
(1990) 10 MP CK 0029

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 1 of 1988

Bindal Agro Chem. Ltd. and Another

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 09-10-1990

Acts Referred:

Constitution of India, 1950 — Article 226
Industries (Development and Regulation) Act, 1951 — Section 11, 3
Madhya Pradesh General Sales Tax Act, 1958 — Section 12

Citation : (1991) J LJ 79 : (1990) MPJR 752

Hon'ble Judges : S.K. Jha, C.J.; K.M. Agarwal, J

Bench : Division Bench

Advocate : Shankar Ghosh, Lalit Bajla, Sandeep Agarwal and Deepak Verma, for the Appellant; S.L. Saxena, A.A.G. and P.C. Naik, D.A.G., for the Respondent

Final Decision : Allowed

Judgement

S.K. Jha, C.J.

Since the points involved are common and the parties are the same, this order shall also dispose of M.P. No. 4348/89 (Bindal Agro Chemical Ltd. and Anr. v. The State of M.P. and 3 Ors.) where a direction to the taxing authorities for grant of sales tax registration certificate in respect of Petitioners' alleged new industrial unit at Mandideep in District Raisen of the State of M.P. is sought which is incidental in nature and tenable or untenable, depending upon the success or failure of the main Misc. Petition No. 1 of 1988. The Petitioners are common in both these petitions under Article 226 of the Constitution of India.

This writ petition is directed against orders contained in Annexures R, S, T and U in this petition and I and J in M.P. No. 4348/89, issued to the Petitioners by the Respondents informing the Petitioners that the Petitioners have shifted their Unit from Dewas to Mandideep and as such they are not eligible to central investment subsidy, sales-tax exemption, power subsidy and Entry-tax exemption. All these letters were written on various dates in August, 1987.

Petitioner No. 1 is a Public Limited Company incorporated under the Companies Act, 1956 and Petitioner No. 2 is a share-holder and the General Manager of the Company.

The basic controversy revolves round the question as to whether the Petitioner Company is eligible to the various incentives announced by the State Government to the entrepreneurs setting up new industries in backward districts of the State of Madhya Pradesh. While the Petitioner Company's contention is that the Unit set up by it for manufacturing hydrogenated vegetable oil (Vanaspati) at Mandideep is an entirely new Unit and as such, it is eligible for such incentives, the Respondents have contended that the Petitioner Company had purchased a running unit for manufacture of Vanaspati at Dewas under an existing licence issued by the Central Government and the Unit set up by it at Mandideep, not having been set up pursuant to a new licence, cannot be said to be a new Unit.

The facts of the case lie in a narrow compass. M/s. Nand Vanaspati, a partnership firm, was granted industrial licence on 18th January, 1971 under the Industries (Development and Regulation) Act, 1951 by the Central Government for setting up a Vanaspati factory with a capacity of 50 tons per day and on the basis of the said licence, the said firm set up a factory at village Balgarh in Tahsil of Dewas in the district of Indore. Subsequently, the Central Government, vide letter dated 17th July, 1980, permitted transfer of the said Unit along with its industrial licence in favour of M/s. 5 S Ltd. By agreement dated 18th. September, 1986, the Petitioner Company purchased from M/s. 5 S Ltd. the plant, machinery, land, building, etc. of the said factory at Dewas along with the industrial licence.

After purchase of the factory, the Petitioner company carried out a technical feasibility study to ascertain the potential of the existing plant and machinery to manufacture good quality Vanaspati which revealed that the plant and machinery at Dewas had become old and obsolete and was not capable of producing good quality Vanaspati and also to the extent of the licensed capacity. In view of the feasibility report, the Petitioner Company, on 3.10.86, applied to the Central Govt. for permission to set up a new Unit against the existing industrial licence dated 18.1.1971 at Mandideep for manufacture of Vanaspati. In his application, the Petitioner Company specifically stated that the Unit to be set up at Mandideep will be a totally new Unit and the plant and machinery of the existing Unit at Dewas will not be shifted or transferred to Mandideep.

The Commerce and Industries Department of the State Government also recommended the case of the Petitioner Company to the Central Government for grant of permission to set up a new Unit at Mandideep. A copy of the said letter is annexed as Annexure "D" to the writ petition.

