(2008) 04 MP CK 0055

In the Madhya Pradesh High Court

Transline Engineers Pvt. Ltd. APPELLANT

Vs

State of M.P. and Others RESPONDENT

Date of Decision : 08-04-2008

Acts Referred:
Madhya Pradesh Commercial Tax Act, 1994 — Section 17, 17(2)

Citation : (2008) 15 VST 163

Hon'ble Judges : R.S. Jha, J;R.S. Garg, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard.

2. At the very outset, Shri Shukla, learned Deputy Advocate-General for the State, submitted that the constitutional validity of Notification No. A-3-74-99-ST-V(48) dated June 9, 2000 has been upheld by this Court in Writ Petition No. 28300 of 2003 (D.J. Laboratories Private Limited v. State of Madhya Pradesh Pradesh [2008] 14 VST 586 (MP). Therefore, the petition has become infructuous.

3. Shri Shekhar Sharma, learned Counsel for the petitioner, submitted that on earlier occasion, Section 17(2) of the Madhya Pradesh Commercial Tax Act, 1994 was not brought to the notice of this Court and as the judgment of the Supreme Court in the matter of State of Punjab Vs. Nestle India Ltd. and Another, was not brought to the notice of this Court, the judgment in the matter of D.J. Laboratories Private Limited (Writ Petition No. 28300 of 2003 See [2008] 14VST 586 (M.P)) deserves reconsideration by a larger Bench.

4. Section 17(2) provides that any notification issued u/s 17 may be rescinded before the expiry of the period for which it was to have remained in force and on such rescission, such notification shall cease to be in force and that a notification rescinding an earlier notification shall have prospective effect.

5. In the present matter, the original Notification No. A-3-24-94-ST-V(108) dated

October 6, 1994 has not been rescinded. In fact the benefit flowing from that notification would now be available to the particular class of persons and industries, which have undertaken the particular work, have taken possession of the property, have taken loan from a Nationalised Bank or who have been registered before a particular date. The notification even provides that after registration, if the person has spent some good amount on establishment of the industry then such person would be entitled to the benefit flowing from the original notification.

6. By the amended notification, the Government has provided that the industry would be classified in two parts : one who have already come into production and the other who have taken effective steps for establishment of the industry. The present petitioner was not registered as an industrial unit on or before December 31, 1999, therefore, he was held not entitled to any benefit.

7. In the matter of State of Punjab Vs. Nestle India Ltd. and Another, , the question before the Supreme Court was whether the Government or a department of the Government is estopped from contending or doing something contrary to the promise made by it. In the present case, the Government is not doing something which runs contrary to the original notification.

Taking into consideration the totality of the circumstances and the earlier judgment, we do not think that the matter requires to be referred to the larger Bench. The petition deserves to and is accordingly dismissed.