

Enggee Electronics Vs. Industries Commissioner and ors.

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Court : Madhya Pradesh

Decided On : Jan-02-2001

Reported in : [2001]122STC12(MP)

Judge : A.M. Sapre, J.

Acts : Madhya Pradesh General Sales Tax Act, 1958 - Sections 12; [Central Sales Tax Act, 1956](#) - Sections 8(5)

Appeal No. : Misc. Petition No. 1281 of 1992

Appellant : Enggee Electronics

Respondent : industries Commissioner and ors.

Advocate for Def. : S. Mukati, Adv.

Advocate for Pet/Ap. : G.M. Chafekar and ;C.R. Pancholia, Adv.

Disposition : Petition allowed

Judgement :

ORDER

A.M. Sapre, J.

1.The decision rendered in this writ shall govern the disposal of other writ being M.P. No. 1336 of 1992 as in both these writs, common question of law is involved.

2. By filing this writ under Articles 226/227 of the Constitution of India, the petitioner seeks quashing of order dated August 3, 1991, passed by District Level Committee (annexure G/1) and an appellate order dated June 4, 1992 (annexure I), which affirms the order dated August 3, 1991, passed by the District Level Committee. In order to appreciate the issue involved in the writ, few facts which lie in a narrow compass need mention.

3. Petitioner is engaged in the business of manufacture of sale of rechargeable torches. For this purpose it has set up a new small-scale industrial unit at Sanawad in District Khargone. Necessary provisional registration certificates declaring it to be a S.S. unit have been issued to the petitioner, similarly provisional certificate of registration under State Sales Tax Act and Central Sales Tax Act have also been issued to the petitioner to enable them to carry on business and comply the provisions of sales tax laws.

4. In exercise of powers conferred under Section 12 of the State Sales Tax Act (since repealed) and Section 8(5) of the [Central Sales Tax Act, 1956](#) the State Government as also the Central Government have issued several notifications from 1981 to 1986 by which the new industrial units were given exemption from payment of State and Central sales tax. These notifications are :

1. A-3-41-81(35)-ST-V dated October 23, 1981 (State).

2. A-3-41-81(31)-ST-V dated June 29, 1982 (Central).

3. A-3-II-86(78)-ST-V, dated October 16, 1987 (State).

4. A-3-II-86(74)-ST-V dated October 16, 1986 (State).

5. A-3-II-86(75)-ST-V dated October 16, 1986 (State).

6. A-3-II-86(76)-ST-V dated October 16, 1986 (Central).

7. A-3-II-86(86)-ST-V(63) dated December 30, 1987 (State).

5. The petitioner claiming to have commenced the commercial production in their new industrial unit on January 11, 1988 made an application (annexure D) to the

General Manager, District Industries Centre, Khargone (respondent No. 3) on April 11, 1988. By this application the petitioner claimed grant of eligibility certificate for exemption from payment of sales tax under the State Sales Tax Act pursuant to aforementioned exemption notifications. It is the case of petitioner that while their application for grant of exemption was pending, the State issued one Notification No. A-5-4-88 ST-V(12), dated March 3, 1989 (annexure E) amending the earlier Notification No. A-3-11-86(74) ST-V dated October 16, 1986. By amending notification, Clause (xii) of the general conditions specified in October 16, 1986 Notification [A-3-11-86(74) ST-V] was substituted by inserting new clause which reads as under and which alone is relevant for the disposal of this petition :

'(xii)(a). A dealer shall have the option to avail of the facility of exemption under this notification or under S.R.D. Notification No. A-3-41-81(35)-ST-V, dated the 23rd October, 1981. Such option once exercised shall be final and shall not be changed. A dealer who has opted for facility for exemption under the aforesaid notification dated the 23rd October, 1981 shall not be eligible for exemption under this notification :

Provided that a dealer who had opted for the facility of exemption under S.R.D. Notification No. A-3-41-81(35)-ST-V, dated the 23rd October, 1981, before the date of commencement of this provision may, within ninety days of such date opt for the facility of exemption under this notification and thereupon he shall avail of such facility for the unexpired period of eligibility ;

(b) A dealer other than a dealer specified in Clause (xii-a) may, in lieu of exemption under this notification, opt for deferment of payment of tax under the Madhya Pradesh Deferment of Payment of Tax Rules, 1986 and thereupon he shall not be eligible for exemption under this notification ;

(c) If a dealer who is availing of the facility of exemption under this notification goes for diversification during the period of eligibility, he shall be eligible to avail of the facility of exemption under this notification in respect of the new products also from the date of commencement of commercial production under the diversification scheme to the date of expiry of the period of eligibility.'

