

**(2012) 11 MP CK 0012**

**Madhya Pradesh High Court (Indore Bench)**

**Case No:** Writ Petition No. 453 of 2004

Rock Hard Petrochemical  
Industries Ltd.

APPELLANT

Vs

Assistant Commissioner of  
Commercial Tax and Others

RESPONDENT

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**Date of Decision:** Nov. 6, 2012

**Citation:** (2013) 57 VST 301

**Hon'ble Judges:** Shantanu Kemkar, J; Prakash Shrivastava, J

**Bench:** Division Bench

**Advocate:** P.M. Choudhary, for the Appellant; M. Ravindran, Deputy Government  
Advocate, for the Respondent

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### **Judgement**

@JUDGMENTTAG-ORDER

Prakash Shrivastava, J.

The petitioner is aggrieved with the order of assessment dated December 30, 2002 (annexure P10) and the revisional order dated November 3, 2003 (annexure P13). In brief, the petitioner who is a manufacturer of formaldehyde, hexamine and monoethylene glycol (by-product) was granted the eligibility certificate dated April 26, 1995, for exemption from payment of State and Central sales tax under the exemption notification dated October 16, 1986 for a period of seven years from March 22, 1992 to March 21, 1999. Later on the said eligibility certificate was amended on March 28, 1998 and the period of eligibility was extended up to March 21, 2003 (for 11 years). The petitioner had undertaken expansion in its existing unit and was granted eligibility certificate dated February 22, 2001 under the exemption notification dated October 6, 1994 in respect of the expanded capacity for the period September 7, 1997 to September 6, 2004.

2. In the assessment proceedings for the period April 1, 1999 to March 31, 2000 the assessing authority had passed the order of assessment dated March 31, 2001

holding that the petitioner had not done any production of hexamine in the main unit and had done the production of 1,052.95 MT in the expansion unit which was in excess of the installed capacity of 750 MT. The assessing authority, therefore, restricted the exemption to the installed capacity of 750 MT and denied exemption in respect of the excess production of 302.95 MT. The revisional authority vide order dated September 26, 2001, while allowing the revision petition of the petitioner and remanding the matter back to the assessing authority had noted certain decisions in respect of the extent of exemption which would be permissible in terms of the notification and had directed the assessing authority to pass a fresh order keeping in view the eligibility certificate and the decisions noted in the said order after giving an opportunity to the petitioner. The assessing authority vide order dated December 30, 2002, has maintained its original order of assessment dated March 31, 2001. The petitioner's revision petition against the said order of assessment has been dismissed by the order dated November 3, 2003.

3. The learned counsel for the petitioner submits that the assessing as well as the revisional authorities have committed an error in restricting the exemption to the installed capacity of the expansion unit whereas in terms of the exemption notification the petitioner is entitled to the exemption from payment of tax even for the production in excess of the installed capacity. He further submitted that while framing the fresh assessment on remand, the assessing authority has not considered the direction contained in the remand order.

4. The learned counsel for respondents has supported the impugned orders passed by the authorities.

5. Having heard the learned counsel for the parties and on the perusal of the record, we have found that though the revisional authority while remanding the matter back to the assessing authority vide order dated September 26, 2001 had directed the assessing authority to pass fresh order keeping in view the eligibility certificate and the decisions noted in the remand order but the said direction has been overlooked by the assessing authority. On remand, the assessing authority has maintained its earlier order of assessment which was already set aside in revision simply by observing that the petitioner had not filed any proof for exempting him from the tax liability whereas the eligibility certificate which has been granted to the petitioner is not in dispute and the same was already taken note of by the assessing as well as the revisional authority in the first round of litigation. This aspect of the matter has also been ignored by the revisional authority while passing the order dated January 3, 2003 and affirming the order of assessment dated December 30, 2002.

6. During the course of argument it has also been pointed out that condition 9 of the exemption notification dated October 6, 1994 may also have some bearing in the present case in respect of the extent of exemption which may be available to the petitioner for the concerned period.

7. Keeping in view the aforesaid aspect of the matter, we deem it proper to set aside the impugned assessment order dated December 30, 2002 and the revisional order dated November 3, 2003 and remand the matter back to the assessing authority for fresh decision keeping in view the observations made above. Since it is an old matter, the assessing authority is expected to frame the fresh assessment in accordance with law as expeditiously as possible without unnecessarily adjourning matter. The writ petition is accordingly disposed of.