(2005) 04 MP CK 0055

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1846 of 1999

Kothari Laboratories APPELLANT

Vs

The General Manager, District Industries Centre and Others RESPONDENT

Date of Decision : 12-04-2005

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

Citation : (2005) 3 MPLJ 128 : (2006) 148 STC 572

Hon'ble Judges : A.K.Shrivastava, J

Bench : Single Bench

Advocate : Sumit Nema, for the Appellant; P.N. Dubey, Deputy Advocate-General, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Shrivastava, J.

The petitioner is a manufacturer of ointment, liquid for skin disease, for oral therapy and for external use. The petitioner was registered as a small-scale industry provisionally with the respondent No. 1 by registration certificate dated May 28, 1990 (annexure P 1). Later on, the petitioner was issued a permanent registration certificate dated February 17, 1994 effective from August 1, 1993 (annexure P 2). The petitioner also made an application for registration with the sales tax/commercial tax authorities, but it was refused by order dated October 31, 1992 (annexure P 3) against which the petitioner filed a revision before the Deputy Additional Commissioner of Sales Tax, Sagar, who vide order dated September 2, 1993 directed the Sales Tax Officer to issue certificate of registration both under the State and also under the Central Sales Tax Act, 1956. A copy of the said order is annexure P4. In compliance with the said order, the certificate of registration dated December 31, 1993 was issued by the Sales Tax Officer effective from September 1, 1992. Similarly, the registration certificate under the Central Sales Tax Act was issued on January 3, 1994 effective from September 1, 1992. These certificates are annexures P5 and P6, respectively.

The respondent No. 1 by its order dated November 2, 1996 informed the petitioner that the District Level Committee in its meeting held on September 28, 1996 decided that the trial production was started from September 1, 1992 and accordingly the petitioner was entitled to exemption from payment of tax for the period from September 1, 1992 to July 31, 1999 to the extent of 90 per cent of the investment made till this date. The said order has been placed on record as annexure P7. An appeal was preferred to the State Level Committee (respondent No. 2) and vide its order dated January 8, 1999, the appellate authority affirmed the order of respondent No. 1 and held that commercial production was held to be from August 1, 1993. The said order of the State Level Committee is annexure P8. Subsequently, by order dated October 16, 1997 a certificate of eligibility for exemption from tax was issued by respondent No. 1 (annexure P9).

The petitioner is aggrieved by the orders passed by the District Level Committee (annexure P7) and State Level Committee (annexure P 8) determining the date of commercial production with effect from September 1, 1992.

The contention of Shri Sumit Nema, learned Counsel appearing for the petitioner, is that respondent No. 1 inspected the unit of the petitioner and on the basis of the said inspection on October 7, 1992, a letter was issued to petitioner that the unit has not started its production nor it has been fully established and, therefore, refused to grant permanent certificate of registration. A copy of the letter dated October 7, 1992 has been filed as annexure A along with the application for taking additional documents on record. Thus it has been contended that holding the commercial production with effect from September 1, 1992 vide certificate annexure P9 is contrary to letter dated October 7, 1992 (annexure A).

On the other hand, it has been contended by Shri Dubey, learned Deputy Advocate-General, that exemption from payment of sales tax in case of the petitioner-unit has to be given on the basis of the notification dated October 16, 1986 (annexure R-I). This notification was issued by the State Government by exercising the powers conferred to it by Section 12 of the M.P. General Sales Tax Act, 1958. As per this notification, eligible unit of the petitioner''s class is entitled to exemption from payment of tax for a period of seven years from the date of commercial production. The term "commercial production" has been explained in clause XV of the said notification, which read thus:

XV(b) : An industrial unit shall be deemed to have gone into or have commenced commercial production:

(i) if it is a small-scale industrial unit on the date immediately following the date of expiry of the period of trial run or on the expiry of thirty days from commencement of the trial run, whichever is earlier.

According to the learned Deputy Advocate-General the trial production of the petitioner unit was commenced from September 1, 1992 and, therefore, the respondents have granted exemption for a period of seven years from September

1, 1992 to July 31, 1999 which is in accordance with law. It has been prayed that there is no substance in the contention of the petitioner that seven years exemption should be reckoned from August 1, 1993.

After having heard the learned Counsel for the parties, I am of the view, that this petition deserves to be dismissed.

The petitioner sold the goods in the market after its production and after trial has taken place. The production has also taken place in his unit. So far as annexure A dated October 7, 1992 is concerned, it appears to be of unit No. 2 of the petitioner and authorities of respondent No. 1 after inspecting unit No. 2 of the petitioner, found that unit No. 2 has neither started its production nor it has been established fully. Thus, in that context, letter dated October 7, 1992 (annexure A) was given to the petitioner.

According to clause XV(b) of the notification "commercial production" would mean the date immediately following the date of expiry of a period of the trial run or the expiry of thirty days from commencement of the trial run, whichever is earlier. On going through annexures P7, P8 and P9, it is revealed that trial production commenced from September 1, 1992 to July 31, 1993 and, therefore, according to notification (annexure R-I) it would be after expiry of trial run or expiry of thirty days from commencement of the trial run, whichever is earlier. Since trial production was commenced from September 1, 1992, therefore commercial production would be deemed to have gone or have commenced with effect from thirty days after September 1, 1992. Thus, contention of the petitioner was rightly repelled that commercial production should have been deemed to be accepted from August 1, 1993.

For the reasons stated hereinabove, this petition is found to be devoid of any substance. The same is hereby dismissed without any order as to costs.

