

Jagdamba Industries and Others Vs The State of Madhya Pradesh and Others

Court: Madhya Pradesh High Court

Date of Decision: Nov. 2, 1987

Acts Referred: Constitution of India, 1950 " Article 162, 226, 309

Citation: (1989) ILR (MP) 502 : (1988) JLJ 701 : (1988) MPLJ 620 : (1988) 69 STC 1

Hon'ble Judges: N.D. Ojha, C.J; K.K. Adhikari, J; Faizanuddin, J

Bench: Full Bench

Final Decision: Dismissed

Judgement

This Judgment has been overruled by : State of Madhya Pradesh and another Vs. G.S. Dall and Flour Mills and Others, AIR 1991

SC 772 : (1991) 187 ITR 478 : (1990) 4 JT 430 : (1990) 2 SCALE 756 : (1992) 1 SCC 150 Supp : (1990) 1 SCR 590 Supp : (1991) 80

STC 138

@JUDGMENTTAG-ORDER

Faizanuddin, J.

The order passed in this petition shall also govern the disposal of Miscellaneous Petition No. 2204 of 1987 (Shriram Dall Mill, Kolaras v. State of

M.P. and 3 Others) as both these petitions raise identical and common questions which may be resolved by a common order.

In both the petitions, the question of interpretation of a Notification F. No. A-3-41-81(35)-ST-V dated 23rd October, 1981, issued u/s 12 of the

M. P. General Sales Tax Act, 1958 (No. 2 of 1959), which is filed as annexure-B in M. P. No. 2710 of 1987 is involved which relates to

exemption of sales tax to the new industrial units set up after 1st April, 1981 in terms of said notification and a subsequent Notification No. A-3-

52-87-ST-V(29) dated 3rd July, 1987, filed as annexure-G, amending the earlier notification of 1981 referred to above. Both the petitions came

up for hearing on admission before a Division Bench of this Court on 7th August, 1987 and during the arguments an order dated 7th October,

1986 passed by another Division Bench of this Court, in which one of us (Faizanuddin, J.) was a member, in Miscellaneous Petition No. 1861 of

1983 (G.S. Dall and Flour Mills v. State of M.P.), was referred to in support of these petitions, wherein it was held that even the traditional

industries like dall mills are also covered by 1981 notification referred to above and that such traditional industries are also entitled to the grant of

eligibility certificate to claim exemption from payment of sales tax. . The Division Bench hearing these two petitions was of the opinion that the said

order rendered in G. S. Dall and Flour Mills (M. P. No. 1861 of 1983 dated 7th October, 1986-Madhya Pradesh High Court) required

reconsideration as the aspect does not appear to have been brought to the notice of the Division Bench that the notification dated 23rd October,

1981 was not a notification which laid down the terms and conditions in the matter of grant of eligibility certificate and that the said notification, in

column No. (3), only provided that the exemption shall be available to an industry mentioned in column No. (1) only if it had obtained eligibility

certificate and produced the same at the time of assessment. The said Division Bench also expressed the opinion that the terms and conditions for

grant of eligibility certificate were such as laid down by the Industries Department and the question as to whether a particular industry was or was

not entitled to the grant of eligibility certificate was to be considered with reference to such rules or instructions as may have been issued by the

Industries Department in this behalf from time to time.

Since the questions _ involved in these two petitions are frequently raised in various petitions, therefore, the Division Bench felt it desirable to refer

the matter for decision by a Full Bench of this Court. This is how these two petitions have been placed before this Full Bench for hearing and

decisions.

The material facts which gave rise to these petitions may briefly be stated thus : All the petitioners in the two petitions except petitioner No. 3

(which is a proprietary concern of Purshottam Das) are registered partnership firms having been established on various dates in the year 1983, and

running dall mills at places within the District of Guna (M. P.). They are also registered with the Industries Department as small-scale industries.

They are also registered dealers under the M. P. General Sales Tax Act, 1958 as well as under the Central Sales Tax Act, 1956.

