government could not have withdrawn such exemption with retrospective effect. In the result, this petition is allowed. Notification (Annexure P/1) in so far as it relates to the petitioner only restricting the exemption of Notification (Annexure P/5) till 31st of March, 2004 is not sustainable under the law and is hereby quashed. Petitioner who was extended benefit of exemption from payment of entry tax till 31st of March, 2007 vide Notification (Annexure P/5) shall be entitled to get the aforesaid exemption. With the aforesaid directions, this petition is allowed with no order as to costs.