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**(2002) 01 MP CK 0075**

**In the Madhya Pradesh High Court**

**Case No :** Writ Petition No. 360 of 1996

Kinetic Honda Motor Limited APPELLANT

Vs

Industries Commissioner and Others RESPONDENT

**Date of Decision :** 03-01-2002

**Acts Referred:**
Madhya Pradesh General Sales Tax Act, 1958 — Section 12

**Citation :** (2002) 128 STC 561

**Hon'ble Judges :** A.M. Sapre, J

**Bench :** Single Bench

**Advocate :** G.M. Chafekar and C.R. Pancholiya, for the Appellant; P. Verma, Government Advocate, for the Respondent

**Final Decision :** Allowed

## Judgement

A.M. Sapre, J.—By filing this writ under Article 226/227 of Constitution of India, the petitioner has challenged the order dated May 31, 1994 (annexure F) passed by State Level Committee, followed by order dated August 8, 1994 (annexure H) explaining the real import of the order dated May 31, 1994 and lastly the order dated December 29, 1995 (annexure L) being consequential to the main order dated May 31, 1994. Facts in brief that led to filing of this writ need mention in brief to appreciate the grievance urged.

2. Petitioner is limited company engaged in the business of manufacture of two wheeler scooters in their factory at Pithampur area in District Dhar.

3. By order dated October 5, 1987 (annexure A) the petitioner was granted sales tax exemption, i.e., exemption from payment of State sales tax and purchase tax for a period of five years, i.e., up to April 9, 1991 to be counted from the date of commencement of the production, i.e., on April 10, 1986. However, by order dated June 14, 1989 (annexure B), the period of five years exemption originally granted to the petitioner was extended for a total period of nine years, i.e., up to April 9, 1995 in place of April 9, 1991.

4. On March 3, 1989 (annexure C) the State in exercise of powers conferred u/s 12 of the Madhya Pradesh General Sales Tax Act, 1958, issued an amendment in exemption notification by adding Clause XII(a) in place of existing Clause (d) of Clause XII. The petitioner claiming themselves to be eligible to claim the benefit as provided in amended exemption notification, then applied for grant of exemption under this amended exemption notification as provided in newly added Clause XII(a). The application made by the petitioner was duly considered by the State Level Committee in their meeting held on December 6, 1989 and March 23, 1990 and while allowing the application made by the petitioner, the State amended the eligibility certificate by issuing an amended certificate dated July 17, 1990 (annexure C/2). Annexure D and annexure E to enable the petitioner to seek exemption both under the State laws as also Central laws under the newly amended notification dated March 3, 1989 (annexure C). Accordingly the petitioner availed of the entire benefit in terms of amended exemption eligibility certificate, for the period so mentioned therein.

5. It was after four years of issuance of amended eligibility certificate, i.e., July 17, 1990 the State (Industries Department) on May 31, 1994 passed the impugned order. In the order, it was mentioned that in the meeting held on April 30, 1994 the case of petitioner relating to grant of exemption was again considered by the State Level Committee suo motu and it was decided to review the grant of earlier exemption by imposing certain conditions in the exemption which was not originally specified in exemption. In other words, by the impugned decision, the exemption already granted was made conditional on petitioner''s fulfilling certain conditions. It was said that if petitioner fulfill these conditions then only the petitioner will be entitled to claim the exemption else not. It was also said that in view of this decision taken, the benefit granted to petitioner earlier as per earlier 1981 notification is recalled and petitioner is asked to deposit the tax not paid by them so far. It is this decision/ order which is impugned in this writ by the petitioner.

6. The State has filed the return and supported the impugned decision to be in conformity with the object of the exemption notification.

7. Heard Shri G.M. Chafekar, learned Senior Advocate, assisted by Shri Pancholiya, for the petitioner and Shri P. Verma, Government Advocate, for the State-respondents.

8. Learned counsel for the petitioner while assailing the legality and correctness of the impugned order submitted that it is not legally sustainable. Elaborating his submission, learned counsel urged that benefit of tax exemption once granted and availed of by the dealer (petitioner), the same cannot be then retrospectively withdrawn nor can it be made conditional. Learned counsel urged that in any event there was neither any occasion nor any need to suo motu took up the case by the State Level Committee after four years of the grant of exemption and that too behind the back of petitioner thereby resulting in breach of principle of natural justice. Learned counsel urged that the original grant of exemption and

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subsequent amendment made in favour of petitioner by the State Level Committee which were based on valid notification were granted perfectly in accordance with the legal requirement and hence they had to be maintained and rather be upheld in favour of petitioner. It was also urged that petitioner on the strength of two exemption certificates granted by the State actually acted upon it, and availed of entire benefit in relation to payment of sales tax and purchase tax and Central sales tax for the period for which the certificates were holding the field and now after the expiry of entire period, its retrospective withdrawal is just not legal and deserves to be quashed. Learned counsel placed reliance on the decision of the Supreme Court rendered in the case of Birla Jute and Industries Ltd. v. State of M.P. [2000] 119 STC 14.

9. In reply learned counsel for the State defended the impugned decision contending that the same has been taken in the interest of State and do not require any change or/and interference.

10. Having heard the learned counsel for the parties and having perused the record of the case I am inclined to allow the writ and quash the impugned decision contained in letter dated May 31, 1994 (annexure F).

11. Indeed, in my considered view the issue involved in this writ is squarely covered by the law laid down by their Lordships of Supreme Court in the case of Birla Jute and Industries case [2000] 119 STC 14, rightly relied on by learned Counsel for the petitioner. In that case also the facts were more or less similar. The State granted sales tax exemption to the petitioner of that case for a period of 5 years on raw material as also on gunny bags. The petitioner actually availed of the benefit. It was after five years of the exemption, the State made attempt to review the exemption already granted and availed of by the petitioner. It was then challenged. Accepting the challenge made by the petitioner and allowing the writ filed by the petitioner, their Lordships (speaking through justice S.P. Barucha, as his Lordship then was) held in para 8 :

"There was, in our view, no justification for reviewing the said certificate long after the term thereof had expired and, therefore, long after its benefit had been availed by the appellant or at all. The view taken by the High Court in the judgment to which we have referred to is correct, and is borne put by the decisions of this Court aforementioned."

12. In my opinion, the facts of case in the case of Birla Jute [2000] 119 STC 14 (SC) and that of present one are almost identical in nature. In this case also the State after granting the exemption as back as on October 5, 1987 and then on July 17, 1990 made attempt to seek review of these two exemptions by passing impugned order on May 31, 1994, i.e., almost seven years from first exemption and four years after second exemption. It is not permissible. It has to be set aside on this short ground alone. It is apart from the fact that no show cause notice was given to the petitioner as to why and on what basis, the exemption already granted by the competent authority and which was availed of by the

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petitioner is being withdrawn and that too by taking up the issue suo motu by the State without there being any reason. It is not in dispute nor it has ever been the case of State that while granting the exemptions it has any element of fraud or/and forgery attributable to the petitioner.

13. Consequently and as a result of aforesaid discussion, the petition succeeds and is allowed. Impugned order dated May 31, 1994 (annexure F) and other two consequential orders dated August 8, 1994 (annexure H) and order dated December 29, 1995 (annexure L) are quashed by writ of certiorari.

No costs.

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