(2000) 07 MP CK 0008

In the Madhya Pradesh High Court

Case No : Writ Petition No. 876 of 1999 (I)

Hind Syntex Ltd. APPELLANT

Vs

Member Secretary State Level Committee Hind Filters Ltd. RESPONDENT

Date of Decision : 31-07-2000

Acts Referred:

Central Sales Tax Act, 1956 — Section 8(5)
Madhya Pradesh General Sales Tax Act, 1958 — Section 12

Citation : (2001) 1 MPJR 319

Hon'ble Judges : N.K. Jain, J

Bench : Single Bench

Advocate : G.M. Chaphekar with Mr. C.R. Pancholia, for the Appellant; Shekhar Bhargava with Smt. Ritu Bhargava, Advocate for respondent No. 1 and Mr. Prakash Verma, Government Advocate for respondents No. 2 to 4, for the Respondent

Final Decision : Allowed

Judgement

N.K. Jain, J.

All these Petitions (W.P.Nos. 876/1999, 878/1999, 931/1999, 932/1999, 1127/1999, 1195/1999, 1196/1999, 1256/1999, 1257/1999,1763/1999, 717/2000, 718/2000 and 719/2000) have been heard as connected matters and are being disposed of by this common order as the result of all these petitions turns on the interpretation of the two State Government''s Notifications No. A3-32-94-ST-V(5) and No. A3-32-94-ST-V(6), both dated 28th Feb. 1995, (Annexed as No. ''B'' and ''G'' in W.P. No. 876/99).

Both the aforesaid Notifications have been issued by the State Government in exercise of their power u/S.12 of the M.P. General Sales Tax Act, 1958 (for short, ''the State Act'') and Section 8(5) of the Central Sales Tax Act, 1956 (for short, the Central Act''), granting exemption / deferment to such dealers in the matter of payment of sales tax / commercial tax, who have either set-up non-conventional power generator system or who have set up some other industry and consumes power therefor, generated from such non-conventional power generation system, subject to such conditions and restrictions as specified in these Notifications. Notification (Annexure - B) is regarding exemption, while Notification (Annexure - G) deals with the deferment. The dealers in order to avail exemption / deferment under these Notifications are required to obtain eligibility certificate from the State Level Committee, respondent No.3, set-up by the State Government for that purpose.

For the purpose of this Order I shall now state briefly the facts of W.P.No. 876/1999. I need not to state facts of other petitions as the question involved in all these petitions is the same. Suffice to say that all these petitioners are registered as Dealers within the meaning of the two Acts and fell within one or more categories of the Dealers specified in the said two Notifications.

Petitioner - Hind Syntes Ltd. -(of W.P.No. 876/99) a Limited Company, has set-up two industrial units, one at village Birgod, District Dhar and another at Pilukhedi, District Rajgarh, and carries on business of manufacture of Synthetic Blended Yarn. The petitioner after issuance of Notifications (Annexures - B and G) has also set-up two Wind Electrical Generators at location number 23 and 24 at Jamgodrani Hills, in Dewas District, with capacity of 225 KW of electric energy from each generator. The petitioner claims to have made an eligible investment of Rs. 220 lacs on installation of these two generators. The petitioner for the purpose of use of non-conventional electric power in his aforesaid two units, entered into an agreement of purchase of the said power with M/s. Hind Filter Ltd., a Limited Company, which has also set-up a non-conventional wind power generation system at some other locations at Jamgodrani Hills. Under this agreement (Annexure G/2), the petitioner was to get power generated by the Hind Filter Ltd., from its three generators for which, it is said, that this Company made eligible investment of Rs. 330 lacs.

Petitioner Company, on 9/4/96 made two applications on prescribed forms to the State Level Committee for grant of eligibility certificates under the aforesaid Notifications. Eligibility certificate under the Notification (Annexure-B) for exemption was claimed in respect of two Wind Electrical Generators set-up by the petitioner at Jamgodrani Hills for the eligible investment Rs. 220 lacs, while the certificate for deferment was claimed under the Notification (Annexure - G) in respect of the power purchased by the petitioner - Company for use in its units from M/s. Hind Filter Ltd., claiming that the petitioner was eligible to avail the facility of deferment in payment of tax to the extent of eligible investment Rs. 330 lacs. The State Level Committee in the first instance on 16.10.96 granted temporary eligibility certificates (Annexures - D and H) enabling the petitioner to claim exemption and deferment in the matter of payment of tax to the extent of 100 percent of 220 lacs and 330 lacs under the Notifications (Annexure - B and G), respectively. Permanent eligibility certificates were also granted by respondent No.3 on 25.7.98 (vide Annexures - E and I), but in these certificates the amount of eligibility investment in both the cases was reduced from Rs. 220

