

PETITIONER:
COMMISSIONER OF SALES TAX, M.P.

Vs.

RESPONDENT:
MADHYA BHARAT PAPERS LTD.

DATE OF JUDGMENT: 18/01/2000

BENCH:
R.C.Lahoti, N.Santosh Hedge

JUDGMENT:

R.C.LAHOTI, J.

In exercise of the powers conferred by sub-Section (5) of Section 8 of the Central Sales Tax Act, 1956, the Government of Madhya Pradesh issued a notification No.F.No.A3-41-81(31)-ST-V Dated the 29th June, 1982 allowing exemption from payment of tax to certain dealers subject to satisfying the requirements of the notification. The relevant part of the notification reads as under:-

NOTIFICATION

F.No.A3-41-81(31)-ST-V Dated the 29th June, 1982. Whereas, the State Government is satisfied that it is necessary so to do in the public interest;

Now, therefore, in exercise of the powers conferred by sub-section (5) of Section 8 of the Central Sales Tax Act, 1956 (No.74 of 1956), the State Government hereby directs that no tax under the said Act shall be payable with effect from the 1st July, 1982, by the 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 (.....) in respect of sales in the course of inter- state trade or commerce of goods produced / manufactured by them, for the period specified in column (2), subject to the restrictions and conditions specified in column (3) of the said Schedule:-

SCHEDULE

Class of dealers Period Restrictions and conditions subject to which exemption has been granted.

(1)	(2)	(3)
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2. Dealers who -

a) are registered in the case The dealer specified under the Madhya of an industry in column (1) shall Pradesh

General located in a continue to furnish Sales Tax Act, district the prescribed 1958 (No.2 of 1959) specified in returns under the and the Central Sales category 'A' of Central Sales Tax Act, 1956 (No. Part-II of the Act, 1956 (No.74 to 1956). Annexure, up to 1956), and shall the date on produce before the which period assessing authority of 3 years, at the time of his beginning from assessment a certi- the date of ficate issued by commencement the (Industries of production, Commissioner)Madhya expires. Pradesh, or any officer authorised by him for the purpose, certifying that such dealer is eligible to claim

the exemption from payment of tax and that he has opted for the scheme of exemption from payment of tax under the Madhya Pradesh General Sales Tax Act, 1958 (No.2 of 1959) Under the separate Revenue Department Notification No. A-3-41-81(35)-ST-V dated 23.10.81.

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The respondent, a public limited company, is a new industrial unit engaged in manufacture and sale of paper at Champa in the backward tribal area of District Bilaspur in the State of Madhya Pradesh. It is not disputed that the respondent industrial unit satisfies the requirements of Columns (2) and (3) of the notification. It is also not disputed that the respondent was registered as a dealer under the M.P. General Sales Tax Act, 1958 as also under Section 7(2) of the Central Sales Tax Act, 1956. The registration under the Central Sales Tax Act is dated 12.11.1981. Having taken into consideration the two sales tax registrations as 'dealer' under the two Acts i.e., the State and the Central Acts, the Directorate of Industries issued a certificate of eligibility dated 19.2.1985 for exemption from payment of sales tax whereby it was certified that the respondent was a new

unit having gone into production on 10.1.1984 i.e. after 1.4.1981 and as such eligible for exemption from payment of sales tax. It was also certified that the unit being located in District Bilaspur - category Backward 'A', was eligible for exemption for the period upto 9.1.1987.

The Assistant Commissioner of Sales Tax formed an opinion that for the purpose of claiming benefit of the exemption notification a dealer registered under the State Act has also to be registered under sub-section (1) of Section 7 of the Central Sales Tax Act but the respondent was registered under sub-Section (2) and not sub-Section (1) of Section 7 of the Central Sales Tax Act and therefore was not entitled to the benefit of the exemption notification dated 29.6.1982. The Appellate Deputy Commissioner agreed with the Assistant Commissioner. In an appeal preferred by the respondent the Board of Revenue reversed the finding of the authorities below and held that on the basis of the certificate of eligibility issued by the Directorate of Industries, the respondent was entitled to exemption from payment of sales tax and therefore the assessment and consequential penalty were unwarranted.

At the instance of the Revenue the following question was stated for the opinion of the High Court under Section

44 of the M.P. General Sales Tax Act:-

"Whether on the facts and circumstances of the case, the Tribunal was justified in holding that the dealer is eligible to avail of the exemption under Separate Revenue Department Notification No. A-3-41-81-(31)-ST-V, dated 29.6.82 in respect of the Inter State sale of goods manufactured by him by virtue of his holding an eligibility certificate in fulfilment of one of the conditions laid down in the said notification for eligibility, although he was not holding a Registration Certificate under sub-section (1) of Section 7 of the Central Sales Tax Act, 1956."

