(2008) 03 MP CK 0011

In the Madhya Pradesh High Court

J.K. Marbles APPELLANT

Vs

State Level Committee and Others RESPONDENT

Date of Decision : 19-03-2008

Acts Referred:

Madhya Pradesh General Sales Tax Act, 1958 — Section 12

Citation : (2009) 25 VST 345

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajendra Menon, J.—Challenging the order passed by the appellate authority refusing to grant exemption in the matter of payment of tax vide, annexure P16 dated September 22, 1995, the petitioner has filed this petition.

2. The petitioner claims to be a small-scale industry engaged in cutting and polishing of stones. The industrial unit of the petitioner is situated in the District of Satna and the competent authorities have declared the petitioner''s unit to be a small-scale industry and the petitioner has obtained registration in this regard vide annexure P1, from the Industries Department. The petitioner is also holding a registration certificate under the Madhya Pradesh General Sales Tax Act, 1958 and the Central Sales Tax Act, 1956. According to the petitioner, the petitioner started production in the industrial unit with effect from February 13, 1989. Section 12 of the Madhya Pradesh General Sales Tax Act, 1958 empowers the State Government to grant exemption to dealers of goods from payment of tax or to grant benefit of deferment in payment of tax. In pursuance to the aforesaid power vested, the State Government has issued a notification on October 23, 1981, as contained in annexure P4 and according to this notification, certain exemptions are to be granted to industries. The petitioner claims to be entitled to grant of exemption from payment of tax under this notification of 1981.

3. Another notification was issued by the State Government granting exemption

again vide annexure P5 on October 16, 1986. In this notification (hereinafter referred to as, "the 1986 Scheme") also similar provision for granting exemption, as was available in the earlier notification of 1981, was provided for. It is the case of the petitioner that after he had started production on February 13, 1989, petitioner submitted an application to the General Manager, District Industrial Centre, Satna, seeking exemption under the notification of 1981 (hereinafter referred to as, "the 1981 Scheme"). However, as the application was not in the proper pro forma as prescribed in the notification, it is stated that the application was returned back and the petitioner again submitted application on December 13, 1989, claiming exemption under the 1981 Scheme. According to the petitioner, subsequent thereof also the petitioner filed series of applications on March 14, 1991 and June 12, 1991 and other dates seeking exemption under the 1981 Scheme, copies of the applications are annexures P7, P8 and P9, respectively. Vide communication (annexure P9A) dated July 5, 1989, certain defects were pointed out and the petitioner rectified these defects. Thereafter, matter was referred to the District Level Committee and according to the petitioner, the District Level Committee without considering the fact that the petitioner was seeking exemption under the 1981 Scheme rejected the claim on the ground that the same cannot be considered. The petitioner filed application for review and finally it is the case of the petitioner that the matter travelled to the State Level Appellate Committee. Initially the State Level Appellate Committee rejected the application of the petitioner on the ground that the process of cutting and polishing of stones does not involve manufacturing process and, therefore, the petitioner is not entitled to exemption. This resulted in petitioner filing writ petition M. P. No. 910 of 1992 before this Court and the said writ petition was allowed and decided vide order dated March 10, 1993 (annexure P12). The petitioner''s application was allowed and respondents were directed to consider the claim of the petitioner on merit and decide it in accordance with law.

4. It is the case of the petitioner that after remand of the matter the matter was reconsidered and vide annexure P14, the petitioner was communicated the decision of the competent authority to the effect that the petitioner has been granted exemption under the 1986 Scheme. The petitioner was directed to appear and enter into the agreement in pursuance of the aforesaid. This decision taken in the meeting dated July 29, 1993 was communicated to the petitioner. Inter alia, claiming that the petitioner is claiming exemption under the 1981 Scheme and in granting exemption under the 1986 Scheme, respondents have committed error, the petitioner filed an appeal before the State Level Committee vide annexure P15, on October 4, 1993, and by order dated September 22, 1995 (annexure P16), the State Level Committee has dismissed the appeal holding that the District Level Committee has correctly given benefit to the petitioner under the 1986 Scheme. The petitioner applied for grant of exemption for the first time in May 1989 and as the petitioner wanted change of his option, then he should have applied within the period of 90 days of March 3, 1989, application

was rejected, It is the case of the petitioner that his application is rejected on incorrect consideration.