The respondent-State in exercise of its powers conferred u/s 12 of the M. P. General Sales Tax Act, 1958 (hereinafter referred to as ""the Act"")

issued a Notification F. No. A-3-41-81(35)-ST-V dated 23rd October, 1981 (annexure-B) (hereinafter referred to as ""1981 notification"") which

was published in the Madhya Pradesh Extraordinary Gazette dated 26th October, 1981. By the said notification, the respondent-State exempted

the class of dealers specified in column No. (1) of the Schedule appended to the notification from payment of sales tax, who had set up industry in

any of the districts in Madhya Pradesh specified in the annexure to the said notification and who had commenced production after 1st April, 1981,

for the period specified in column No. (2) of the annexure, subject to the restrictions and conditions specified in column No. (3) of the Schedule.

Later on, after the decision dated 7th October, 1986 rendered by the Division Bench of this Court in the case of G. S. Dall and Flour Mills (M. P.

No. 1861 of 1983), the respondent-State by a notification dated 3rd July, 1987, published in the M. P. Gazette dated 4th July, 1987 (annexure-

G) amended the earlier notification of 1981 by inserting a paragraph below the Schedule of 1981 notification to the effect that the exemption under

the said notification of 1981 shall not be available to certain traditional industrial units including flour mills and dall mills.

The petitioners' case is that on being induced by 1981 notification granting concession to the new industrial units by way of exemption from

payment of sales tax, the petitioners established their dall mills by making heavy capital investments of lacs of rupees and commenced production in

the year 1983, and thereafter on fulfilling all the necessary conditions, the petitioners moved the District Industries Centre, Guna, for issuing

requisite eligibility certificate in order to enable them to claim exemption from payment of sales tax in terms of the said notification, but the District

Industries Centre by its communications (annexures-E to E/2) declined to issue the required eligibility certificate on the ground that the exemption

was not available to traditional industries like dall mill and that no directions have been issued by the State Government in pursuance of the decision

by the High Court in Miscellaneous Petition No. 1861 of 1983 (G. S. Dall and Flour Mills v. State of M.P.). This denial by the Industries

Department to issue eligibility certificates to the petitioners led to the filing of these petitions under Article 226 of the Constitution. The petitioners

have alleged that the respondent-State has issued notification dated 3rd July, 1987 (annexure-G) with a view to overreach the decision of this

Court dated 7th October, 1986 made in Miscellaneous Petition No. 1861 of 1983 (G. S. Dall and Flour Mills v. State of M. P.) giving

retrospective effect to it which is illegal and ultra vires as it amounts to rescission of exemption already conferred by 1981 notification as the

provisions of Sub-section (2) of Section 12 of the Act do not empower the State Government to rescind any exemption with retrospective effect.

The petitioners are, therefore, seeking to quash the subsequent notification dated 3rd July, 1987 (annexure-G) purporting to withdraw the

exemption and a declaration that it has been issued in violation of Sub-section (2) of Section 12 of the Act. A further relief has been sought for

issuance of a direction to the Industries Department/District Industries Centre, Guna, to issue eligibility certificates to the petitioners to enable them

to avail the exemption granted by notification dated 23rd October, 1981 (annexure-B) and to refund the sales tax already collected from the

petitioners for the years 1982-83 and 1983-84.

The respondents have opposed the petitions by contending that the intention of the State Government is to grant exemption only to such industries

which need the incentive and which are required to be established in a particular area for the development of that area. It is asserted that the

purpose of granting exemption is to bring into existence certain new industries in the State for better industrialisation. It is further asserted that since

the traditional industries were already in existence no incentive was needed to be given to them and as such no traditional industries were ever

granted any exemption from payment of sales tax nor the Industries Department in view of settled practice ever granted any eligibility certificate to

any traditional industries and as such the question of grant of eligibility certificate to the petitioners who have set up dall mills, which are traditional

industries, does not arise. The respondents have further stated that 1981 notification does not contemplate exemption automatically simply because

an industry is registered with the Industries Department; but it should also fulfil the conditions enumerated in column No. (3) of the said notification.

It is stated that according to 1981 notification no exemption can be granted without obtaining an eligibility certificate from the Industries

Department. No procedure is prescribed for grant of eligibility certificate either in the said notification or in the Act itself nor there are statutory

rules and, therefore, the Government had laid down the procedure for the same according to which the petitioners are not entitled to eligibility

certificates.

