

(1999) 10 MP CK 0065

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1319 of 1999 (J)

Mysore Cement Ltd. and Another

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 06-10-1999

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Madhya Pradesh General Sales Tax Act, 1958 — Section 12

Citation : (2000) 2 MPJR 607

Hon'ble Judges : S.P. Khare, J

Bench : Single Bench

Advocate : H.S. Shrivastava, for the Appellant; R.S. Jha, Dy. Advocate General for State and V.P. Verma, Advocate, for the Respondent

Final Decision : Allowed

Judgement

S.P. Khare, J.

This is a petition under Articles 226 and 227 of the Constitution of India challenging the letter dated 23/10/1996 (Annexure-P/5) of the respondent No. 3 by which the respondent No. 4 has been directed to charge the commercial tax from the petitioner at full rate on sale of High Speed Diesel oil to the petitioner.

The petitioner No. 1 Mysore Cement Limited has established a cement industry in the backward district of Damoh in Madhya Pradesh. It is a registered dealer under the MP. General Sales Tax Act, 1958 (hereinafter referred to as the "Act of 1958"). In the registration certificate High Speed Diesel Oil has been specified as one of the "raw materials". By virtue of the notification dated 19/2/1991 issued u/s 12 of the Act of 1958 the petitioner was exempted from payment of tax under this Act. The eligibility certificate dated 28/02/1995 (Annexure-P/4) was issued in its favour by the State Level Committee for a period of eleven years from 29/12/1993 to 28/12/2004 in terms of the notification. In this certificate also Diesel is specified as raw-material. The petitioner was purchasing High Speed Diesel from respondent No. 4 Indian Oil Corporation and was submitting the

declaration form on the basis of which the petitioner was not being charged any sales tax. It is an admitted fact that the petitioner was not being charged even four percent concessional rate of tax as per Section 6(2) of the Act of 1958. It is also admitted that the petitioner was legally exempted from payment of the concessional rate of tax at the rate of four percent. The selling dealer i.e. Indian Oil Corporation was also exempted from payment of sales tax on the sale of diesel to the petitioner as per notification dated 19/2/1991 (Annexure-P/2).

The Act of 1958 has been repealed by the M.P. Vanijyik Kar Adhiniyam, 1994 (hereinafter to be referred to as the new Act), and this Act has come into force from 1/4/1995. Sections 9 and 17 of this Act correspond to Section 6 and 12 respectively of the Act of 1958. Sub-section (1) of Section 9 provides full rate of tax on goods specified in Schedule-II. High Speed Diesel is included in this Schedule in Part-II as item No. 1. Sub-section (1) is subject to Sub-section (2) of Section 9 and that provides for concessional rate of tax at the rate of four percent on sale of goods specified in Schedule-II by a registered dealer to another registered dealer as raw material in the manufacture of goods "exempted in whole u/s 17". To this extent there does not appear to be any difference between Section 6 of the Act of 1958 and Section 9 of the new Act. But an exception has been carved out to Sub-section (2) of Section 9 by appending Schedule-III and including therein "Diesel Oil" as Item No. 4.

The petitioner's case is that Section 12 of the Act of 1958 (Section 17 of the new Act) is an "overriding provision" and in exercise of this power the petitioner as a dealer has been exempted in whole from payment of tax under the Act on certain goods including diesel oil and therefore it cannot be subjected to tax. It is entitled to exemption from sales tax and also the purchase tax. The right which accrued to the petitioner under the notification u/s 12 of the Act of 1958 has been saved by proviso to Section 81 of the new Act and, therefore, the exception made in Section 9(2) read with Schedule-III would not apply. Having granted the eligibility certificate dated 28/2/1995 in exercise of the statutory power the right which accrued to the petitioner cannot be taken away because of the "rule of estoppel" also. The State Government in the Industrial Policy and Action Plan for 1994 vide para 5.2 had decided to continue the "facilities and concessions" under the existing scheme for the remaining period of eligibility according to the provisions of the scheme in force. Therefore, the impugned letter is against the policy declared by the State Cabinet and that policy has the force of law. The petitioner Company claims that it is entitled to purchase diesel without payment of tax and wants that the impugned letter be quashed. That is also the interpretation of the State Level Appellate Forum as per letter dated 26/2/1997 (Annexure-P/10). That decision is final as per 1986 notification referred in the notification dated 19/2/1991 (Annexure-P/1).

The case of the respondents No. 1 to 3 is that u/s 9(2) read with Schedule-III of the new Act no exemption is available in respect of the items included in this schedule. Therefore, the dealer is required to pay tax at the full rate. The

eligibility certificate stands modified in view of the new statutory provision. Now the State Government has no power to grant exemption in respect of goods specified in Schedule-III. The petitioner is liable to pay tax at the full rate in respect of the diesel purchased by it from the Oil Companies. The impugned letter clarifies the legal position now obtaining under the new Act.

The points for determination are whether (a) the impugned order dated 23/10/1996 (Annexure-P/5) is in conformity with the law so far as its applicability to the case of the petitioner is concerned and (b) whether the doctrine of promissory estoppel is attracted in the present case.

