(1999) 08 MP CK 0085

In the Madhya Pradesh High Court

Case No : Writ Petition No. 746 of 1999

Prime Solvent Extraction Ltd. and Others APPELLANT

Vs

State of M.P. and Others RESPONDENT

Date of Decision : 25-08-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Madhya Pradesh General Sales Tax Act, 1958 — Section 12

Citation : (2001) 1 MPJR 13 : (2006) 143 STC 170

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

Bench : Single Bench

Advocate : H.S. Shrivastava, for the Appellant; Ajay Mishra, Deputy Advocate-General, for the Respondent

Final Decision : Allowed

Judgement

S.P. Khare, J.

This is a petition under Article 226 of the Constitution of India for a direction to the respondents Nos. 1 and 2 to issue the "eligibility certificate" forthwith.

The petitioner is a public limited company. It has established a solvent extraction plant in village Partala, Tehsil and District Chhindwara. The petitioner-company has been granted the certificate of having the status of "pioneer industry" by the Commissioner of Industries as per order dated October 22, 1997 (annexure P-1-A). In the meeting held on January 11, 1998 (112th meeting) of the respondent No. 2, State Level Committee it has been decided to grant eligibility certificate to the petitioner-company for a period of nine years from December 1, 1990 to November 30, 1999, as per notification dated October 23, 1981 (annexure P-1) issued u/s 12 of the Madhya Pradesh General Sales Tax Act, 1958 under which the State Government had power to grant exemption from payment of sales tax. As per item 3(c) the period of exemption is nine years in the case of pioneer industry located in any of the Tehsils of a district specified in category "C" of Part II of the annexure from the date of commencement of production. Chhindwara is included therein. The Industries Commissioner has communicated the decision dated March 11, 1998 of the State Level Committee to the petitioner by endorsing a copy of letter dated June 26, 1998. (annexure P-2). The petitioner has also executed the agreement on June 30, 1998 and submitted it before the General Manager, District Industries Centre, Chhindwara.

The petitioner''s case is that all the conditions have been complied with but the respondents Nos. 1 and 2 are not issuing the eligibility certificate with the result the respondents Nos. 3 and 4 are proceeding to impose the tax from which the exemption has been granted under the law.

The respondents Nos. 1 and 2 have not come forward with any defence except that a high level committee under the Chief Secretary has decided not to grant the said certificate. A copy of memo dated July 1, 1998 (annexure R-1) addressed to the Industries Commissioner by the Commerce and Industries Department has been produced in which it is stated that the matter relating to grant of certificate relating to "pioneer industries" is under the consideration of the State Government and it should not be issued to any industry. It is not known what has been after that.

The learned Counsel for both the sides were heard. The point for determination is whether the respondents Nos. 1 and 2 can withhold the eligibility certificate without assigning any valid reason.

The notification (annexure P-1) granting exemption from payment of sales tax to the "pioneer industries" on fulfilment of the conditions stated therein issued u/s 12 of the M.P. General Sales Tax Act, 1958 has the force of law. Its efficacy cannot be whittled down by any executive order. The State Government has no option but to honour its commitment. The rule of "promissory estoppel" and the emerging doctrine of "substantive legitimate expectation" also do not permit the Government to wriggle out of its unequivocal promise. As a matter of fact the respondents Nos. 1 and 2 have not assigned any valid reason for withholding the eligibility certificate after the approval of the State Level Committee and the communication of its decision to the petitioner. The notification has not been rescinded. The object of granting the exemption was to provide incentive for development of industries in the hitherto backward areas so as to keep pace with the industrialisation in other developed areas and open avenues for increasing the productivity and employment. If this laudable objective is the paramount consideration then refusal to grant the eligibility certificate at this stage is a retrograde step and it is difficult to comprehend it.

In State of Madhya Pradesh and another Vs. G.S. Dall and Flour Mills and Others, , a three-Judge Bench of the Supreme Court has considered the notification dated October 23, 1981 (annexure P-1) and held, if the tax-payer is within the plain terms of the exemption it cannot be denied its benefit by calling in aid any supposed intention of the exemption authority. If any other condition is prescribed which is not in the notification, it is liable to be struck down on the ground of impermissible delegation of legislative power to the executive. The executive instructions can supplement a statute or cover areas in which the statute does not extend. They cannot run contrary to statutory provisions or whittle down their effect. It is not permissible to travel beyond the terms of the notification.

The petition is allowed. The respondents Nos. 1 and 2 are directed to issue the eligibility certificate to the petitioner as per decision dated March 11, 1998 of the respondent No. 2 which has been communicated to the petitioner by the Industries Commissioner by the letter dated June 26, 1998 within one month.