The respondents have further pleaded that by the impugned notification dated 3rd July, 1987 (annexure-G) the State Government has not

withdrawn any existing exemption or concession but it has clarified the position and removed the ambiguity that the traditional industries are not

entitled to exemption under 1981 notification. It is pleaded that since no concession was ever granted to traditional industries, the question of its

withdrawal either retrospectively or prospectively did not arise and there being no question of rescinding the same, there is no violation of Sub-

section (2) of Section 12 of the Act.

As regards the allegation about assurance for exemption from payment of sales tax to new industrial units by 1981 notification, it is stated by the

respondents that no promise was ever made for any tax holiday to the traditional industries and hence the doctrine of promissory estoppel is not

available to the petitioners. On these grounds the respondents have prayed for dismissal of the petitions.

Learned counsel for the petitioners first contended before us at the Bar that the notification dated 23rd October, 1981 (annexure-B) which granted

exemption to the new industrial units itself prescribed in column No. (3) the restrictions and conditions for grant of eligibility certificate from the

Industries Department and as the petitioners fulfilled all those restrictions and conditions, they are entitled to the grant of eligibility certificates which

have been unreasonably and arbitrarily declined to be granted despite the decision of this Court in the case of G. S. Dall and Flour Mills (M. P.

No. 1861 of 1983 decided on 7th October, 1986). He urged that Section 12 of the Act does not permit any subordinate legislation nor confer any

power for issuance of instructions by the Government imposing conditions other than those prescribed in column No. (3) of the notification and,

therefore, the Government instructions filed on record and relied on by the respondents cannot have any bearing or overriding effect on the

notification dated 23rd October, 1981 (annexure-B). It was vehemently argued that the intention of the State Government is amply clear from

1981 notification itself, issued u/s 12 of the Act whereby all the industries are exempted from payment of sales tax without any distinction between

traditional industries and other industries. He also canvassed that the conditions subject to which the exemption from tax is to be granted by 1981

notification are clearly expressed in the notification itself without any ambiguity and, therefore, it should be strictly construed in accordance with the

plain meaning of the language employed therein without implying anything which is not expressed or by importing limitations which are not to be

found in the notification itself but on the assumed deficiency supplied from outside. In support of these contentions reliance has been placed on the

decisions in the cases of Innamuri Gopalan and Others Vs. State of Andhra Pradesh and Another, ; Sushil Kumar Sharad Kumar v. Commissioner

of Sales Tax [1986] 19 VKN 34 (MP) and Commissioner of Income Tax v. Maharashtra Sugar Mills Ltd. AIR 1971 SC 2434 (at page 2437

Col. II). But we are not convinced with any of the aforesaid submissions made by the learned counsel for the petitioners for the reasons stated

hereinafter.

The crux of the matter is the notification dated 23rd October, 1981 (annexure-B) of which the relevant part and to the extent it is essential for

disposal of these petitions is reproduced hereunder for the sake of convenience:

Notification

Revenue Department, Bhopal, the 23rd October, 1981. F. No. A-3-41-81-(35)-ST-V.

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 district 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 :-

Class of dealers Period Restrictions and conditions

subject to which exemption has been

granted

(1) (2) (3)

2. Dealers who-

(c) have set up in- (c)5 years, in the The dealer specified in column (1)

dustry in any of the case of an indus- shall continue to furnish the

districts specified try located in a prescribed returns under the

in Part II of the district specified Madhya Pradesh General Sales

Annexure. in category "C" of Tax Act, 1958, and shall produce

Part II of the An- before the assessing authority at

nexure; the time of his assessment a

from the date of certificate issued by the Director

commencement of of Industries. Madhya Pradesh, or

production. any officer authorised by him for

the purpose, certifying that such

dealer is eligible to claim the

exemption and that he has not

opted for the scheme of deferring

the payment of tax under the

rules framed for this purpose.

ANNEXURE

Part I

* * *

Part II

Category "A"

Category "B"

Category "C" 20. Guna.

