
(2008) 02 MP CK 0019

In the Madhya Pradesh High Court

D.J. Laboratories Pvt. Ltd., Bimla Steel Industry and
Pithampur Oxygen Pvt. Ltd.

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 26-02-2008

Acts Referred:

Central Sales Tax Act, 1956 — Section 8

Citation : (2008) 14 VST 586

Hon'ble Judges : S.C. Sharma, J;Ramesh Surajmal Garg, J

Bench : Division Bench

Final Decision : Allowed

Judgement

R.S. Garg, J.—This judgment shall finally decide W. P. No. 28298 of 2003 (Bimla Steel Industry v. State of M. P. and Ors.), W. P. No. 28300 of 2003 (D. J. Laboratories Pvt. Ltd. v. State of M.P. and Ors.) and W.P. No. 28830 of 2003 (Pithampur Oxygen Pvt. Ltd. v. State of M.P. and Ors.).

2. The short facts necessary for decision of these three petitions are that the State Government vide its Notification No. A-3-24-94-ST-V (108) dated October 6, 1994 observed that the State Government was satisfied that it was necessary so to do in the public interest and, therefore, in exercise of the powers conferred by Section 12 of the Madhya Pradesh General Sales Tax Act, 1958 (hereinafter referred to as, "the State Act") and Sub-section (5) of Section 8 of the Central Sales Tax Act, 1956 (hereinafter referred to as, "the Central Act") subject to paragraphs 2 to 10 and the general conditions specified in paragraph 12 exempted from payment of tax u/s 6 and Section 7 of the State Act and under the Central Act, the class of dealers:

(a) specified in column (2) of the Schedule I below to the extent of the maximum cumulative quantum of tax under the Act and the Central Act specified in column (3), for the maximum period specified in column (4), subject to the restrictions and the conditions specified in column (5) of the said Schedule, and

(b) specified in column (1) of Schedule II below to the extent specified in column (2), for the period specified in columns (3) to (10) respectively, subject to the restrictions and conditions specified in column (11) of the said Schedule : who,:

(i) are registered under the Act and/or the Central Act;

(ii) are certified by the Commerce and Industries Department of the Government of Madhya Pradesh as a dealer establishing a new industrial unit and undertaking expansion in the existing industrial unit and;

(iii) hold an eligibility certificate issued by a competent authority to avail of the facility of exemption from payment of tax under this notification.

3. It also appears that vide another Notification No A-3-74-99-ST-V(48) dated June 9, 2000 the eligibility criteria was amended. Clause (a) remained as it is but Sub-clause (ii) of Clause (b) was substituted and after Sub-clause (iii) Sub-clause (iv) was added. The substituted and amended sub-clauses read as under:

(ii) hold a letter of intent/licence/I.E.M. issued by the Government of India or are registered with the Commerce and Industries Department of Government of Madhya Pradesh on or before December 31, 1999

(2) After Sub-clause (iii) the following sub-clause shall be inserted, namely:

(iv) commences commercial production in the new industrial unit or in the expanded capacity of the existing industrial unit on or after May 6, 1994, but on or before December 31, 1999 or having taken the following effective steps on or before December 31, 1999 commences commercial production on or after the said date but on or before December 31, 2001,:

(a) has obtained allotment/possession of land for the factory, and

(b) has applied for finances from a regular financial institution.

4. The petitioners, who, according to their submissions had taken effective steps on or before December 31, 1999 and commenced their production on or before December 31, 2001 submitted their applications to the competent authority for issuing eligibility certificate to avail the facility of exemption from payment of tax under the notification dated October 6, 1994.

5. According to the petitioner Bimla Steel Industry, commenced their commercial production on March 28, 2001, while D. J. Laboratories and Pitampura Oxygen Pvt. Ltd. commenced commercial production on December 12, 2000 and June 19, 2001. Each of the petitioner made the applications but the competent authority, i.e., the General Manager, District Level Committee rejected all the applications. The application filed by Bimla Steel Industries was rejected on November 22, 2002 vide annexure P13. Application filed by D. J. laboratories was rejected on December 22, 2001 under exhibit P8 and the application filed by Pitampura Oxygen Pvt. Ltd. was rejected on February 11, 2003 under exhibit P13. In each of the matters each of the petitioner filed appeal to the State Level

Committee and as the appeals came to be dismissed the petitioners have filed these petitions.

6. Shri Shashank Verma, learned Counsel for each of the petitioner submitted that the amendment made in the original notification dated October 6, 1994 was per se illegal and contrary to the assurance given to the entrepreneurs who wanted to enter into the industrial activities and commence production. According to him when the notification was published in the Gazette on June 9, 2000 the cut-off date could not be fixed as December 31, 1999. It is also submitted by him that the petitioners in fact had taken effective steps as required under the amended Sub-clause (iv) but the competent authority without giving any due opportunity of hearing and without permitting them to lead evidence to satisfy the said officer rejected the applications by observing that the petitioners had not taken appropriate steps on or before December 31, 1999. According to him if the amended provisions are not held ultra vires the scheme floated by the Government then too each of the petitioner would be entitled to the benefits flowing from the original so also from the amended scheme.

