(2003) 07 MP CK 0033

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 2062/91

Dodsal Limited APPELLANT

Vs

State of Madhya Pradesh and Others RESPONDENT

Date of Decision : 28-07-2003

Acts Referred:
Madhya Pradesh Electricity Duty Act, 1949 — Section 2, 3, 3B

Citation : (2003) 3 MPHT 446 : (2003) 4 MPLJ 236

Hon'ble Judges : S.P. Khare, J

Bench : Single Bench

Advocate : Vivek Ranjan Pandey, for the Appellant; A.S. Raizada, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

S.P. Khare, J.

This is a writ petition under Articles 226 and 227 of the Constitution of India for quashing order dated 8-8-1990 (Annexure P-6) and the other orders by which the petitioner has been directed to pay electricity duty under the Madhya Pradesh Electricity Duty Act, 1949 (hereinafter to be referred to as ''the Act'').

It is not in dispute that petitioner Dodsal Limited having its head office at Bombay was given a contract for construction of a pipe line for supply of natural gas from Hazira in Gujarat to Jagdish Nagar (U.P.) via Bijapur in M.P. The construction of pipe line was done from August, 1986 to March, 1988. Petitioner/Company was generating its own electricity through generators for consumption in its contract work and also in the residential quarters which were built for the workers engaged in this work. The respondent No. 2 issued notice to the petitioner/Company on 25-5-1990 for payment of electricity duty to the tune of Rs. 20,51,000/-. Section 3 of the Act is the charging section which, inter alia, provides that every producer shall pay the electricity duty as per table given under the section. Section 3-B confers powers on the State Government to exempt any producer of the electrical energy consumed by such producer for the purpose of its industry if it is considered necessary or expedient in public interest by issuing a notification in that behalf. In exercise of this power the State Government issued the Notification No. F. 10-7-XIII-81, dated 13-3-1981 which is as under :--

"Whereas the State government is of the opinion that having regard to the particular circumstances of the industries establishing their own generating station for purposes of consumption of electrical energy by such industries, it is necessary and expedient so to do in the public interest.

Now, therefore, in exercise of the powers conferred by Section 3-B of the Madhya Pradesh Electricity Duty Act, 1949 (No. X of 1949), the State Government hereby exempts with effect from the 10th December, 1980 all producers who run industries from payment of duty, during the period as specified in column (1) of the Schedule below and to the extent as specified in the corresponding entries in column (2) thereof, in respect of the electrical energy consumed by such producers for the purpose of the industries run by them :--

SCHEDULE

Period of generation of Electrical Energy Extent of exemption

(1) (2)

(a) First two years from the date of commencement of generation of electrical energy. In whole

The petitioner''s case is that the contract work which the petitioner/Company was doing comes within the ambit of "industry" and it was producing electrical energy for consumption in its own industry and, therefore, it is entitled to claim exemption from payment of electricity duty for a period of two years on the basis of the notification mentioned above. It is also stated by the petitioner/Company that it was using generators of less than 90 volts for operating welding machines and, therefore, it is not covered by the definition of ''producer'' given in Section 2 (di) of the Act and it is not liable to pay electricity duty.

The respondents'' case is that the petitioner/Company is a contractor and it is not running any industry and, therefore, it does not come within the scope of the notification mentioned above. The petitioner/Company was generating electrical energy at a voltage exceeding 100 volts and, therefore, it is covered by the definition of ''producer''.

The points for determination are (a) whether the petitioner/ Company is an ''industry'' within the meaning of Section 3-B of the Act and the notification issued thereunder, and (b) whether the petitioner comes within the definition of ''producer'' given in Section 2 (di) of the Act.

Point (a):

The petitioner/Company was generating electricity through generators for consuming the same in its business of laying pipe lines. The word ''industry'' is not defined in the Act. Therefore, it must be understood in its common parlance. In Msco. Pvt. Ltd. Vs. Union of India (UOI) and Others, , the Supreme Court has held that the expression ''industry'' has many meanings. It means ''skill'', ''ingenuity'', ''dexterity'', ''diligence'', ''systematic work or labour'', ''habitual employment in the productive arts'', ''manufacturing establishment'' etc. But while construing a word which occurs in a statute or a statutory instrument in the absence of any definition in that very document it must be given the same meaning which it receives in ordinary parlance or understood in the sense in which people conversant with the subject-matter of the statute or statutory instrument understand it.

The notification mentioned above came up for consideration before the Supreme Court in The Grasim Industries Ltd. and Another Vs. State of Madhya Pradesh and Another, , in which it has been held that exemption notification particularly in fiscal matters has to be strictly construed and the person claiming its benefit is obliged to satisfy the Court that his claim was covered by the exemption notification. The notification has to be read in its entirety and not in parts. The earlier decision of the Supreme Court in Union of India and others Vs. M/s. Wood Papers Ltd. and another, , has been cited, according to which an exemption provision is like an exception and on normal principle of construction or interpretation of statutes it is construed strictly either because of legislative intention or on economic justification or inequitable burden or progressive approach of fiscal provisions intended to. augment State revenue. But once exception or exemption becomes applicable no rule or principle requires it to be construed strictly. Truly speaking liberal and strict construction of an exemption provision are to be invoked at different stages of interpreting it. When the question is whether a subject falls in the notification or in the exemption clause then it being in nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to if and it calls for a wider and liberal construction.

According to Section 3-B the State Government has been given the power to grant exemption if it is of opinion that-- (i) in order to encourage the establishment of any particular industry or class of industries in the State; (ii) having regard to the particular circumstances of any industry or class of industries; or (iii) in order to extend facilities to such persons or class of persons and for such purposes as the State Government may, by notification, specify; it is necessary or expedient so to do in public interest, it may, by notification and subject to such conditions, if any, as it may specify in the notification, exempt from payment of duty any distributor of electrical energy or producer in respect of the electrical energy where any producer runs the industry in respect of the electrical energy consumed by such producer or class of producers for the purpose of such industry. The notification dated 13-3-1981 is not limited to any particular industry or class of industries. It is applicable to all industries generating their own electricity which have been established after 10-12-1980. Any industry established after this date generating electrical energy for its own consumption is entitled to exemption. The business of the petitioner of laying down the pipe lines for carrying the gas from one place to the other is also an industry. The word ''industry'' means business carried on by a systematic activity. The business of the petitioner/Company does hot go out of the ambit of industry simply because the petitioner is doing the work on contract basis. The petitioner/ Company is generating electricity for its own consumption in connection with its business and, therefore, it is covered by the exemption notification mentioned above.

Point (b):

The case of the petitioner/Company is that it is using generator of less than 100 voltage capacity where as the case of the respondents'' is that it is of more than 100 voltage. This finding of fact arrived at by the respondents, who are experts in this branch, can not be disturbed by this Court. The petitioner/Company is covered by the definition of producer given in Section 2 (di) of the Act.

In the result this petition is allowed. It is declared that the business which was being carried on by the petitioner/Company is covered by the meaning of industry given in Section 3-B of the M.P. Electricity Duty Act, 1949 and, therefore, the petitioner/Company is exempted from payment of electricity duty as per notification dated 13-3-1981 issued under this Section. The order dated 8-8-1990 (Annexure P-6) of the respondent No. 2 is quashed.