In order to help industrialisation of backward areas, the Government of Madhya Pradesh, pursuant to a decision of the Central Government, announced various

incentives to entrepreneurs in order to accelerate the industrialisation of backward areas "in the State. A Notification was issued in this regard on 16.10.1986 whereby new industrial units to be set up in backward areas, identified in the said notification, were offered various incentives, like exemption from payment of sales tax, entry tax and grant of power subsidy and investment subsidy, etc. The said notification was issued u/s 12 of the Madhya Pradesh General Sales Tax Act, 1958. The notification is annexed as Annexure "J" to the writ petition.

The said incentives were, however, subject to certain conditions enumerated in para 2 of the notification. Clause (iv) of para 2 reads as follows:

If a dealer establishes a new industrial unit and closes down or deliberately reduces the production substantially in the existing industrial unit within the State engaged in production of the same product, the eligibility certificate shall be liable to be cancelled by the authority sanctioning issue of such certificate and such cancellation shall take effect from the date on which such substantial reduction in production has occurred.

(Emphasis supplied)

Clause (XIII) further provides that the exemption under the notification shall not be available to the industrial units enumerated and categorised in various sub-clauses thereunder. Clause (e) thereof categorises such new industrial units which are set up by transferring, shifting or dismantling or closing an existing unit within the State of Madhya Pradesh.

The contention of the Petitioner is that the Unit set up by them at Mandideep which is categorised as "C" backward area in the notification, is a totally new Unit. The land for the said unit was allotted to the Petitioners by the State Government and after allotment of the land, the Petitioner Company set up new building, plant and machineries and miscellaneous fixed assets by investing a sum of Rs. 3.04 crores. The entire plant and machinery worth Rs. 2.57 crores were newly purchased by the Petitioner Company and no plant or machinery of the unit at Dewas was dismantled or transferred to Mandideep, rather the Unit at Dewas also was renovated and modernised by the Petitioner Company by making a further investment of Rs. 96.33 lacs.

After having set up the said new Unit at Mandideep, the Petitioners applied for an eligibility certificate before the General Manager, District Industries Centre, Bhopal which was a pre-requisite for availing the various incentives like exemption from payment of sales tax, entry tax, availing power subsidy and investment subsidy, etc. The General Manager, District Industries Centre, Bhopal, vide his letter dated 1.8.1987, informed the Petitioners that the Petitioners had shifted their Unit from Dewas to Mandideep and, therefore, as per decision communicated by the Commissioner of Industries, the Petitioners were not eligible for central investment subsidy. As much stress has been laid by the counsel for the Petitioners on the said communication, we are quoting the

contents of the said letter:

You have shifted your Unit from Dewas to Mandideep. Therefore, as per decision communicated by the Commissioner of Industries, you are not eligible for Central investment subsidy. The case is returned herewith.

Two other letters giving the same reason were issued by Respondent No. 3 to the Petitioners stating that the Petitioners were not eligible for sales tax exemption and power subsidy. Still Anr. letter was issued by Respondent No. 3 on 13.8.1987 again assigning the same reason for informing the Petitioners that the Petitioners were not eligible for entry tax exemption.

Dr. Shanker Ghosh, learned Counsel for the Petitioners, has strenuously contended that the order is clearly erroneous. No plant or machinery of Dewas Unit was shifted to Mandideep and the Unit at Mandideep was set up by acquiring new land and all the plant and machinery were newly purchased. The Unit at Dewas was also not closed down; rather substantial modernisation was carried on thereby making an investment of Rs. 96.33 lacs.

The basic question which falls for consideration to resolve the controversy between the parties is as to whether the setting up of a new industrial Unit at Mandideep by the Petitioners on the basis of an industrial licence which was utilised earlier for setting up a Unit at Dewas, amounts to shifting of the industrial Unit from Dewas to Mandideep. The learned Counsel for the Respondents have strenuously contended that the Petitioner Company was not granted a new licence in terms of Section 11 of the Industries (Development and Regulation) Act, 1951, without which a new industrial undertaking could not have been established by the Petitioners at Mandideep and as the plant set up by the Petitioners at Mandideep was pursuant to the licence issued in 1971, the Unit at Mandideep cannot be termed as a new Unit. On the other hand, the counsel for the Petitioners has contended that the notification dated 16.10.86 provides, for refusal to grant the incentives only when a new industrial Unit is set up by transferring, shifting or dismantling or closing an existing Unit within the State of Madhya Pradesh. It has further been contended that the stress is on the physical assets like land, building, plant and machineries which only can be transferred, shifted, dismantled or closed and not of licence and a licence is no part of an industrial Unit, rather it is antecedent to the setting up of a new Unit.