For the sake of convenience the relevant part of Section 12 of the M. P. General Sales Tax Act, 1958, which confers powers of exemption upon

the State Government, is also being reproduced hereunder :

Section 12. Saving.-(1) The State Government may, by notification and subject to such restrictions and conditions as may be specified therein,

exempt whether prospectively or retrospectively, in whole or in part-

(1) any class of dealers or any goods or class of goods from the payment of tax under this Act for such period as may be specified in the

notification;

(ii) any dealer or class of dealers from any provision of the Act for such period as may be specified in the notification;

(iii) ...

(2) Any notification issued under this section may be rescinded before the expiry of the period for which it was to have remained in force and on

such rescission such notification shall cease to be in force. A notification rescinding an earlier notification shall have prospective effect.

(3)...

A perusal of Sub-section (1) of Section 12 reproduced above will go to show that the State Government while issuing any notification exempting

any class of dealers or any goods or class of goods from payment of tax or from any provision of the Act, it also has the power to impose certain

restrictions and conditions in respect of such exemptions. Now a reading of column No. (3) of the notification reproduced above will go to show

that a dealer or class of dealer, who has been granted exemption and specified in column No. (1) of the notification is required to continue to

furnish the prescribed returns under the Act and to -produce before the assessing authority at the time of his/its assessment a certificate issued by

the Director of Industries, M.P., or any officer authorised by him for the purpose, certifying that such dealer is eligible to claim the exemption and

that he has not opted for the scheme of deferring the payment of tax under the rules framed for this purpose. It is abundantly and explicitly clear

,from the underlined* portion above in column No. (3) of the notification that in order to have the benefit of exemption from payment of sales tax,

the dealer has to obtain a certificate from the Director of Industries or such other officer who may have been so authorised by the Director in that

behalf, certifying that the dealer is eligible to claim the exemption and produce the same before the assessing authority at the time of his/its

assessment. It may, however, be noted that though column No. (3) requires the securing of an eligibility certificate from the Director of Industries

or authorised officer and production thereof before the assessing authority by the dealer it neither contain any guidelines nor any procedure to

regulate the grant or refusal of such certificate by the Director or authorised officer. That means it is left to the unguided and absolute discretion of

the Director or authorised officer who may at his whim or pleasure choose to issue or not to issue the eligibility certificate. An authority, howsoever

free and independent it may be, when conferred with the absolute and unguided power or discretion to do or not to do a certain thing is apt to act

arbitrarily at times to the prejudice of others. The discretion conferred on an authority is always unknown and it works differently with different

persons. It is casual and depends upon the constitution, temperament and passion of an individual and most often it is capricious. The question of

exemption from tax is a matter affecting the revenue of the State and as no guideline or any procedure was laid down in the notification itself, the

Government in order to exclude the possibility of arbitrariness and injustice to someone while deciding the question of grant or refusal of the

eligibility certificate formulated the guidelines and procedure in the form of executive instructions.

One Shri R. K. Shukla, General Manager, Industries, Jabalpur, has filed an affidavit on behalf of the respondents giving the history of grant of

subsidy and exemption to industrial units from payment of sales tax and the instructions issued by the Government from time to time in that behalf,

which is supported by documents on record. First of all the Government floated the scheme for grant of subsidy to new industrial units except the

traditional industries like flour mills and dall mills, etc., in the year 1969 for which the Government issued guidelines known as ""Rules of concession

for sales tax"" (annexure-R I, pages 69 to 75 in M. P. No. 2710 of 1987). The said instructions were approved by the Government by order dated

30th August, 1973 (annexure-R I). The said scheme according to Clause 2 was brought into force after 15th September, 1969, and had to

continue till the end of the Fourth Five Year Plan or such further period as may be extended by the State Government. Clause 3 of these

instructions relates to the eligibility for the concession which specifically speaks that the same would not be applicable to traditional industries like

oil mills, flour mills and dall mills, etc. Thereafter in the year 1977, the Government again issued further instructions dated 8th June, 1977

