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Court : Madhya Pradesh

Decided On : Apr-28-1987

Reported in : [1988]70STC12(MP)

Judge : G.G. Sohani and ;P.D. Mulye, JJ.

Appeal No. : Misc. Petition No. 864 of 1986

Appellant : Badrinarayan

Respondent : State of M.P. and ors.

Advocate for Def. : Kulshrestha, Government Adv.

Advocate for Pet/Ap. : Chaphekar and ; Anil Trivedi, Advs.

Disposition : Petition allowed

Judgement :

G.G. Sohani, J.

1. This is a petition under Article 226 of the Constitution of India.

2. The material facts giving rise to this petition, briefly, are as follows :

The petitioner carries on the business of blending tea leaves at Indore under the name, M/s. Quality Tea Industries. The petitioner applied for grant of eligibility

certificate for claiming exemption from payment of sales tax in accordance with the provisions of the notification dated 23rd October, 1981 issued by the State Government, in exercise of the powers conferred on the State Government by Section 12 of the Madhya Pradesh General Sales Tax Act, 1958 (hereinafter referred to as 'the Act'). By that notification, exemption was granted from payment of sales tax to the class of dealers specified in the notification, subject to the conditions and restrictions set out in the notification. The petitioner contends that though the petitioner fulfilled all the necessary conditions for grant of eligibility certificate under the notification, he was not granted that certificate on the ground that the petitioner was not engaged in any manufacturing process and hence was not entitled to any exemption. Aggrieved by this refusal to issue the eligibility certificate, the petitioner has filed this petition.

3. Having heard the learned counsel for the parties, we have come to the conclusion that this petition deserves to be allowed. The short question for consideration in this case is whether the petitioner was entitled to the grant of eligibility certificate in accordance with the provisions of the notification dated 23rd October, 1981 issued by the State Government under Section 12 of the Act. The relevant provisions of that notification, which were in force at the material time, are as follows :

F. No. A3-41-81(35)-ST-V dated 23rd October, 1981.-In exercise of the powers conferred by Section 12 of the Madhya Pradesh General Sales Tax Act, 1958 (No. 2 of 1959), the State Government hereby exempts the class of dealers specified in column (1) of the Schedule below, who have set up industry in any of the districts of Madhya Pradesh specified in the annexure to this notification and have commenced production after 1st April, 1981, from payment of tax under the said Act for the period specified in column (2), subject to the restrictions and conditions specified in column (3) of the said Schedule :- SCHEDULEClass of dealers Period Restrictions and conditionssubject to which exemption has been granted(1) (2) (3)1. Dealers who-(a) hold certificate of Two years The dealer specified inregistration under from the column (1) shall continue to the Madhya Pradesh date of furnish the prescribed General Sales Tax commence- returns under the Madhya Act, 1958 (No. 2 of ment of Pradesh General Sales Tax 1959);

production. Act, 1958, and shall produce(b) are registered as before the assessing autho-small-scale indus- rity at the time of his assess-trial units with the ment a certificate issued byIndustries Depart- the Director of Industries, ment of the Govern- Madhya Pradesh, or any ment of Madhya officer authorised by him for Pradesh ; and the purpose, certifying that(c) have set up indus- such dealer is eligible to try in any of the claim the exemption anddistricts specified in that he has not opted for thePart I of the Anne- scheme of deferring the pay- xure. ment of tax under the rulesframed for this purpose.

Now, it is not disputed that the petitioner has set up an industry at Indore, which is one of the districts specified in the annexure to the notification. It is also not disputed that the petitioner holds a certificate of registration under the Act. The only ground on the basis of which eligibility certificate was refused to the petitioner was that the process of blending tea leaves carried on by the petitioner, did not amount to 'manufacture' and hence, the petitioner could not be held to be engaged in the production of any commodity.

4. The question that arises for consideration in this petition, therefore, is whether as a result of blending of different qualities of tea leaves, a commercially new and distinct commodity comes into existence. In this connection, we may usefully refer to the following observations of the Supreme Court in Chowgule & Co. Pvt. Ltd. v. Union of India [1981] 47 STC 124 at page 131 :

The Revenue however relied on the decision of the Bombay High Court in Nilgiri Ceylon Tea Supplying Co. v. State of Bombay [1959] 10 STC 500. The assessees in this case were registered dealers in tea under the Bombay Sales Tax Act, 1953, and they purchased in bulk diverse brands of tea and without the application of any mechanical or chemical process, blended these brands of different qualities according to a certain formula evolved by them and sold the tea mixture in the market. The question arose before the sales tax authorities whether the different brands of tea purchased and blended by the assessees for the purpose of producing the tea mixture could be said to have been 'processed' after the purchase within the meaning of the proviso to Section 8(a), so as to preclude the assessees from being entitled to deduct from their turnover under Section 8(a) the

value of the tea purchased by them. The High Court of Bombay held that the different brands of tea purchased by the assessees could not be regarded as 'processed' within the meaning of the proviso to Clause (a) of Section 8, because there was not even application of mechanical force so as to subject the commodity to a process, manufacture, development or preparation' and the commodity remained in the same condition. The argument of the Revenue before us was that this decision of the Bombay High Court was on all fours with the present case and if the blending of different brands of tea for the purpose of producing a tea mixture in accordance with a formula evolved by the assessees could not be regarded as 'processing' of tea, equally on a parity of reasoning, blending of ore of different chemical and physical compositions could not be held to constitute 'processing' of the ore. Now undoubtedly there is a close analogy between the facts of the Nilgiri Tea Company's case [1959] 10 STC 500 (Bom) and the facts of the present case, but we do not think we can accept the decision of the Bombay High Court in the Nilgiri Tea Company's case [1959] 10 STC 500 as laying down the correct law. When different brands of tea were mixed by the assessees in the Nilgiri Tea Company's case [1959] 10 STC 500 (Bom) for the purpose of producing a tea mixture of a different kind and quality according to a formula evolved by them, there was plainly and indubitably processing of the different brands of tea, because these brands of tea experienced, as a result of mixing, qualitative change, in that the tea mixture which came into existence was of different quality and flavour than the different brands of tea which went into the mixture.

In view of the aforesaid observations of the Supreme Court, the contention advanced on behalf of the respondents that the petitioner was not engaged in the production of any article cannot be upheld. It is significant to note that in a subsequent notification dated 16th October, 1986 issued under Section 12 of the Act, 'blending of tea' is one of the industrial units specified, to whom exemption under the notification would not be available. This shows that but for this provision, exemption would have been available. Such a provision was not incorporated in the notification dated 23rd October, 1981. Under the circumstances, it must be held that the refusal to issue eligibility certificate to the petitioner was not justified.

5. For all these reasons, this petition is allowed. The respondents are directed to issue an eligibility certificate to the petitioner in accordance with the provisions of the notification dated 23rd October, 1981 (annexure 3). In the circumstances of the case, parties shall bear their own costs of this petition. The outstanding amount of security deposit, if any, shall be refunded to the petitioner.

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