It has also been contended that an industrial Unit, as will appear from Section 3(d) and 3(c) of the Industries (Development and Regulation) Act, is a factory where manufacturing process is carried on. A factory is a premise where with the help of plant and machineries, the Management and labour carry on industrial activities and such a factory can be set up only after a licence is obtained.

The counsel for the Petitioners has further contended that if the statutory authority rejects an application on a ground mentioned in its order, then the legality of such order will have to be decided only by considering the validity of the ground given in such order and no other or additional ground can be

forwarded by affidavit or in the course of argument and for this contention, the counsel for the Petitioners has relied on a decision of the Supreme Court reported in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others,

According to the counsel for the Petitioners, the only ground for rejecting the Petitioners' application was the alleged shifting of the Dewas Unit to Mandideep and as this was not so, the order for the rejection of the Petitioners' application was erroneous and cannot be sustained. He has further contended that the said order cannot now be justified on other grounds such as reference to clause 2(iv) (a) of the notification dated 16.10.1986 which has been quoted hereinabove. The counsel has further submitted that clause 2(iv)(a) refers to the right of the Government to cancel the eligibility certificate on the ground mentioned therein. It does not give any right to the Government to refuse to issue an eligibility certificate as the outset. The counsel for the Petitioners has further contended that even if clause 2(iv)(a) is applied, it will not be attracted in the case of the Petitioners as the Unit already existing at Dewas has admittedly not been closed down. Not only it is functioning rather on account of renovation and modernisation undertaken by the Petitioners, the production at the said Unit, instead of being reduced, has increased substantially.

After carefully considering the submissions made on behalf of both the parties, we find substantial force in the contentions made on behalf of the Petitioners. Admittedly, the reason assigned by the Respondent No. 3 in his communications to the Petitioners as contained in Annexures R, S, T and U, is only the alleged shifting of the Unit of the Petitioners from Dewas to Mandideep. Even the counsel for the Respondents have not disputed the fact that the Unit at Dewas is existing and has not been shifted to Mandideep. Although the counsel for the Respondents made a half-hearted attempt to dispute the claim of the Petitioners that the Unit set up at Mandideep is a completely new Unit, it must be said in all fairness to the counsel for the Respondents that ultimately he conceded that the Unit set up by the Petitioners at Mandideep was on a plot of land newly allotted to the Petitioners by the State Government and the plant and machineries put up by the Petitioners were not by way of shifting the same from Dewas to Mandideep. The learned Counsel for the State, however, contended that on account of the licence for the Unit being an old one, issued way-back in 1971 by the Central Government, the Unit set up at Mandideep should be deemed to be an old Unit. We are constrained to hold that the notification issued by the State Government does not permit such interpretation.

Learned Counsel for the State has further contended that the Petitioners cannot now claim the incentives on the principle of estoppel and waiver. In this regard, much stress has been laid by the counsel for the Respondents on the letter dated 4.3.1987 (Annexure-F) which was addressed to the Under Secretary to the Government of Madhya Pradesh in the Department of Commerce and Industries by the General Manager of the Petitioner Company. In all fairness to the counsel

for the State, we quote the relevant contents of the said letter:

In view of what has been stated in your letter, we agree that we shall not claim concessions in case the same is not allowed because this would be transfer of capacity and not grant of capacity. In view of this, we would request you to grant us permission for change of location of our Vanaspati Unit from Dewas to Mandideep.

Counsel for the Respondents has submitted that the permission to change the location was granted by the Central Government on the basis of the said undertaking given by the Petitioners and the Petitioners having given the said undertaking, have waived their right to claim exemption.