5. It is pointed out by Shri Samaiya, learned Counsel for the petitioner, that once the order was passed by the Division Bench of this Court in the writ petition, M. P. No. 910 of 1992, respondents were duty-bound to grant exemption to the petitioner on the basis of 1981 Scheme and in refusing to do so, it is argued that the respondents have committed error. That apart, the second ground urged by Shri Samaiya is that the 1986 Scheme did not supersede the earlier 1981 Scheme. It only granted the benefit with some modification and the option to claim benefit under the 1981 Scheme was protected. It is stated that the limitation of 90 days prescribed in the proviso to Clause (12A) of the 1986 Scheme vide amending notification dated March 3, 1989 and this amending clause prescribing the limitation of 90 days is only applicable if an establishment which has opted to get benefit of 1981 Scheme wants to switch over and avail of the facility in the subsequent 1986 Scheme. It is the case of the petitioner that as the petitioner was not seeking change of option from 1981 Scheme to the 1986 Scheme, the respondents have incorrectly applied the circular dated March 3, 1989 and rejected the case. Accordingly Shri Samaiya, learned Counsel, submits that the petitioner''s application for grant of exemption under the 1981 Scheme is rejected incorrectly applying the limitation of 90 days, which was not applicable. On these grounds he prays for interference.

6. The respondents have refuted the aforesaid and it is stated by them that as the petitioner had commenced production only on February 13, 1989, when the notification dated October 16, 1986 had come into existence and the petitioner had not submitted any application within 90 days, for seeking benefit under the 1981 Scheme, his application is rightly rejected. It is argued by the counsel for the State that once benefit of the 1986 Scheme is extended to the petitioner and he is directed to appear and enter into an agreement, the petitioner cannot now claim the benefit of the 1981 Scheme, and in rejecting the claim of the petitioner seeking this benefit, it is argued by Shri V. P. Nema, for the respondents, they have not committed any error.

7. I have heard the learned Counsel for the parties and perused the record. All the three notifications which are relevant for deciding the present case, i.e., the first notification dated October 23, 1981, the second notification dated October 16, 1986 and the third notification dated March 3, 1989 clarifying the notification dated October 16, 1989, have been produced for the perusal of this Court.

8. The first ground raised by Shri R. K. Samaiya to the effect that after the judgment of the Division Bench in writ petition M. P. No. 910 of 1992, the respondents are duty-bound to grant exemption is not correct. In the said writ petition, the only question decided was that cutting and polishing of stones amounts to manufacturing process on the basis of decisions rendered by the apex court and, therefore, the respondents were directed to consider the claim of the petitioner for grant of eligibility certificate in accordance with law. That being

so, the contention of the petitioner to the effect that after decision of the Division Bench, the application could not be rejected is wholly misconceived,

9. A perusal of the notification issued on October 23, 1981 indicates that State Government has exempted certain class of dealers as specified in Column No. (i) of the Schedule appended to this notification from payment of tax and the eligibility conditions stipulated in the said notification contemplates that the industry should have commenced production on or before April 1, 1986, but before August 1, 1986. Further exemption is to be granted to such industries which have taken steps contemplated under Clauses (i), (ii) and (iii), but have commenced production after August 1, 1986. Admittedly, the petitioner had commenced production after August 1, 1986 with effect from February 13, 1989 and, therefore, the petitioner is entitled for exemption under the second part of this notification only if Clauses (i), (ii) and (iii) are fulfilled. It is not the case of the respondents that petitioner does not fulfil these conditions and is not entitled to the benefit of this notification.

10. The second notification dated October 16, 1986 also grants exemption to class of industries indicated therein for various periods and the condition for starting commercial production is indicated to be August 1, 1986 or thereafter. Under Clause (1A)(3) of this notification, a condition is stipulated that such industries which start commercial production on or after August 1, 1986 shall have an option to avail of the exemption from payment of tax in accordance with the 1981 Scheme, and dealers who exercise option to avail of exemption under the said Scheme, shall not be entitled to exemption under the current 1986 Scheme.

