(2014) 10 MP CK 0011

In the Madhya Pradesh High Court

Case No : W. P. No. 5387/2013

Sharda Solvent Ltd. APPELLANT

Vs

State of M.P. RESPONDENT

Date of Decision : 30-10-2014

Acts Referred:

Citation : (2014) 10 MP CK 0011

Hon'ble Judges : S.K. Gangele, J;Rohit Arya, J

Bench : Division Bench

Advocate : Ankur Mody, Advocate for the Appellant; Praveen Newaskar, Govt. Advocate, Advocate for the Respondent

Judgement

1. Heard.

2. The petitioner has filed this petition against the orders dt. 29.6.2011 (Annexure P/11) and 24.7.2010 (Annexure P/10). The petitioner further prayed a relief that the application submitted by the petitioner in regard to granting status of exemption from payment of sales tax be considered in accordance with law.

3. The petitioner is a Public Limited Company incorporated under the Companies Act. It is engaged in the manufacture of edible oil, refined oil as well as Vanaspati oil. The petitioner company was granted exemption from payment of tax for a period of five years because it was granted a status of pioneer industry. The Notification dt.23rd October 1981 in regard to grant of exemption from payment of tax was amended and it was decided to extend the facility of exemption from payment of tax for a period of nine years to the pioneer industry, which had investment of more than five crores.

4. The petitioner company was granted certificate of eligibility for exemption from payment of sales tax w.e.f. 11.6.1993 to 10.6.1998 for a period of five years. Subsequently, the period of grant of exemption was extended to nine years from the date of commercial production with a condition that the industry should be established in no industry district. The petitioner established the

industry in District Shivpuri, which was a no industry District. Hence, the petitioner submitted an application for grant of exemption for further period of four years because it had a certificate of pioneer status. The General Manager, District Industries Centre, Shivpuri forwarded the letter of the petitioner to the department. When no decision was taken, the petitioner filed a writ petition before this court, which was registered as W.P.No.1933/1999. The aforesaid Writ Petition was disposed of vide order dt.27.11.2001 with the following directions :-

?Respondents, in their return, have submitted that the case of the petitioner is under consideration and State shall take positive decision within a period of three months.

It is, therefore, directed that the respondents shall take decision within a period of three months, keeping in mind the judgment Annexure P-9, passed in writ petition No.746/99.

As regards recovery of sales-tax concerned, respondents may proceed with the assessment but recovery shall remain stayed till question of granting status and exemption from tax is determined by the State.

With the aforesaid directions, petition is disposed of.?

5. When the direction was not followed, the petitioner filed another writ petition before this court, which was registered as W.P.No.109/2004 and was disposed of vide order dt.25.8.2006 with the following directions :-

?Accordingly, without going into the merits of the claim made by the petitioner with regard to grant of extension for a period of four years from payment of tax, respondent no.2 State Level Committee represented through the Commissioner of Industries, Bhopal is directed to decide the claim of the petitioner for grant of extension keeping in view the observation made in the order dated 27.11.01 passed by this court in W.P. 1933/00 within a period of two months from the date of receipt of certified copy of this order.

For the present this petition stands disposed of with the aforesaid directions. In the meanwhile, order passed by this court on 27.11.01 in W.P.No.1933/00 in the matter of recovery of tax shall remain stayed.

Petition stands disposed of with the aforesaid.

C.C. as per rules.?

6. Thereafter, the case of the petitioner was considered by the State Level Committee in its meeting held on 31.5.2011 and in view of the policy decision of the State Government dt.24.7.2010, the application of the petitioner for extension of period of exemption from payment of tax was rejected. The petitioner was again informed the same vide order dt.3.5.2013.

7. From the perusal of the communication dt.29.6.2011 (Annexure P/11), it is clear that the claim of the petitioner in regard to grant of exemption was rejected

in view of the decision taken by the Industry, Trade and Employment Department on 24.7.2010, however, the petitioner was granted status of pioneer industry and it was granted exemption from payment of tax in accordance with the exemption scheme available at that time. The exemption certificate was granted to the petitioner for a period from 11.6.1993 up to 10.6.1998. The petitioner was eligible to get further exemption for another period of four years because at that time in accordance with the notification of the department an industry, which was established in no industry area, was eligible to get exemption for the total period of nine years from the date of communication of production. This court vide order dt.27.11.2001 directed the department to consider the case of the petitioner in accordance with the order passed by the court in W.P.No.746/1999. It is an admitted fact that the respondents have not considered case of the petitioner accordingly and they have held that the petitioner is not eligible to get exemption in view of the decision taken by the government in the year 2010. Hence, the decision taken by the State Level Committee in its meeting held on 31.5.2011 communicated to the petitioner vide letter dt.29.6.2011 (Annexure P/11) is arbitrary and illegal.

8. Consequently, the petition is allowed. The impugned decision of the State Level Committee taken in its meeting dt.31.5.2011 communicated to the petitioner vide letter dt.29.6.2011 (Annexure P/11) and further communication vide letter dt.3.5.2013 (Annexure P/12) are hereby quashed. The matter is remanded back to the State Level Committee to decide the application of the petitioner in regard to grant of exemption in accordance with the direction issued by this court in W.P.No.1933/1999 vide order dt.27.11.2001 and observations made in this order within a period of three months from the date of receipt of copy of the order.

9. No order as to costs.