

# SUPREME COURT OF INDIA

Birla Jute & Industries Ltd.

Versus

State of M.P. and another

(S.P. Bharucha, S.S. Mohammed Quadri and Shivaraj V. Patil, JJ.)

Civil Appeal No. 82 of 1998.

04.05.2000

## JUDGMENT

**S.P. Bharucha, J.** - The appellant was issued an eligibility certificate under the provisions of an exemption notification dated 9th February, 1977 issued in exercise of the power conferred by Section 10 of the Madhya Pradesh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976. The said certificate granted to the appellant an exemption for raw materials required by it in the process of manufacture. In the words of the judgment of the High court, "The raw material, as per the certificate, included for exemption was Limestone, Laterite & Iron Ore, Gypsum, Pozzolanic Materials such as Coal Ash, Cal Slinder, Brick Bats & Calcine Clay, etc., all types of coal, Lubricants and gunny bags. Later, the certificate was amended to include consumable goods including spares and ancillaries....." (Emphasis supplied). The period of the exemption under the said certificate commenced on 21st October, 1982 and concluded on 20th October, 1987.

2. On 25th March, 1991, long after the period specified in the said certificate had expired, the appellant was issued a notice by the District Industries Centre of the first respondent. The notice was on the subject of "Review of the Entry Tax Exemption case." The notice recited that the said certificate had been granted to the appellant, and it stated :

"..... In these Certificates other items have been specified in addition to raw materials.

Therefore, the case of your unit is under consideration for review by the District Grant Committee. The next meeting of the District Grant Committee will be held on 15.4.1991 at 3 P.M. in the District Industries Centre. You can present your cases in writing or by appearing in person."

Upon this notice an order was passed on 30th October, 1991. It stated : "The following items mentioned in Sr. Nos. 7 and 8 in the Entry Tax exemption certificate ..... are deleted from the date of issue of the eligibility certificate." (Emphasis supplied). At serial No. 7 gunny bags were mentioned.

3. The said order dated 30th October, 1991 was impugned by the appellant in a writ petition filed in the High Court of Madhya Pradesh. The High Court's judgment records that the contention of the appellant was that "the committee had no power or authority to review the certificate of eligibility once granted....." There is no finding of the High Court on this contention but, on another contention, the High Court though it appropriate to order that the matter be placed again before the authorities of the first respondent. Again the judgment and order of the High Court, the appellant is

here by special leave.

4. It was contended on behalf of the appellant that had the High Court dealt with the aforesaid contention, it would surely have been decided in favour of the appellant because the very same issue had been dealt with by the High Court, and, incidentally, by the same Bench, about a month earlier. This judgment of the High Court is in ***K.P. Enterprises v. Divisional Deputy Commissioner of Sales Tax, Raipur and others, 102 S.T.C. 483***. The High Court there said :

"However, one thing is clear that the eligibility certificate for exemption from tax was given by the Committee on April 19, 1990 and the same has been withdrawn/revoked by order dated March 7, 1991 with effect from April 19, 1990. This cannot be permitted because it will amount to causing greater hardship to the assessee because the assessee has acted upon the eligibility certificate issued by the competent authority and on the basis of the appreciation of facts, the authority has now changed its opinion and wants to withdraw the certificate. If the authority wants to withdraw the eligibility certificate, then the affectivity of withdrawal shall be with effect from the date of order and it cannot be made retrospective. To this extent submission of learned counsel is correct that the order of withdrawal of eligibility certificate cannot be given retrospective effect and the petitioner is entitled for the relief to this extent."

The Special Leave Petition filed by the State against this judgment and order was dismissed by this Court.

5. Learned counsel for the appellant referred to the decision of this Court in ***Central Areca Nut & Cocoa Marketing & Processing Co-operative Ltd. v. State of Karnataka and others, (1997)8 SCC 31***. That decision was in relation to an exemption notification that had been struck down. This Court said :

"In our view, the High Court ought not to have gone into the question merely for the purpose of the future and, at any rate, ought to have noticed the highly inequitable consequences of its interference so far as the appellant-Society as concerned. The appellant was given the exemption by the State, it was challenged by the respondents, the High Court did not suspended the notification pending the writ petition, the appellant was statutorily prohibited from collecting the sales tax which was exempt and when the writ petition was allowed in 1990 quashing the exemption of September, 1977, the appellant became liable to pay tax for the period of September 1977 to March 1984. Learned counsel for the appellant informed us that now the Department has indeed taken some steps to recover the tax relatable to the above period. It is also significant that none appears for the respondent-writ petitioners and that the State of Karnataka is supporting the appellant."

6. To the same effect are observations in the judgment of this Court (reproduced at page 368 as an order connected to the judgment in ***State of Rajasthan and another v. Mahaveer Oil Industries and others, (1999)4 SCC 357***) in *State of Rajasthan and another v. Gopal Oil Mills and another*, thus :

"We find that even after the impugned judgment of the High Court was rendered on 12.1.1993, eligibility certificates were issued to certain industrial units and a circular dated 27.1.1994 was also issued by the Director of Industries of the State Government on the same lines under which some benefit has been availed by those industrial units under the State Sales Tax Act. In these circumstances, we consider it appropriate to direct that the unavailed benefit under those eligibility certificates under the State Sales Tax Act would not be available to them but the extent to which the benefit under the State Act has been already availed up to 4.4.1994, the date on which the *ex parte*

order of stay was made by this Court, on the basis of the eligibility certificates so issued, the State Government would not disturb that position by seeking to recover any amount under that head."

7. Learned counsel for the State submitted that it became necessary to review the said certificate because it had been subsequently got amended at a subordinate level to include gunny bags. There is no warrant for the submission. As the High Court noted, the said certificate specified gunny bags from the very beginning. In any event, the case of fraud which would have been specified in the notice to review. As we have seen, the notice for review did not so state. It did not even mention which items in the said certificate were sought to be excluded on the ground that they had been "specified in addition to raw materials."

8. There was, in our view, no justification for reviewing the said certificate long after the term thereof had expired and, therefore, long after its benefit had been availed by the appellant or at all. The view taken by the High Court in the judgment to which we have referred to is correct, and is borne out by the decisions of this Court aforementioned.

9. We note in conclusion that the appeal has been argued only upon this point on behalf of the appellant.

10. The appeal is allowed. The judgment and order under appeal is set aside. The writ petition filed by the appellant is allowed and the order dated 30th October, 1991 passed by the District Industries Centre of the first respondent is quashed.

The 1st respondent shall pay to the appellant the costs of the appeal.