On the other hand, the counsel for the Petitioners has strongly contended that there can be no estoppel or waiver against the statute. If on the facts in existence, the Petitioners are entitled to exemptions and benefits under the notification, the Petitioners cannot be denied such exemptions. In support of his contention, the learned Counsel for the Petitioners has relied on various cases of the Supreme Court, particularly (Dunlop India Ltd. v. Union of India AIR 1977 SC 597) , Nookala Setharamaiah Vs. Kotaiah Naidu and Others,) A.C. Jose Vs. Sivan Pillai and Others,

A close scrutiny of the letter dated 4.3.1987, relevant contents of which have been quoted hereinabove, makes it clear that the plea of waiver raised by the counsel for the State is erroneous. What the Petitioners had agreed to in their said letter was that if the setting up of the plant at Mandideep is found to be a transfer of capacity and not creation of capacity, the Petitioners will not claim the concessions.

Besides, in our considered opinion, the plea of waiver is of no consequence under the facts and circumstances of the case. If it is held that the setting up of the Unit by the Petitioners at Mandideep amounts to transfer of capacity and not creation of capacity, the Petitioners, irrespective of the plea of waiver, will not be eligible for the concessions. On the other hand, if it is held that the Unit set up by the Petitioners at Mandideep has resulted in creation of new capacity, the Petitioners cannot be denied the concessions to which they may be eligible under the notification.

In fairness to the learned Counsel for the Petitioners, we are also taking note of Anr. argument advanced by him. Clause 2(iv)(a) of the notification stipulates cancellation of an eligibility certificate, if a dealer establishing a new Unit, closes down or deliberately reduces production substantially engaged in the production of the same product. Much stress was laid by the counsel for the Petitioners on the word "product". In this regard, he has contended that "product" refers to the products enumerated in Schedule II to the M.P. General Sales-tax Act. Entry No. 25 of Part III of Schedule II is as follows:

Hydrogenated vegetable oil.

M.P. General Sales-tax Act, does not make any distinction between edible and non-edible hydrogenated vegetable oil. Hydrogenated vegetable oil is being produced by the Petitioners at their new Unit at Mandideep, while non-edible hydrogenated vegetable oil is being produced at the Unit at Dewas. Both these kinds of hydrogenated vegetable oils are covered by Entry No. 25 and as the production of hydrogenated vegetable oil continues at Dewas, it cannot be said that there has been any reduction, much less substantial reduction, in the production of hydrogenated vegetable oil in the existing Unit of the Petitioners at Dewas after the setting up of the new Unit by the Petitioners at Mandideep which also is engaged in the manufacture of hydrogenated vegetable oil (edible). Accordingly it is contended that the said clause 2(iv)(a) of the notification is not at all attracted.

In the peculiar context of this case, the rule of law that any beneficent tax provision has to be liberally construed, would also come into play. Way back, in Commissioner of Income Tax, Bombay City I Vs. Chugandas and Co. (Securities), , it had been discussed as follows:

Lastly, it was argued by Mr. Palkhiwala that since we are dealing with the exemption clause if there was any doubt as to the true interpretation of the exemption clause, the exemption should be liberally construed, provided no violence is done to the language employed in the section. This, no doubt, has been held in the proper canon of construction by the Calcutta High Court in COMMISSIONER OF AGRICULTURAL Income Tax, WEST BENGAL Vs. RAJA JAGADISH CHANDRA DEO DHABAL DEB., and by the Sir Kameshwar Singh Vs. Commr. of Income Tax, and we certainly accept that canon of construction.

Again, a Division Bench of the Madras High Court in Commissioner of Income Tax, Tamil Nadu-I Vs. Simpson and Company, has held as follows:

It is also a well settled principle of construction that in construing a provision for exemption or relief, it should be liberally construed. The reason behind this rule of interpretation is that the administrative authorities or the Courts should not whittle down the plentitude of the exemption or relief granted by Parliament by laying stress on any ambiguity here or there.

Both on principle and precedent, it is, therefore, to be held that the orders passed by the Respondents as contained in Annexures R, S, T and U in the present petition and Annexures I and J in M.P. No. 4348/89 are erroneous and non-sustainable.

In the light of the aforesaid discussion, both these writ petitions are hereby allowed and the impugned orders, as contained in Annexures R, S, T and U in the present petition and Annexures I and J in M.P. No. 4348/89 are quashed with the direction that the Petitioners are eligible to the incentives as contained in the Notification dated 16.10.1986 (Annexure-J) as are applicable to a newly set up industrial Unit at Mandideep in the State of Madhya Pradesh. Security amount, if deposited, be refunded to the Petitioners. No order as to costs.