(2015) 01 MP CK 0076

In the Madhya Pradesh High Court

Case No : Writ Petition No. 3976/2014

Him Technoforge Limited — APPELLANT

Vs

State Level Committee — RESPONDENT

Date of Decision : 30-01-2015

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2015) 01 MP CK 0076

Hon'ble Judges : S.C. Sharma, J.;P.K. Jaiswal, J.

Bench : Division Bench

Advocate : Pradeep Choudhari, for the Appellant; Sudarshan Joshi, Panel Lawyer, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. They are heard.

2. The present petition has been filed by the petitioner under Article 226 of the Constitution challenging the order dated 11.04.2014 passed by the State Level Committee whereby the application for grant of eligibility certificate on expansion capacity of its industrial unit located in Pithampur has been rejected on the ground that the petitioner does not fulfill the essential conditions for availing exemption benefit as laid down under Notification No. 108 dated 06.10.1994 i.e. 1994 Exemption Scheme.

3. In the year 1981, Government of India introduced Exemption Scheme for granting eligibility certificate for exemption from payment of Sales Tax and Central Sales Tax. Later on, second scheme for exemption was introduced in the year 1986 and the exemption benefit was restricted by linking it with the investment made on the establishment of the industry. Again, in the year 1994, another exemption scheme was introduced vide Notification No. 108 dated 06.10.1994, which is known as 1994 Exemption Scheme.

4. The petitioner had invested in the expansion of existing capacity at its

industrial unit located in Pithampur and claimed exemption for such expanded capacity.

5. Clause 2 (ii) and (iv) of the 1994 Exemption Scheme is relevant, which reads as under:

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

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

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

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

Clause (ii) was substituted by Notification No.A7499STV (48), dated 09.06.2000.

6. The Central Government with the consent of the States formed an Empowered Committee of the State Finance Ministers with all the States being Members of the said Committee and this Committee was entrusted to consider and regulate the issues relating to Sales Tax. The question relating to Exemption Scheme came for its consideration and it was decided by the consent of the States to discontinue the existing schemes of exemption by all the States.

7. The decision for discontinuance of the exemption was taken at the behest of all the States and such discontinuance had to be given effect to immediately by the States. This decision was implemented by the State of Madhya Pradesh with effect from 01.01.2000. Instead of rescinding the Notification No. 108 dated 06.10.1994, the said notification was amended. By the amending notification No. 48 dated 09.06.2000, a condition was imposed that new industrial units having established before 01.01.2000 or having taken effective steps for establishment of a new unit or expansion of an existing unit, would only be eligible to avail the benefit of exemption.

8. The petitioner established its unit at Pithampur, District Dhar in Madhya Pradesh and being a new industry, it was granted exemption for a period of nine years with effect from 29.03.1995 to 28.03.2004. The petitioner, after availing the exemption, as a new industrial unit, undertook an expansion of the said unit and submitted for the issue of eligibility certificate for its production in the expanded capacity of the unit. The conditions for availing exemption by a new industrial unit as also for expanded capacity of existing industrial units are the same. The essential condition as enumerated in the notification No. 108 dated 06.10.1994 require a newly established unit to hold an IEM issued by the Government of India for its expanded capacity of existing industrial unit. The

requirement of holding IEM is essential condition of the exemption unless this condition is satisfied, exemption cannot be granted. This condition requires to be fulfilled on the first day of exemption period as also on the every subsequent day of this period.

9. In the present case, it is evident that the petitioner was not holding IEM during the entire period for which exemption has been sought. It is well established rule of interpretation that the restrictions and conditions imposed by the notifications would have to be followed strictly. If the conditions enumerated in the notification are not satisfied, the benefit of the notification would not be available and allowable. The petitioner did not hold IEM on the date of commencement of the commercial production in the expanded capacity as also during the entire period for which, eligibility of the exemption has been claimed, therefore, the condition required under the notification was not fulfilled and hence, the petitioner was not entitled to the benefit under the notification.