(annexure-R II, pages 76 to 83 in M. P. No. 2710 of 1987) in place of earlier instructions (annexure-R I) for the development of those new

industrial units which were established in pursuance of the said earlier instructions. The instructions of 1977 were known as ""Rules for grant of sales

tax subsidy/loan to industries in M. P." and were made applicable with effect from 1st April, 1977. Clause 3 of these instructions again laid down

that the same shall not be applicable to the traditional industries enumerated therein including the flour mills and dall mills, etc. These instructions

again contained the complete procedure for scrutiny of the application of industrial units for grant of concession and issuance of eligibility certificate

by the Industries Department. It appears that the mode of concessions granted by the aforesaid instructions involved some inconvenience to the

industrial units and duplication of procedure inasmuch as the industrial unit had to first collect the sales tax and the tax so collected and paid along

with the returns was later on refunded to the industrial unit in the shape of subsidy. To avoid the duplication of procedure the State Government

thought it fit to altogether exempt the industrial units from payment of sales tax or defer the payment of sales tax. Consequently the State

Government by its order dated 12th January, 1983 (annexure-R III, pages 84 to 91 in M. P. No. 2710 of 1987) approved yet another set of

instructions known as "Instructions for the grant of certificate of eligibility to new industrial units claiming exemption from/deferment of payment of

sales tax". By these instructions the concessions were made available to the new industrial units including pioneer units which had gone into

production after 1st April, 1981 and the concessions were (a) total exemption from payment of sales tax, and (b) deferment of payment of sales

tax in lieu of exemption for a period of ten years in accordance with the first notification dated 23rd October, 1981 (annexure-B). It may be

pointed out that Clause 5 of these instructions of 1983 again specifically provided that the aforesaid concessions will not be available to traditional

industries like flour mills and dall mills, etc. These instructions also contain a complete procedure for application and grant of eligibility certificate by

the Industries Department. Thus it is clear from these instructions that the question of grant of eligibility certificate by the Industries Department is

not an empty formality but before granting the certificate the Industries Department has to see whether all the requirements as contained in the

instructions are fulfilled and complied with or not.

All the Government instructions discussed above, issued from time to time right from 1973 onwards till 1983 (annexures-R I, II and III) clearly

indicate not only the consistent Government policy in the matter of grant of sales tax concessions to the new industrial units but also the consistent

practice that has been followed throughout whereby these concessions were not at any time made available to the traditional industries like flour

mills and dall mills, etc. Not a single instance is available to show that any of these concessions were ever made available to any traditional

industries. It may be pointed out that all these facts and the Government policy as also all the aforesaid Government instructions on the subject

were not placed before the Division Bench which heard and decided Miscellaneous Petition No. 1861 of 1983 (G.S. Dall and Flour Mills v. State

of M.P.). However, after the decision of M.P. No. 1861 of 1983 the State Government while issuing Notification No. 351 dated 21st October,

1986 u/s 12 of the Act, a photostat copy of which has been filed on record of M. P. No. 2710 of 1987 (see at page 94 of the Paper Book)

exempting the industrial units specified therein from payment of tax under Sections 6 and 7-AA of the Act again specifically provided in Clause

(XIII) of the said notification that the said exemption shall not be available to the industrial units enumerated therein including flour mills and dall

mills, etc.

In the present case, the principles of ""contemporanea expositio"" may be applied with advantage, according to which a usage or practice developed

under a statute is accepted to be indicative of the meaning ascribed to its words by contemporary opinion and the same is admissible as an external

aid for its construction. A uniform long standing practice consistently followed under any statute, rule or regulation and inaction of the legislature to

amend the same, are important factors to show that the practice so followed was based on correct understanding of the law (see Bastin v. Davies

[1950] 1 All ER 1095 and Corpus Juris Secundum, Vol. 82, pages 761 and 774). So also a uniform and consistent departmental practice arising

out of construction placed upon an ambiguous statute by the highest executive officers at or near the time of its enactment and continuing for a long

period of time is also an admissible aid to the proper construction of the statute by the court and would not be disregarded except for cogent

reasons (see Principles of Statutory Interpretation by Sri G. P. Singh at page 241, paragraph 1). In the case of G. Ramaswamy and Others Vs.

