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(1987) 11 MP CK 0015

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 2821 of 1985

Pathik Products APPELLANT

Vs

General Manager, District Industries Centre and Others RESPONDENT

Date of Decision : 10-11-1987

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

Citation : (1988) 70 STC 21

Hon'ble Judges : N.D. Ojha, C.J;K.K. Adhikari, J

Bench : Division Bench

Advocate : B.L. Nema, for the Appellant; S.K. Dixit, Deputy Advocate-General, for the Respondent

Final Decision : Allowed

Judgement

N.D. Ojha, C.J.—This order shall also govern the disposal of M. P. Nos. 569 of 1986 and 1906 of 1987.

2. The petitioners of these writ petitions were registered as small-scale industrial units by the Industries Department on various dates and made applications for grant of eligibility certificates in order to enable them to claim exemption from sales tax in view of the notification dated 23rd October, 1981 issued u/s 12 of the M. P. General Sales Tax Act, 1958 (hereinafter referred to as "the Act").

3. The case of the petitioners is that they were registered as small-scale industrial units for carrying out the business of blending tea and since they fulfilled the requirement of the notification dated 23rd October, 1981, they were entitled to exemption from sales tax subject of course to production of eligibility certificates as contemplated by the said notification, from the Industries Department. According to them it is for this purpose that they applied for grant of eligibility certificates, but they have erroneously been denied the grant of eligibility certificates on the ground that they do not appear to have made sufficient investment in the industries and that what they were carrying on, could

not be treated as any manufacturing process.

4. The order dismissing the application for grant of eligibility certificate which is challenged in M. P. No. 2821 of 1985, is dated 3rd July, 1985 and was passed by the General Manager, District Industries Centre, Raigarh, respondent No. 1, a copy of which is attached as annexure to the said petition. The order whereby the application made by the petitioner of M. P. No. 569 of 1986 for grant of eligibility certificate was dismissed, is dated 25th October, 1985, passed by the General Manager, District Industries Centre, Raipur, and this order was communicated to the petitioner vide two letters, copies whereof have been attached as annexures P-9 and P-10 respectively. The order dismissing the application for grant of eligibility certificate which has been challenged in M. P. No. 1906 of 1987, was passed by the General Manager, District Industries Centre, Raigarh, on 14th March, 1985, a copy whereof has been attached as annexure F to the writ petition. The petitioner thereafter made an application for review which, by order dated 3rd July, 1985, a copy whereof has been attached as annexure H, was returned to the petitioners with the result that the earlier order dated 14th March, 1985 dismissing the application for grant of eligibility certificate, stood maintained.

5. It has been urged by the learned counsel for the petitioners that the aforesaid orders dismissing the applications made by the petitioners for grant of eligibility certificates, are liable to be quashed and a direction deserves to be issued to the General Manager, District Industries Centre concerned, to grant eligibility certificates to the petitioners in view of the decision of a Division Bench of this Court at the Indore Bench, in M. P. No. 864 of 1986 Badrinarayan Vs. State of M.P. and Others, dated 28th April, 1987.

6. Having heard learned counsel for the parties, we are of the opinion that there is substance in the submission made by the learned counsel for the petitioners. In this connection, it may be pointed out that there is no dispute that if the petitioners were carrying on business of blending tea, their case will be squarely governed by the decision of this Court in the case of Badrinarayan Vs. State of M.P. and Others, . That the petitioners were small-scale industrial units within the meaning of the notification dated 23rd October, 1981, admits of no doubt when the Industries Department had itself granted registration certificates to the petitioners in their capacity as small-scale industrial units. The other requirements for claiming exemption under the aforesaid notification dated 23rd October, 1981 would, therefore, be made out subject of course to the grant of eligibility certificates by the Industries Department.

7. Executive instructions in this behalf were issued by the Industries Department, a copy whereof has been attached as annexure P-12 in M. P. No. 669 of 1986. These instructions were approved by the Government as is apparent from the letter dated 12th January, 1983, a copy of which constitutes annexure P-13. To this letter are attached the relevant executive instructions issued in the matter of grant of eligibility certificates. Even though para 5(b) of these executive

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instructions provides that the concessions will not be available to the traditional industries mentioned therein and such other industries as may be notified by the Government from time to time, it was not stated in the said notification that eligibility certificates would not be available to a small-scale industrial unit of blending of tea.

8. It is thus apparent that the executive instructions did not debar the petitioners of these writ petitions from obtaining an eligibility certificate with regard to their blending of tea industrial units. No notification except a notification dated 16th October, 1986, has been brought to our notice which may fall within the category of "such other industries as may be notified by the Government from time to time" occurring at S. No. 9 of para 5(b) of the executive instructions aforesaid whereby it may have been notified that an industrial unit of blending of tea would not be entitled to the grant of eligibility certificate.

9. As regards the notification dated 16th October, 1986, it may be pointed out that the said notification applies to such dealers who having established an eligible industrial unit in any district in M. P., have commenced commercial production on or after 1st August, 1986. Since the petitioners of these writ petitions had commenced commercial production before 1st August, 1986, apparently the said notification dated 16th October, 1986 will not apply to them. Even the notification dated 3rd July, 1987 does not debar an industrial unit of blending of tea from obtaining eligibility certificate. An industrial unit of blending of tea, therefore, stands on a footing different from the industrial units in regard to which it was specified in the executive instructions and the notification dated 3rd July, 1987 referred to above that they shall not be entitled to an eligibility certificate. In view of the decision by a Division Bench of this Court in the case of Badrinarayan Vs. State of M.P. and Others, that an industrial unit of blending of tea was carrying on manufacturing process and was consequently entitled to the grant of eligibility certificate in pursuance of the notification dated 23rd October, 1981, we are of opinion that these petitions deserve to be allowed.

10. Learned counsel for the petitioners urged that consequent upon the grant of eligibility certificates, the petitioners would be entitled to the relief of exemption from taxation before the sales tax authorities. So far as this submission is concerned, suffice it to point out that the consequences contemplated by the learned counsel for the petitioners will enure only after grant of eligibility certificates. As such, it would be open to the petitioners after they have been granted eligibility certificates to approach the sales tax authorities in this connection for appropriate relief.

11. In the result, all these three writ petitions succeed and are allowed. The respondents are directed to issue eligibility certificates to the petitioners in accordance with the provisions of the notification dated 23rd October, 1981 referred to above. In the circumstances of the case, parties shall bear their own costs. The outstanding security amount be refunded to the petitioners of each of these petitions.

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