The High Court of Madhya Pradesh has answered the question in favour of the respondent-assessee forming an opinion that the eligibility certificate issued by the Directorate of Industries was conclusive and binding on the assessing authorities and they could not go into the question whether the respondent-assessee was eligible for the benefit of exemption inspite of his holding the eligibility certificate by entering into the question of the respondent's registration whether it was under sub-Section (1) or (2) of Section 7 of the Central Sales Tax Act. Feeling aggrieved the Revenue has come up in appeal before this Court.

It was submitted by the learned counsel for the appellant that on a full reading of the notification and placing a reasonable construction thereon the expression - ".....registered under the Central Sales Tax, 1956", as employed in the first column of the notification

should be understood as meaning the registration under sub- Section (1) of Section 7 of the Central Sales Tax Act; registration under sub-Section (2) of Section 7 of the Central Sales Tax Act is not covered by the expression and is of no relevance for the purpose of claiming exemption under the notification.

Section 7 of the Central Sales Tax Act (relevant part thereof) reads as under:

Registration of dealers -

(1) Every dealer liable to pay tax under this Act shall, within such time as may be prescribed for the purpose, make an application for registration under this Act to such authority in the appropriate State as the Central Government may, by general or special order, specify, and every such application shall contain such particulars as may be prescribed.

(2) Any dealer liable to pay tax under the sales tax law of the appropriate State, or where there is no such law in force in the appropriate State or any part thereof, any dealer having a place of business in that State or part, as the case may be, may, notwithstanding that he is not liable to pay tax under this Act, apply for registration under this Act to the authority referred to in sub-section (1), and every such application shall contain such particulars as may be prescribed.

Explanation - For the purpose of this sub-section, a

dealer shall be deemed to be liable to pay tax under the sales tax law of the appropriate state notwithstanding that under such law a sale or purchase made by him is exempt from tax or a refund or a rebate of tax is admissible in respect thereof.

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A bare perusal of the above quoted provision goes to show that every dealer liable to pay tax under the Central Sales Tax Act shall secure a registration under sub-Section (1) of Section 7. Such dealers as have a place of business in a State and are not liable to pay tax under the Central Act may still have themselves registered under sub-Section (2) of Section 7 of the Central Sales Tax Act if (i) they are dealers liable to pay tax under the Sales Tax law of the appropriate State (notwithstanding the fact that the sales or purchases made by them are exempt from tax or a refund or a rebate of tax is admissible in respect thereof), or (ii) there is no State Legislation attracting liability to pay tax on such dealers. Such a prayer for registration shall be made to the same authority who grants registration under sub Section (1). Registration under sub-section (1) is compulsory; registration under sub-section (2) is optional. For the purpose of securing a registration under sub-section (2) abovesaid the dealer need not necessarily be liable to pay any amount of tax.

The learned counsel for the appellant submitted that the dealers liable to pay tax under the Central Act have been dealt with only under sub-section (1) of Section 7; sub-section (2) refers to registration under the sales-tax law of the appropriate State if there be one in force and in as much as the relevant notification dated 29.6.1982 deals with exemption from payment of tax under the Central Act, it is necessary that the dealer should have been registered under sub-section (1) of Section 7 of the Act. However, we find no merit in the contention. The language of the notification is plain and simple. It admits of no ambiguity. The requirement of Column (1) is satisfied if the dealer is registered under the State Act and the Central Act-both; it is immaterial whether the registration under the Central Act is under sub-section (1) or sub-section (2) of Section 7. A registration under sub-section (2) of Section 7 is certainly a registration under the Central Sales Tax Act. This is clear from the language of sub-section (2) of Section 7 which speaks, inter alia, - "...may, notwithstanding that he is not liable to pay tax under this Act, apply for registration under this Act to the authority referred to in sub-section (1)...."

The learned counsel for the respondent-assessee has rightly pointed out that the certificate of registration 'valid from 12.11.1981 until cancelled' was secured by the respondent though on the date of registration it was not liable to pay tax under the Central Act. Liability to pay tax arose on commencement of production and business on 10.1.1984 whereafter exemption from payment of sales-tax was claimed under the notification. Without regard to the fact whether the assessing authority was entitled to go behind the certificate of eligibility issued by the Directorate of Industries, the entitlement of the respondent for exemption from payment of tax under the notification was clearly made out as the requirements of Column (1) of the notification

were also satisfied.

The appeal is held liable to be dismissed though for a reason different from the one assigned by the High Court. The question referred to for the opinion of the High Court is answered in favour of the assessee and against the Revenue. Accordingly, the appeal is dismissed. No order as to the costs.

JUDIS