(2005) 07 MP CK 0096

In the Madhya Pradesh High Court

Shri Jawaharlal APPELLANT

Vs

State of Madhya Pradesh and Others RESPONDENT

Date of Decision : 21-07-2005

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (2008) ILR (MP) 960 : (2007) 8 VST 635

Hon'ble Judges : A.M. Sapre, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.M. Sapre, J.—This petition is filed by the petitioner under article 226/ 227 of the Constitution of India for claiming the following relief:

7(i) To issue a writ of mandamus requiring the correspondent and in particular District Level Committee to consider the application of the petitioner keeping in view the option exercised by the petitioner and further direct the authorities concerned to properly process the application and adjudicate upon the same in accordance with law.

(ii) To issue a writ of mandamus and/or any other writ, direction or order requiring the respondent to issue correct certificate in regard to the eligibility of the petitioner for exemption under the incentive scheme.

(iii) To issue a writ of mandamus and/or any other writ, direction or order to decide the issue relating to closure of the petitioner''s business for reasons beyond his control and requiring the State Level Committee to consider the issue on merits and further examine the period of closure and extend the period of exemption by that period.

2. In substance, therefore, the petitioner is not satisfied with the exemption certificate (annexure P3) granted to it by the State authorities from payment of sales tax for the period from December 4, 1990 to December 3, 2993 on its

goods (made of soya). According to the petitioner, it is also entitled to claim exemption for the period in question from payment of purchase tax in addition to sales tax and since the impugned certificate is only confined to exemption from payment of sales tax and not purchase tax and hence, it is bad. In other words, the petitioner wants exemption from payment of purchase tax which has not been granted to it in the certificate (annexure P 3). Notice of this writ was issued to the respondents. They are served. A return has been filed defending the action.

3. Heard Shri P.M. Choudhary, learned Counsel for the petitioner and Shri A.A. Kutumble, learned Additional Advocate-General with Shri M. Parwal for the respondents.

4. According to learned Counsel for the petitioner, the case of the petitioner should have been considered in terms of exemption notification dated October 23, 1981 and since it was not so considered despite petitioner''s request and hence, the certificate issued confining its applicability to exemption from payment of sales tax is bad. In reply, learned Counsel for the State defended the grant of eligibility certificate.

5. Having heard learned Counsel for the parties and having perused record of the case, I find no merit in this petition.

6. In my considered view, no fault can be noticed in the certificate of exemption granted to the petitioner in accordance with the requirement of notification then in force being the latest one dated October 16, 1986 mentioned in the certificate. The petitioner has got the benefit of the exemption notification which was then in force. There was neither any occasion nor any provision for consideration of the petitioner''s case in the context of old notification of 1981 (October 23, 1981). Whatever benefits which are provided under the exemption notification dated October 16, 1986, were all granted to the petitioner. Mere mention of date of notification in the form by the petitioner does not give it any right to claim exemption of any notification of its choice. The respondents were, therefore, fully justified in examining the case of the petitioner in the light of exemption notification No. A-3-II-86-ST(v)74, dated October 16, 1986 as it was this notification which was holding the field at the relevant time and governed the cases of new industries.

7. Now that period of exemption is over in 2993, no reliefs as such can be granted to the petitioner after the lapse of 12 years. It should feel satisfied of what it got by way of exemption in payment of sales tax on its goods.

8. I am, therefore, unable to notice any merit in this petition. It is accordingly, dismissed.

9. No costs.