6. The petitioner accordingly made an application dated May 29, 1989 (annexure F) claiming benefit of amended Clause (xii) and opting for the benefit provided in the said clause. It is this application which was rejected by the District Level Committee on August 3, 1991 (annexure G). Petitioner then filed an appeal to State Level Committee. This appeal was also dismissed on June 4, 1992 (annexure 1). It is against this order, the petitioner has filed this writ and questioned the correctness of the view taken therein.

7. The State by filing the return has supported the impugned orders.

8. Heard Shri G.M. Chafekar, learned Senior Counsel with Shri C.R. Pancholia, learned counsel for the petitioner and Shri S. Mukati, learned Government Advocate for the respondents.

9. While assailing the legality and validity of the impugned orders of District Level Committee which proceeded to reject the application of petitioner in claiming exemption, learned counsel for the petitioner, urged that on proper interpretation of Clause (xii), quoted supra, would clearly show that a case for grant of exemption as claimed by the petitioner is made out. Learned counsel urged that both the authorities which rejected the prayer erred in holding that the petitioner is not entitled to claim the benefit of 1981 notification in terms of amended Clause (xii). Learned counsel maintained that careful reading of Clause (xii) would clearly show that petitioner was given a right to exercise their option once, as to which facility they (dealer) would like to opt, i.e., under the amended notification or 1981 Notification and therefore, since the petitioner opted for the facility of exemption under 1981 Notification, the same should have been granted to the petitioner.

10. In reply, the learned counsel for the State in substance argued for upholding of the view of the two authorities, i.e., District Level Committee and State Level Committee. In his submission, the view taken by the authorities in rejecting petitioner's application is reasonable, legal and proper and hence this Court should uphold it.

11. Having heard the learned counsel for the parties and having perused the record of the case, I am of the considered view that this petition deserves to be

allowed.

12. The fate of this petition depends upon the true interpretation of the Clause (xii) quoted supra.

13. A close reading of Clause (xii) would show that it gives an opportunity to a dealer to avail of the option, whether to take benefit of notification, i.e., 1989 or notification dated October 23, 1981. It also provides that once option provided in Clause (xii)(a) is exercised then it shall be final and shall not be changed. It then further provides that once the dealer has opted for facility to claim exemption under October 23, 1981 notification then he shall not be eligible to claim exemption under this notification, i.e., 1989. The proviso then says that those dealers who have already availed of the facility under October 23, 1981 notification before March 3, 1989 notification [i.e., amended Clause (xii)] was brought into force then they will be entitled to opt for exemption under March 3, 1989 notification provided they apply for such option within 90 days from the date of commencement of notification, i.e., March 3, 1989.

14. In my opinion, there is absolutely no ambiguity either in language of Clause (xii) or in its interpretation. The petitioner when applied on April 11, 1988, the notification dated March 3, 1989 [i.e., amended Clause (xii)] was not in force. When petitioner's application was pending consideration, the amendment came in force entitling the petitioner to opt for claiming benefit either under the 1981 notification or amended notification (March 3, 1989). The petitioner did make an application within 90 days, i.e., on May 29, 1989 opting for claiming benefit under the notification dated October 23, 1981. The petitioner was, therefore, certainly entitled to avail of the benefits of October 23, 1981 notification.

15. In my opinion, even a dealer who has already availed of the benefit under October 23, 1981 notification prior to March 3, 1989 (i.e., prior to the commencement of amended notification), he too is entitled to opt for the change over provided he makes an application within 90 days to be counted from March 3, 1989 exercising his option. Only those dealers who have availed of exemption facility under October 23, 1981 notification but do not make an application within 90 days in terms of proviso would lose an opportunity to get benefit of Clause (xii).

16. The amended Clause (xii) is enacted for the benefit of dealer. It gives an additional opportunity to the dealer to get benefit in payment of sales tax in some different form than the one initially opted by him. It has to be therefore, interpreted in favour of dealer as interpretation in favour of dealer achieve the object of amendment for which it was enacted.

17. In my opinion, therefore, both the authorities below were not justified in rejecting the application of petitioner by holding that petitioner is not entitled to claim the benefit of notification dated October 23, 1981. In my opinion as observed supra, the petitioner was entitled to claim and opt for exemption contained in notification dated October 23, 1981 and hence their case should have been considered on merits with a view to find out whether the petitioner satisfies the requirement of notification dated October 23, 1981 for claiming benefits of the said notification.

18. Accordingly and in view of the aforesaid discussion, the petition succeeds and is allowed. Impugned order dated July 27, 1991 (annexure G1) and order dated April 27, 1992 (annexure 1) are quashed by writ of certiorari. The respondent No. 3 is directed to reconsider the application of petitioner afresh on merit in the light of observation made in the petition supra. Since the issue relates to exemption of payment of sales tax to small-scale industries it is desirable that the matter be finally decided within three months from the date of this order.

No costs. Security amount, if deposited by the petitioner, be refunded.