lacs to Rs. 138.754 lacs and from Rs. 330 lacs to Rs. 208.131 lacs. Petitioner''s prayer for reconsideration of the matter went unheeded by respondent No.3 Petitioner, therefore, approached this Court in Writ and in pursuance of the Order dated 18.11.98 (Annexxure - J) passed by this Court, the State Level Committee reconsidered the matter in its meeting dated 8.12.98 and finally declined petitioner''s prayer for enhancing the amount of the two eligibility certificates. The decision of the Committee was communicated by its Member Secretary, the respondent No.1, to the petitioner vide Memo dated 22.12.98 (Annexure -K). The appeal preferred by the petitioner to the State Government against this decision, has also been dismissed. It is this decision of the State Level Committee (vide Annexure - K) and the two eligibility certificates (Annexures - E and I) which are sought to be impungned by the petitioner in this petition.

I have heard Shri G.M. Chaphekar, learned Sr. counsel appearing with him Shri C.R.Pancholia, counsel for petitioners; Shri Shekhar Bhargava, learned Sr. counsel appearing with him Smt. Ritu Bhargava, learned counsel for respondent No.1; and, Shri Prakash Verma, learned Government Advocate for respondents No.2 to 4.

English translation of the impugned decision as extracted in the letter Annexure - K, reads as follows :

In this context, in the aforesaid Notification the exemption limit which is based on eligible investment means the maximum limit. For according sanction to all non-conventional power generation projects, Detailed Project Reports (DPRs) had been procured from all the units. The projects have been approved on the basis of generation figures as projected in the DPRs and in accordance with the delared policy of the State Government. Hence, for all the projects the exemption / deferment in commercial tax as declared in the energy policy of the State Government, should be granted at hundred percent of the eligible investment only if the generation is equal to or exceeds the figures committed in the DPRs. Obviously, the actual commercial tax benefit given should be proportionate to the actual generation. That is, those manufacturers who produce hundred percent energy would be given hundred percent sales tax benefit. But if they fail to generate the projected figures the benefit should also be proportionately curtailed.

Shri Chaphekar, learned Sr. counsel has assailed the impugned decision (Annexure - K) as prima-facie illegal and without jurisdiction. He submitted that the ground for reduction of the amount of eligible investment given by the State Level Committee is beyond the scope of the two Notifications. The petitioners, who otherwise satisfy all the conditions for grant of eligibility certificates under the said Notifications, were entitled to exemption / deferment to the extent of the maximum amount of eligible investment made in the said Wind Electrical Power Generators. The State Level Committee had no jurisdiction to link the amount of investment with the actual power generated by these power plants.

As against it, Shri Bhargava assisted by the learned Government Advocate, strongly defended the impugned decision and contended that the object of the said two Notifications was to encourage power generation through non-conventional sources as is evident from the Scheme (vide Annexure R1/2) drawn up by the State Government in that behalf. It was pointed out that these aero-generators were set-up by the petitioners amongst others, in colloboration with the MP. Wind Farms Limited (MPWF), a Joint Sector Company set-up by the State Government. The MPWF had carried out a detailed survey of the land available at Jamgodrani Hills and submitted a Detailed Project Report (DPR). The petitioner - investors had also entered into O & M agreement with MPWF which was to operate, maintain and generate electricity on behalf of the investors. In its Project Report (DPR), the MPWF had indicated the estimated out-put of energy from the concerned projects. In these circumstances, pointed out the counsel, when the question of permanent eligibility arose before the State Level Committee, it decided to limit the quantum of eligibility investment and make it proportionate to the actual generation of electricity.

State Level Committee (SLC) reduced the amount of eligibility investment mainly on the ground that this amount is relatable to the power generation and since the actual power generated by the plants in question is less than the figures committed in the DPRs, the amount of eligibility investment is also liable to be reduced proportionately. The impugned decision also speaks of the discretion of the SLC inasmuch as, it is said, that the word "maximum" appearing in the two Notifications, gives a discretion to the SLC in the matter of computing the amount of eligibility. I am however, afraid, the approach of the SLC and the reasons assigned by it are wholly extraneous to the text and spirit both, of the two Notifications (Annexure - B & G).