7. Shri Rahul Jain, learned Government Advocate, on the other hand, submitted that when the competent Government frames a beneficial scheme then the Government has a right to withdraw the scheme from a particular date and is also entitled to fix a cut-off date for the future operations. According to him if the original notification was to be effective from October 6, 1994 then the State was entitled to create different classes from amongst the entrepreneurs and say that a particular entrepreneur on completing or doing of a particular act would be entitled to a particular benefit. According to him there is no invalidity or illegality in the notification dated June 9, 2000.

8. So far as the amendment of Sub-clause (ii) of Clause (b) is concerned after going through the amended sub-clause we are unable to hold that the notification dated June 9, 2000 withdraws the benefits which are offered to the entrepreneurs vide notification dated October 6, 1994.

9. The original requirement was "who are certified by the Commerce and Industries Department of the Government of Madhya Pradesh as a dealer establishing a new industrial unit or undertaking expansion in the existing industrial unit" while the amended Sub-clause (ii) provides "who hold a letter of intent/licence/I.E.M. issued by the Government of India or (emphasis supplied) are registered with the Commerce and Industries Department of the Government of Madhya Pradesh on or before December 31, 1999". Sub-clause (ii) of Clause (b) did not withdraw all the benefits which were extended in favour of the new entrepreneurs. In fact it directed that the benefits would be available to all those who were registered with the Commerce and Industries Department of Government of Madhya Pradesh on or before December 31, 1999. The cut-off date would not amount to withdrawal of the benefits because Sub-clause (iv) added under notification dated June 9, 2000 protected all such persons who had taken effective steps on or before December 31, 1999 but could not commence

their production on or before December 31, 1999. A perusal of Sub-clause (iv) would make it clear that it refers to two classes of the entrepreneurs : the first is one who commences commercial production in the new industrial unit or in the expanded capacity of the existing industrial unit on or after May 6, 1994 but on or before December 31, 1999.

10. This was the class of the entrepreneurs who commenced commercial production on or after May 6, 1994 but on or before December 31, 1999. If an entrepreneur had taken effective steps and was unable to commence commercial production on or before December 31, 1999 then he was not left remediless but he was given at least 19 months time, i.e., time up to December 31, 2001 to commence the commercial production subject to further condition that he had obtained allotment/possession of the land for the factory and had applied for finances from a regular financial institution. Addition of these two conditions in fact was to confirm that he had taken possession prior to December 31, 1999 because that would have been an effective step towards the commencement of the commercial production and, had applied for finance before December 31, 1999 from a financial institution to establish the industry. These two conditions were in fact to put a check on the forged/false, manufactured or fabricated claims. Delivery of the possession before December 31, 1999 and application for finance from a regular financial institution could certainly prove through the official records that effective steps in fact had been taken. In case entrepreneurs falling under second clause satisfy the competent authority that they had fulfilled all the conditions, then they were certainly entitled to a certificate of exemption.

11. After, giving our thoughtful consideration to the facts and amendment we are unable to hold that the amendments made by the notification dated June 9, 2000 in the original notification dated October 6, 1994 are ultra vires the Constitution or are ultra vires the provisions of the State Act or the Central Act or are running contrary to the original scheme dated October 6, 1994.

12. So far as second limb of the argument is concerned, after going through order dated November 22, 2001-annexure P13 in W. P. No. 28298 of 2003, order dated December 22, 2001-annexure P8 in W. P. No. 28300 of 2003 and order dated February 11, 2003-annexure P13 in W. P. No. 28830 of 2003, we must immediately observe that these orders do not meet the requirement of law. These orders simply say that the conditions were not fulfilled and/or the petitioner/the said applicant was not entitled to any benefit flowing from the original/amended scheme. In a case where a certificate is proposed to be granted then a hearing may not be offered but in case grant of certificate is sought to be refused and the said refusal is to lead to civil consequences then appropriate opportunity to prove the case ought to have been given to each of the petitioner. The officer/competent authority was obliged to make an enquiry about what particular effective steps were taken by each of the petitioner before December 31, 1999, whether they had commenced commercial production on or after December 31, 1999 but on or before December 31, 2001 and whether they

obtained allotment/possession of the land for the factory and whether they had applied for finances from a regular financial institution.

13. If on enquiry the four conditions stand satisfied then obviously such an applicant/entrepreneur would be entitled to a certificate but in case he fails in proving either or any of the condition then certainly the authority would be entitled to refuse the certificate. In the present case, unfortunately, no opportunity of hearing or to lead evidence was provided to either of the petitioner. This non-action and illegality on the part of the officer has vitiated the non-grant of the certificate.

14. The order dated November 22, 2001-annexure P13 in W. P. No. 28298 of 2003, order dated December 22, 2001-annexure P8 in W. P. No. 28300 of 2003 and order dated February 11, 2003-annexure P13 in W. P. No. 28830 of 2003 are hereby quashed and consequently the orders passed by the State Level Authority are hereby quashed. The competent authority shall issue appropriate notices to each of the petitioner informing them as to what particular requirement was not fulfilled and what is required to be proved by the petitioner.

15. Each of the petitioner shall be obliged to appear before the General Manager, District Trade and Industries Center, Pithampur, District Dhar on or before March 17, 2008 with a copy of this order enabling the District General Manager to understand as to what he is required to do in the matter.

16. Each of the petitioner would be issued appropriate notice and they would be given appropriate opportunity to prove their case.

17. It is hereby further directed that the said District General Manager shall dispose of the matter by a speaking order preferably within a period of 6 months from the date of appearance of the petitioners.

18. To the extent indicated above each of the petition is allowed. No costs.