10. The amending notification dated 09.06.2000 has added an additional requirement of holding of IEM prior to 01.01.2000; meaning thereby that no exemption would be available under the said notification after 31.12.1999, even if an IEM is issued to a unit or to the expanded capacity of an existing unit. This amendment has resulted into the discontinuance of the exemption scheme available to newly established industrial units and expanded capacity of already existing units. The condition for holding IEM existed even in the unamended notification as an essential condition. Therefore, even according to the unamended notification, it was a necessary condition for exemption. This condition was required to be fulfilled on the first day of production and every subsequent day of the eligibility period as well as any reference to the date of production was not required. The petitioner has been misinterpreting this condition in its favour.

11. Admittedly, the petitioner was not having IEM certificate on 23.12.1997. On 07.11.2002, the Ministry of Commerce and Industry of Government of India issued a IEM Certificate (Industrial Entrepreneur Memorandum) (Annexure P/6). On the basis of the IEM Certificate issued by the Government of India, on 07.11.2002, the District Industries Centre, Pithampur issued production certificate on 05.12.2002 (Annexure P/5). Considering the aforesaid, the State Level Committee turned down the request of the petitioner for grant of exemption for expanded capacity of industrial unit on the ground that it does not fulfill the essential conditions of IEM, as required as per the notification and held that the petitioner is not eligible for exemption of tax in respect of its expanded capacity of its existing industrial unit. The claim of exemption for expanded capacity can be allowed only if the conditions as specified in the notification are fulfilled in respect of the expanded capacity of its industrial unit. According to the notification No. 108 dated 06.10.1994, unit should hold an IEM for its expanded capacity. According to the petitioner itself, it did not have an IEM till 07.11.2002. It means that the petitioner did not hold an IEM on 23.12.1997, when

commercial production commenced in the expanded capacity. In the absence of an IEM, the unit was not found eligible to exemption in respect of the expanded capacity. The case of the petitioner was rejected by the SLC in its 150th meeting held on 09.12.2003, on merits.

12. The Appellate Forum considered the appeal of the petitioner and decided on 19.04.2007 and the case was remanded to the SLC with certain directions for their fresh decision. After the remand from the Appellate Forum, SLC rejected the claim of exemption made by the petitioner in respect of the expanded capacity, after duly considering the facts as also the directions given by the Appellate Forum.

13. The amended notification dated 09.06.2000 only discontinued the facility of exemption after 31.12.1999, therefore, it has been added in the condition that IEM should be obtained prior to 01.01.2000; meaning thereby that if an IEM is issued after 31.12.1999, the industry would not at all get the exemption benefit. In the case in hand, neither the condition that existed prior to amendment not the condition that existed after amendment was satisfied. Therefore, in either case, the petitioner was not covered within the notification.

14. The decision of MP High Court in the case of Sunpetpack Jabalpur Pvt. Limited Vs. The State of Madhya Pradesh, is not applicable in the case as the same pertains to the situation where commercial production started after 31.12.1999, after closure of the exemption scheme. Whereas, in the case of the petitioner, the production commenced before 01.01.2000 during the exemption scheme.

15. The judgment of the Hon''ble Supreme Court in the case of State of Madhya Pradesh and another Vs. G.S. Dall and Flour Mills and Others, lays down that the condition, which is not expressly given in the notification cannot be made necessary for availing exemption under the exemption notification. Thus, the petitioner will not get any help from the said judgment, as the same is distinguishable on facts.

16. Even if we apply the ratio laid down by the Apex Court in the case of State of Madhya Pradesh and another v. G.S. Dall and Flour Mills (supra), the petitioner, as a unit, is not found eligible as it did not fulfill the condition of holding IEM.

17. For the ongoing reasons, we are of the view that the respondents have rightly rejected the claim of the petitioner on the ground that the petitioner does not fulfill the conditions as laid down under the notification No. 108 dated 06.10.1994, because on 23.12.1997, when the unit was expanded and commercial production on expanded unit started, the petitioner was not having an IEM Certificate. Accordingly, no case is made out to modify or set aside the order dated 11.04.2014 passed by the State Level Committee.

18. The writ petition has no merit and it is accordingly dismissed, but without any order as to costs.

