(1998) 01 MP CK 0035

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 1232 of 1988

Rajani Extractions APPELLANT

Vs

State of Madhya Pradesh and Others RESPONDENT

Date of Decision : 15-01-1998

Acts Referred:

Citation : (1998) 111 STC 794

Hon'ble Judges : Deepak Verma, J

Bench : Single Bench

Advocate : P.M. Chowdhary, for the Appellant; Piyush Mathur, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Deepak Verma, J.—By filing this petition, under Article 226 of the Constitution, petitioner is praying for quashment of annexure P13, eligibility certificate dated November 20, 1987, whereby certain modification has been effected in petitioner''s earlier eligibility certificate, without giving any opportunity of hearing to it and with retrospective effect.

2. At the outset, learned counsel for the petitioner submitted, that no amendment in the eligibility certificate with retrospective effect could be made in view of the judgment of this Court, passed in W.P. No. 990 of 1996, decided on December 15, 1997 (Kitchen Aid, Indore v. State of M.P. reported in [1998] 110 STC 109). The said judgment is based on a ratio of the judgment reported in [1996] 102 STC 483 (MP) (K.P. Enterprises v. Divisional Deputy Commissioner of Sales Tax, Raipur).

3. Brief facts are mentioned hereinbelow :

Petitioner is duly registered under the Madhya Pradesh General Sales Tax Act, 1958 and the Central Sales Tax Act, 1956 as a registered dealer. Petitioner-firm was constituted mainly to carry on the business of solvent extraction of oil seeds and oil cakes. Petitioner applied to the respondents for grant of an eligibility certificate. After scrutiny of the petitioner''s case, eligibility certificate was granted in favour of the petitioner on July 16, 1987 (annexure P11), granting the said eligibility certificate to the petitioner with effect from March 1, 1985 to February 28, 1987, on raw materials specified in the said certificate. Vide the impugned order, certain modification has been effected in the earlier eligibility certificate, withdrawing the benefits to the petitioner with reference to major oil seeds. Feeling aggrieved, petitioner has filed this petition, challenging the said partial withdrawal of the exemption granted to it.

4. Respondents have filed their return in oppugnation. They have submitted, that the registration was granted for solvent extraction out of minor oil seeds and oil cakes. The dealer applied for provisional registration under the M.P. General Sales Tax Act, 1958 in form III-A, in which, the petitioner mentioned his intention to manufacture all kinds of de-oiled cakes, de-oiled meal solvent extracted oil. They have further submitted, that petitioner had obtained the said certificate by suppression of material facts and, therefore, the exemption granted to the petitioner earlier, was modified.

5. At the time of hearing, learned counsel for the respondents, Shri Piyush Mathur, also tried to submit that before effecting the modification, petitioner was also granted an opportunity of hearing, but, has not filed any document in this regard. Respondents have also submitted with regard to the orders passed by sales tax authority in this regard. Petitioner has exhausted the remedy and no case for interference is made out.

6. In the light of aforesaid averments made by parties and the arguments advanced by them, I have heard the learned counsel at length and perused the record.

7. It is not in dispute that eligibility certificate granted in favour of any party, cannot be cancelled, modified and revoked, with retrospective effect, that too, without giving any opportunity of hearing to the affected party. The said question stands fully covered by the judgment of this Court passed in W.P. No. 990 of 1996, decided on December 15, 1997 (reported in [1998] 110 STC 109 Kitchen Aid, Indore v. State of M.P.). In the said judgment, a Division Bench judgment of this Court has been relied upon. The details of which have also been given above. It has also been considered in the said very judgment, the effect of expiry of the period of eligibility granted in favour of the parties and its cancellation with retrospective effect.

8. Petitioner has also placed reliance on a judgment of this Court, reported in [1996] 103 STC 142 (Commissioner of Sales Tax v. Madhya Bharat Papers Ltd.) which also deals with regard to cancellation of the eligibility certificate pursuant to an action taken by the sales tax authority.

9. In view of the aforesaid judgment and in the light of discussions held above, I am of the considered opinion, that annexure P13, deserves to be quashed. It is, accordingly, quashed. The petition, accordingly, stands allowed to the extent

mentioned above. On account of this, the necessary consequence is, that petitioner would be deemed to have enjoyed the necessary exemption from payment of sales tax on the basis of eligibility certificate issued by District Level Committee.

10. Looking to the facts and circumstances of the case, parties shall bear their own costs. Security amount, if deposited, be refunded back to the petitioner after its due verification.

