

(1989) 09 MP CK 0047

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 3476 of 1989

Neha Poha Udyog

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 06-09-1989

Acts Referred:

Central Sales Tax Act, 1956 — Section 8(5)

Citation : (1990) 76 STC 265

Hon'ble Judges : G.G. Sohani, Acting C.J.;K.M. Agarwal, J

Bench : Division Bench

Advocate : B.L. Nema, for the Appellant; A.A.G., for the Respondent

Final Decision : Partly Allowed

Judgement

K.M. Agarwal, J.—This order shall also dispose of the following writ petitions :

M.P. Nos. 3474/89, 4013/89, 2655/89, 2645/89, 3367/89, 3471/89, 3379/89, 258/89, 3241/89, 3626/89, 3605/89, 2204/89, 2192/89, 3371/89, 3050/89, 3152/89, 2656/89, 2654/89, 2402/89, 632/89 and 8/87.

2. The petitioners in all these petitions are registered dealers for the purposes of the Madhya Pradesh General Sales Tax Act, 1958 (in short, "the State Act"), and those of the Central Sales Tax Act, 1956 (in short, "the Central Act"). They are engaged in the business of manufacturing poha and are registered as small-scale industrial units with the Industries Department of the Government of Madhya Pradesh. Their common grievance is denial of eligibility certificate by the Director of Industries, M.P., Bhopal, which is resulting in denial of exemptions from payment of sales tax under the State and the Central Acts as per Notification dated 23rd October, 1981 (annexure 3 in M.P. No. 3476 of 1989), issued u/s 12 of the State Act, as amended by Notification dated 3rd July, 1987 (annexure L in M.P. No. 3474 of 1989), read with further Notification dated 16th October, 1986, issued u/s 12 of the State Act by the State Government and published in Madhya Pradesh Rajpatra dated 21st October, 1986, and as per Notification dated 29th

June, 1982 (annexure D1 in M.P. No. 3476 of 1989), issued u/s 8(5) of the Central Act by the State Government. Accordingly, they have made a common prayer for directing the Director of Industries, M.P., to issue them the requisite eligibility certificates, so as to enable them to obtain exemptions from payment of sales tax under the said Acts.

3. It is not in dispute that Section 12(1)(i) of the State Act empowers the State Government to exempt by notification any class of dealers or any goods or class of goods from the payment of tax under the Act for a specified period and subject to such restrictions and conditions as may be specified in the notification and that, in exercise of that power, Notifications dated 23rd October, 1981, 3rd July, 1987 and 16th October, 1986, were issued by the State Government. Similarly Section 8(5) of the Central Act empowers the State Government to grant exemption from payment of sales tax under the Central Act by issuing an appropriate notification in that regard and that, in exercise of that power, Notification dated 29th June, 1982, was issued by the State Government. In all these notifications, one of the conditions for obtaining the notified exemption was production of an eligibility certificate from the Director of Industries, M.P., or from any officer authorised by him for the purpose. The petitioners in all these petitions having fulfilled all other conditions of the said notifications, applied for eligibility certificate. Some of the applications have been rejected and others are likely to be rejected by the Director of Industries on the ground that in the light of a Full Bench decision of this Court in *Jagdamba Industries v. State of M.P.* [1988] 69 STC 1 ; 1988 MPLJ 620 ; 1988 MPLJ 701, a poha mill was a traditional industry and, therefore, not entitled to any exemption under the said notifications.

4. It is pertinent to mention here that by Notification dated 3rd July, 1987 (annexure L in M.P. No. 3474 of 1989), the Notification dated 23rd October, 1981 (annexure 3 in M.P. No. 3476 of 1989), was amended with retrospective effect from 26th October, 1981, and it was provided that the exemption under the Notification dated 23rd October, 1981, would not be available to the various traditional industrial units there specified. Similarly in paragraph 2(xiii) of the Notification dated 16th October, 1986, published in *Madhya Pradesh Rajpatra* dated 21st October, 1986, it was provided that the exemption under the notification would not be available to the industrial units therein mentioned. The lists of industrial units given in the two Notifications dated 3rd July, 1987, and 16th October, 1986, did not include "poha mill", though they included "rice mill" as industrial units not entitled to exemptions under the said notifications. It was, therefore, contested by the learned counsel for the parties that whether poha mill was or was not included within the meaning of "rice mill" mentioned in the notifications aforesaid. According to the learned counsel for the petitioners, the process of manufacturing poha was altogether different from the process of manufacturing rice, though the raw material for obtaining both the commodities was the same, i.e., paddy. According to the learned Additional Advocate-General appearing for the respondents, poha was nothing but a product of rice. Owners

of poha mills were required to obtain licence under the Rice-milling Industry (Regulation) Act, 1958 (in short, "the Rice-milling Act") for running their poha mills, although "poha mill" or "milling poha" was not separately dealt with or defined under the Act. It was pointed out by the learned Advocate-General that u/s 3(d)(i) of the Rice-milling Act "milling rice", with its grammatical variations means recovering rice or any product thereof from paddy. Poha is nothing but a product of paddy and, therefore, this term must include poha milling operation as well and accordingly the petitioners were not entitled to any eligibility certificate under the said notifications.