The terms and conditions of the two Notifications are the same except that the Notification (Annexure - B) entitles a dealer to claim exemption while the Notification (Annexure - G) extends the facility of deferment in the matter of payment of the tax under the State Act. So, in order to appreciate the import of these two Notifications and to avoid repetition, it is sufficient to reproduce relevant portions of the Notification (Annexure - B) only.

1. Notification No. A-3-32-94-ST-V(5) Dt:28th Feb, 1995

Whereas, the State Government is satisfied that it is necessary so to do in the public interest;

Now, therefore, in exercise of the powers conferred by, -

(1) Section 12 of the Madhya Pradesh General Sales Tax Act, 1958

(No. 2 of 1959), hereinafter referred to as the Act), and

(2) Sub-section (5) of Section 8 of the Central Sales Tax Act, 1956 (No.74 of 1956) (hereinafter referred to as the Central Act);

the State Government, subject to the provisions of paragraphs 2 to 5 and the general conditions specified in paragraph 6 hereby exempts from payment of tax u/s 6 and Section 7 of the Act and under the Central Act, the class of dealer specified in column (2) of the Schedule 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) of the said Schedule subject to the restrictions and conditions specified in column (5) of the said Schedule, who, -

(i) are registered under the Act and/or the Central Act; and (ii) hold an eligibility certificate issued by a competent authority to avail of the facility of exemption from payment of tax under this notification.

SCHEDULE

S. No. (1)

Class of dealer (2)

Extent of maximum exemtion of cumulative quantum of tax u/S. 6 & 7 of the Act & under Central Act

(3)

Maximum period within which quantum of exemption in column (3) is available.

(4)

Restrictions and conditions subject to which exemption is granted. (5)

Dealer who sets up

nonconventional power generation system generating electrical energy from

non-conventional sources if any of the districts in Madhya Pradesh

100 percent of the eligible investment in the non-conventional power generation system

6'' years from the date of commencement of the generation in the non-conventional power generation system or the date on which the cumulative quantum specified in column (3) is achieved whichever is earlier,

Dealer referred to in S.No. (1) above who has setup more than one industrial unit in the State

100 percent of the eligible investment in the nonconventional power generation system

6 years from the date of commencement of the consumption of the power generated in the non-conventional power generation system or the date on which the cumulative quantum referred to in column (3) is achieved, whichever is earlier.

The facility of exemption for payment of tax shall be available to anyone of the industrial unit at the option of the dealer

Dealer who has set up industrial unit in Madhya Pradesh and consumes the power generated and sold by the dealer referred to in serial number (1) above.

Limited to the extent as shown in column (3) against the dealer referred to at serial number (1) irrespective of the number of users.

6 years from the date of commencement of the consumption of the power generated in the non-conventional power generation system or the date on which the cumulative quantum referred to in column (3) is achieved, whichever is earlier.

The exemption from tax under this category shall be admissible to all users in equal share i.e., in proportion of their number duly verified by the supplier.

Explanation. -The words "cumulative quantum of tax", "eligible investment" and "non-conventional power generation system" shall have the meaning as has been assigned to them paragraph 4.

The facility of...............

The facility of...............

For the purpose of this notification, -

(1) "cumulative quantum of tax" in relation to a dealer, -

(i) Specified in Serial number 1 of the Schedule means the tax payable u/s 7 of the Act;

(ii) Specified in Serial number 2 and 3 of the Schedule means the tax payable u/s 6 and 7 of the Act and under the Central Act.

(2) eligible investment means, -

(i) investment made in land, building (in project and office excluding guest house and staff quarters) plant and machinery (new/imported second hand), equipment including pollution control equipment;

(ii) expenditure on land development work;

(iii) expenditure on the construction like compound wall/compound fencing, internal road, well, borewell, water tank, tank, pipelines and other items which the State Level Committee may permit;

(iv) expenditure on installation of plant and machinery and electrification capitalised under the head "plant and machinery", The expenditure on electrification shall include expenditure on all electrical lines and equipment required for generation and transmission of electrical energy upto the MPEB sub-station;

(v) expenditure on technical know how or drawing fees as permitted by the import policy of or approved by the Government of India;

(vi) expenditure on fees paid to laboratories recognised by the State Government or the Government of India;

(3) "Non-conventional power generation system" means a power generation unit generating electrical energy from non-conventional energy sources such as wind energy, bio-energy and solar energy and such other non-conventional energy irrespective of capacity as the State Government may, by order specify and includes small/mini/microhydel projects with a generating capacity upto 3 mega watts.