11. It is clear from this clause that even after coming into force of the 1986 Scheme, right was still available to the petitioner to seek exemption under the 1981 Scheme and the petitioner had sought exemption under this Scheme. The correspondence available on record particularly the communication made by the petitioner as contained in annexures P7, P8 and P9 clearly indicates that the petitioner had all along been contending that he is seeking exemption under the 1981 Scheme and not under the 1986 Scheme. In the communication made to the petitioner vide annexure P14 to the Industries Department by the General Manager, District Industries Centre, Satna on July 29, 1993, this fact is clearly indicated that the petitioner wants to seek exemption under the 1981 Scheme and in the meeting held on December 17, 1990 exemption is granted under the 1986 Scheme. In the earlier petition filed by the petitioner also, as is evident from the copy of the writ petition (annexure P11), it is seen that the petitioner was seeking exemption under the old 1981 Scheme and his prayer was to consider his application for grant of exemption under this Scheme. When the matter is considered after remand and in the communication made to the State Level Committee vide annexure P15 also, the petitioner has clearly stated these facts. In spite thereof, in the impugned order (annexure P16) dated September 22, 1995, his application for grant of exemption under the 1981 Scheme is

rejected in view of the stipulation contained in Clause (12) of the notification dated March 3, 1989 containing the limitation of 90 days.

12. It is, therefore, clear that even though the second notification was issued on October 16, 1986, right of the petitioner to claim exemption under the earlier 1981 Scheme subsisted and petitioner was insisting upon grant of benefit under this Scheme. However, this benefit is denied to the petitioner only on the ground that he has not submitted option within 90 days, as stipulated under Clause (12) of the notification dated March 3, 1989, That being so it would be appropriate to consider the options indicated in Clause (12) of this notification dated March 3, 1989.

13. A perusal of this notification indicates that the said notification was issued on March 3, 1989 and was a clarification to Clause (12A) of the notification issued on October 16, 1986. Clause (12A) of this notification reads as under:

Provided that a dealer who had opted for the facility of exemption under SRD Notification No. A-3-41-81(35)-ST-V dated October 23, 1981, before the date of commencement of this provision may within 90 days of such date opt for the facility of exemption under this notification and thereupon he shall avail of such facility for the unexpired period of eligibility.

(emphasis supplied)

14. From a perusal of the aforesaid provision, it is clear that the condition stipulated therein is that a dealer who has opted for exemption under the 1981 Scheme, may within 90 days opt for facility of exemption under the 1986 Scheme. The words "under this notification" refer to the 1986 Scheme. As the clause is inserted as (12A) to this notification, i.e., October 16, 1986, by the amending notification dated March 3, 1989. It is, therefore, clear that the aforesaid clause applies to a dealer who has already submitted an option, to come under the Scheme of 1981 and wants to change over to avail of the benefit of exemption under the 1986 Scheme. This has never been the case of the petitioner and, that being so, it is a case where by incorrectly applying the provisions of the notification dated March 3, 1989 and Clause (12A), application of the petitioner is rejected on the ground of non-submission of option within 90 days. The petitioner having never opted to change over from the Scheme of 1981 to the Scheme of 1986 cannot be denied the benefit for consideration under the Scheme and notification of 1981 on these grounds. That being so, this is a case where the State Level Committee and the District Level Committee have rejected the claim of the petitioner on incorrect consideration.

15. Accordingly, this petition is allowed and the impugned order dated September 22, 1995 (annexure P16) issued by the State Level Committee is quashed. Matter is remanded back to the State Level Committee to examine the case of the petitioner in accordance with the notification dated October 23, 1981 and after evaluating the claim and eligibility of the petitioner in the light of the provision of the said notification, decide the claim for grant of exemption in

accordance with law. The aforesaid exercise be completed and a final decision be communicated to the petitioner within a period of two months from the date of receipt of certified copy of this order.

16. The petition stands allowed and disposed of with the aforesaid without any order so as to costs.