5. The letter dated 19th September, 1980 (annexure G in M.P. No. 3476 of 1989), issued from the office of the Director of Industries does indicate that the process of manufacturing poha is different from that of milling rice from paddy. It points out that in rice milling operation, grain is separated from its chaff, whereas in poha-making operation, paddy is boiled and levelled before being converted into poha or flattened rice. In common parlance, poha is treated as a different commodity from rice. The State Government has also been treating poha as different from rice, otherwise there would have been no justification for making the Madhya Pradesh Poha (Restriction on Manufacture) Order, 1966, in exercise of its powers u/s 3 of the Essential Commodities Act, 1955. Further, unless there is any ambiguity in the language employed in the statute, the courts adopt literal construction if it does not lead to an absurdity and where a provision of law is capable of two interpretations, the courts prefer the one in favour of taxpayers. We see no reason as to why these settled principles of statutory interpretations should not be applied in construing the language used in the notifications under our consideration. Accordingly, if we look into the two Notifications dated 3rd July, 1987, and 16th October, 1986, it would be manifest that the exemptions under the said notifications are available to all industrial units, except those specifically excluded. "Rice mills" are specifically excluded from the enjoyment of exemptions, but "poha mills" are not specifically mentioned as the industrial units not entitled to exemptions under the said notifications, "Poha mills" are never referred to or understood as "rice mills" and, therefore, we find no justification for holding that the ambit of the term "rice mills" used in the two notifications, extends to poha mills. It would not be out of place to mention here that as evident from his letter dated 19th September, 1980 (annexure G in M.P. No. 3476 of 1989), the Director of Industries was also of the view at one point of time that a poha mill was different from a rice mill and was entitled to similar exemptions notified earlier in the notifications under our consideration in these petitions. It was also pointed out that certain dealers, viz., Jain Shakti Poha Udyog, Waraseoni, Mahavir Poha Udyog, Balaghat, Arihant Poha Udyog, Amreda-Balaghat, similar to those of the petitioners were granted eligibility certificates under Notifications dated 23rd October, 1981, and 29th June, 1982, under similar circumstances. Photo copies of two such eligibility certificates were filed as annexures O and P in M.P. No. 3476 of 1989. We are, therefore, of the view that the petitioners are entitled to eligibility certificates

from the Director of Industries in respect of their poha mills on fulfilment of other conditions and restrictions imposed under the said notifications u/s 12 of the State Act and u/s 8(5) of the Central Act.

6. In the case of Jagdamba Industries [1988] 69 STC 1 ; 1988 MPLJ 620 ; 1988 MPLJ 701, the Full Bench of this Court came to the conclusion that the flour mills and the dal mills being specified as the traditional industrial units in the Notification dated 3rd July, 1987, were not entitled to exemption under the Notification dated 23rd October, 1981, read with Notification dated 3rd July, 1987. It neither said nor there was any occasion to say that poha mills were traditional industrial units. Accordingly, the Director of Industries could not refuse eligibility certificates to the petitioners on the ground that in the light of the said Full Bench decision of this Court, poha mills were traditional industrial units.

7. Our attention was invited to the definition of "milling rice" given in Section 3(d) (i) of the Rice-Milling Act. We, however, refrain from expressing any opinion as to whether poha mills would or would not be included within the meaning of "milling rice" given in Section 3(d)(i) of the Rice-Milling Act. Reliance was also placed on Shri Kishan Satyanarain Vs. State of Madhya Pradesh and Others, : on behalf of the respondents, but that case is quite distinguishable on facts. In that case, entry No. 1(i) of Part V of Schedule II of the State Act was under consideration and the decision was based on the Supreme Court decision in Alladi Venkateswarlu v. Government of A.P. [1978] 41 STC 394, which did not deal with the question whether the term "rice" would include poha.

8. The learned counsel for the petitioners, also argue that the State Government and its officers were bound to issue eligibility certificates to the petitioners by operation of the rule of promissory estoppel against them. Firstly, in the light of our aforesaid view, it is not necessary for us to consider this argument. Secondly, such an argument was rejected by this Court in the case of Jagdamba Industries [1988] 69 STC 1 [FB] ; 1988 MPLJ 620 [FB] ; 1988 JLJ 701 [FB]. Lastly it has not been shown to us that the State Government gave any specific assurance to the owners of poha mills that they would be granted exemptions from payment of sales tax under the State or the Central Act.

9. The learned counsel for the petitioners, in M.P. No. 3474 of 1989 further tried to argue that the Full Bench decision of this Court in Jagdamba Industries [1988] 69 STC 1 ; 1988 MPLJ 620; 1988 MPLJ 701, required reconsideration on the ground that the basis adopted by it for the particular view taken was erroneous. Apart from the fact that the judicial propriety demands that the Full Bench decision should be followed, we are of the view that the contention requires no consideration in the light of our aforesaid view.

10. Besides seeking a direction to the Director of Industries to issue them requisite eligibility certificates, the petitioners in some petitions have also made additional prayers for quashing certain assessment proceedings taken out against them. We are of the view that it is not necessary for us to grant any additional

relief to any of the petitioners in these petitions.

11. For the foregoing reasons, all these petitions partly succeed and they are hereby partly allowed. The Director of Industries, M.P. and/or the officers authorised by him for the purpose of granting eligibility certificate are directed to grant eligibility certificates to the petitioners on their fulfilment of other conditions and restrictions imposed under the Notification dated 23rd October, 1981, read with Notifications dated 3rd July, 1987, and 16th October, 1986. In the circumstances of the case, we make no order as to costs in any of these petitions. The outstanding amounts of security, if any, shall be refunded to the petitioners.