Point (a) :- The learned counsel for both the sides were heard. Sub-section (2) of Section 9 of the new Act in its simplified form as relevant for the present purpose is as under :-

9(2) (a) The tax payable by registered dealer on the sales of any goods specified in schedule-II except the goods specified in Schedule-III to another registered dealer for use by him inside the State - as raw material.....in the manufacture.....of goodsexempted in whole u/s 17 and sold by him..... shall be levied at the concessional rate of four percent.

It can be clearly noticed that the words "except the goods specified in Schedule-III" take away such goods from the general sweep of Sub-section (2) of Section 9. As already seen "H.S. Diesel" is one of the items listed in Schedule-III. It is not exigible to concessional rate of tax of four percent but the exception carved out to Section 9(2) does not in any way affect the exception granted under the wide phrasaeology of Section 12 of the Act of 1958 which has to continue under the corresponding provision of Section 17 read with proviso to Section 81 of the new Act. There is no inconsistency between the provisions of the old Act and the new Act so far as exemption under the "saving" clause (Section 17) is concerned. The provisions in a statute are required to be read as a whole. One section cannot be read in isolation divorced from others. In a taxing statute also the charging section and the exemption or "saving" Clause are to be read together. Section 12 of the Act of 1958 and Section 17 of the new Act have marginal heading as "saving". This "saving" provision preserves and protects the rights granted by that clause and constitutes an exception or a proviso to the earlier charging sections under the Act. Therefore, the petitioner would continue to have the benefit of the exemption notification and the eligibility certificate.

Point (b) -

It has been vehemently argued on behalf of the petitioner that the State Government offered the incentive of exemption from tax on purchase of H.S. Diesel as raw material from a registered dealer and on the faith of that representation the petitioner set up the Cement manufacturing plant in a backward district. This offer was implemented by issuing an "eligibility certificate" in conformity with the notification u/s 12 of the Act of 1958, for a period of eleven years which included H.S. Diesel. That was reinforced by the

Industrial Policy and Action Plan of 1994 vide para 5.2. Now that exemption cannot be withdrawn. The State Government is estopped from doing so on the principle of "promissory estoppel". The argument is that it is manifest injustice and fraud and the State Government is not expected to resile from such unequivocal promise in view of the doctrine of "promissory estoppel".

It cannot be said that there is no substance even in this part of the argument of the learned counsel for the petitioner. Such a step may lead to erosion of faith in the words of the Government and affect its credibility. The doctrine of promissory estoppel was evolved and expanded by judicial law making but it has suffered a set back in recent times. The common thread which runs throughout in all the decisions is that there is no "estoppel" or "promissory estoppel" against a statute.

In *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, the doctrine of promissory estoppel was expanded to a large extent after its recognition in *Union of India Vs. Anglo Afgan Agencies* (AIR 1968 AC 718). But even in the *M.P. Sugar Mills*" case it was observed that the doctrine of promissory estoppel would not apply in the teeth of an obligation or liability imposed by law and that there can be no promissory estoppel against the "exercise of legislative power". Earlier it was observed in *Excise Commissioner, Uttar Pradesh, Allahabad and Others Vs. Ram Kumar and Others*, that it is now well settled by a catena of decisions that there can be no question of estoppel against the Government in the exercise of its legislative, sovereign or executive powers.

In *Kasinka Trading and another, etc. etc. Vs. Union of India and another*, the notification issued u/s 25 (1) of the Customs Act granting the exemption was withdrawn by a subsequent notification under that Section. The Supreme Court held that it can be done in public interest by observing that "the very same power was available to the authority for the rescinding or modifying the earlier notification". A passage from Prof. S.A. De Smith treatise "Judicial Review of Administrative Action", 3rd Edition page 279 was relied upon for the proposition : "The crown cannot be allowed to tie its hands completely prior undertakings" and it was emphasised that flexibility is essential in law making. The principle laid down in this case has been affirmed by a larger Bench in *Shrijee Sales Corporation and Another Vs. Union of India (UOI)*, . It has approved the dictum that imposition of taxes and withdrawal thereof are legislative functions and since there can be no estoppel against legislature, the withdrawal notification was not hit by the principles of estoppel. It has been held that the determination of applicability of promissory estoppel against Government hinges upon "balance of equity or public interest". The "superviving public interest" can justify the withdrawal of the exemption. Again in *Sales Tax Officer and Another Vs. Shree Durga Oil Mills and Another*, it has been held that any Industrial Policy Resolution can be changed if there is an overriding public interest involved and there is "resource crunch" on account of sales tax exemptions keeping in view the new perception of the economic scenario of the State.

In the present case the exemption granted to the petitioner by virtue of the notification and eligibility certificate still stands and it is not taken away by the exception to Section 9 (2) of the new Act. Therefore, the petitioner is succeeding on the first limb of its arguments and not on the strength of the second one i.e. promissory estoppel.

In the result, this petition is allowed. The letter dated 23.10.1996 (Annexure P/5) issued by the respondent No. 3 is quashed. The petitioner will continue to have the exemption as per notification and the eligibility certificate mentioned above.