A dealer specified...............

The exemption under...............

There is nothing in the Notification Annexure B or G which could vests jurisdiction in the SLC to co-relate the amount of eligibility investment with the power actually generated. The definition of the expression "eligible investment" given in both the Notifications makes no reference to the power generation much less its quantum. It is well settled that a taxing statute is to be strictly construed. Justice C.P. Singh, in his classic work "Principles of Statutory Interpretation" (VIth Edn.), has quoted with approval a passage from Rowlatt, J.

In a taxing Act one has to look merely what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly to the language used.

In a fiscal legislation a transaction cannot be taxed on any doctrine of "substance of the matter" as distinguished from its legal signification, for a subject is not liable to tax on supposed "spirit of law" or by inference or by anology ''(see : AIR 1940 183 (Privy Council) .

It is true that the object on behalf of the issuance of the said two Notifications was to encourage production of power from non-conventional sources. To this extent, learned counsel for respondents was possibly right. But as observed by the apex Court in State of Madhya Pradesh Vs. G.S.Dal & Flour Mills (1980 STC 138); "The operation of Notifications has to be Judged not by the object which the rule making authority had in mind but by the words which it has implied to effectuate the legislative intent".

Experience is the mother of all knowledge, the State Government also seemed to have realised its mistake and has now issued a modified Notification (Annexure R1/5) introducing a specific clause to make the quantum of tax relaxation directly relatable to the quantum of power generated by these Units. This amendment clearly goes to show that in the unamended Notifications (Annexure - B and G), there was no such provision either express or implied to authorise the SLC or the assessing authorities to co-relate the exemption/ deferment with the quantum of power.

Interpretation by the SLC of the word "maximum" occurring in the two Notifications was also wholly misplaced. The word "maximum" has been used firstly with reference to the cumulative quantum of tax and then to the period for which exemption / deferment could be claimed. It did not give any discretion either to the SLC or to the taxing authority to reduce the amount of eligibility investment and make it relatable with the quantum of power actually generated. The SLC was required to see only whether the petitioner dealers were eligible to claim exemption / deferment in terms of the two Notifications. It could not import its own ground to curtail the amount of eligible investment, having no foundation in the two Notifications. They could and should make an enquiry as to the actual amount of eligible investment made by the petitioner dealers. Once it was established that the amount as disclosed by the petitioners in their applications was invested by them, and that they are otherwise eligible for the certificate, the SLC was bound to issue eligibility certificate.

As a last leg, Shri Bhargava, learned counsel for respondent No.1 tried to oppugnate the petition on the ground of non-exhaustion of alternative remedy and it was pointed out that the two Notifications provided for review of its decision by the SLC and also made provision for referring the dispute to the State Government. The petitioners should have, therefore, contended the counsel, approached the SLC for review or referred the matter to the State Government for their decision. I am, however, not impressed by the argument. In fact, the petitioners have exhausted by these so-called alternative remedies. The petitioners did apply to the SLC for reconsideration of its decision but with no avail. The appeal filed with the State Government was also dismissed. It is, therefore, now not open for the respondents to contend that the petition is not maintainable on the ground of non-exhaustion of alternative remedy.

All these petitions thus succeeds and are allowed. Impugned order (Annexure - K) as also the similar orders passed in other petitions are quashed. The SLC is directed to issue eligibility certificate to the petitioners after verifying the actual amount invested by them and on satisfying about the fulfillment of other conditions or eligibility, as enumerated in the two Notifications, and keeping in view the legal position as stated herein before.

There shall be no order as to costs of these petitions.

This order shall be retained in W.P.No. 876/1999 and a copy each be placed in the record of W.P.Nos. 878/1999, 931/1999, 932/1999, 1127/1999, 1195/1999, 1196/1999, 1256/1999, 1257/1999, 1763/1999, 717/2000, 718/2000 and 719/2000.