The State of Andhra Pradesh and Others, , a Division Bench of the Andhra Pradesh High Court relying on certain decisions of the Supreme Court

held that one of the most significant aids of construction in determining the meaning of a tax provision is the administrative interpretation given to it

by the agency that is responsible for its administration and enforcement. Similar view has been expressed by a Division Bench of the Madras High

Court in Shenbaga Nadar v. State of Madras [1973] 31 STC 81 MAD, as well as by a Division Bench of the Rajasthan High Court in Assistant

Commercial Taxes Officer v. Azad Bakery, Ajmer. Their Lordships of the Supreme Court also in the case of State of Orissa v. Dinabandhu Sahu

& Sons [1976] 37 STC 583 Ori (586) observed that ""it cannot, however, be denied that the Ministry of Finance, Department of Economic

Affairs, is intimately conversant not only with the policy of legislation for the purpose of implementation of the provisions of the Central Act but is

also familiar with the nature and quality of the commodities as also their use from time to time. If, therefore, such an authority issued a notification

including certain commodities under the head of "oil-seeds", as defined under the Central Act, it cannot be said that the Tribunal and the High

Court were not right in preferring such an opinion of the Government as good evidence for its conclusion".

It is true, as contended by the learned counsel for the petitioners, relying on certain decisions, referred to in paragraph 9 of this order, that it is

settled law that in the absence of any ambiguity, the taxing statute or any notification in that behalf must be construed according to the plain

language employed therein without importing limitations which are not to be found there. But as pointed out earlier that column No. (3) of 1981

notification (annexure-B) does not contain any guidelines or a procedure in the matter of grant of eligibility certificate or refusal thereof by the

Industries Department and as the grant or refusal of such certificate cannot be an empty formality and, therefore, in order to avoid the possibility of

arbitrariness and injustice to anyone the State Government was justified in issuing executive instructions laying down the guidelines and procedure

for the same.

From what has been stated and discussed above, it is clear that at no point of time any concession or exemption from payment of sales tax was

ever given to the traditional industries and not a single example to that effect is available. The State Government while issuing instructions from time

to time have been specifically excluding the traditional industries. Thus the executive authorities and the highest agency and its officers charged with

the duty for the administration and enforcement of the said notification are not only conversant with the underlying policy of the Government but

they are also intimately acquainted with the economic significance of the tax in question and exemption thereof. The interpretation of the

Government regarding the construction of 1981 notification read with the instructions (annexures-R I, II and III) excluding the traditional industries,

which has been consistently followed and acted upon accordingly for a period over a decade, cannot be given a go-by but has to be accepted.

In view of the above discussion the impugned notification dated 3rd July, 1987 (annexure-G) is hardly of any consequence. More or less it is a

clarification of 1981 notification and not rescission of any grant.

Learned counsel for the petitioners next contended that the so-called rules (annexures-R I, II and III) are nothing but instructions which cannot

have overriding effect on the statutory notification dated 23rd October, 1981 (annexure-B). After a careful consideration, we find that there is no

merit in this contention. Here a reference to Article 162 of the Constitution may be made with advantage which provides that subject to the

provisions of the Constitution, the executive power of the State shall extend to the matters with respect to which the Legislature of the State has

power to make laws. Thus the executive powers of the State are co-extensive with the legislative powers of the State Legislature and in the

absence of any enactment, rule or regulation on any subject, the executive instructions of the State hold the field. The Supreme Court in B.N.

Nagarajan and Others Vs. State of Mysore and Others, observed in paragraph 6 of the report that there is nothing in terms of Article 309,

proviso, which abridges power of the executive to act without a law under Article 162 and the State Government has executive power, in relation

to all matters with respect to which the Legislature of the State has power to make laws. Again in the case of Sant Ram Sharma Vs. State of

Rajasthan and Another, it was ruled that it cannot be said that till statutory rules governing promotion to selection grade posts are framed the

Government cannot issue administrative instructions regarding principles to be followed. The same view was reiterated by the Supreme Court in

Sarkari Sasta Anaj Vikreta Sangh Tahsil Bemetra and Others Vs. State of Madhya Pradesh and Others, , paragraph 9, wherein it was observed

that the State Government has undoubted competence to make a scheme for setting up fair price shops in exercise of its executive power under

Article 162 of the Constitution. In the case before us admittedly there are no guidelines or any procedure provided in column No. (3) of the

notification dated 23rd October, 1981 (annexure-B) under which the exemption is claimed by the petitioners and, therefore, the State Government

was fully competent to issue executive instructions in exercise of its powers conferred on it by Article 162 of the Constitution.

Lastly, learned counsel for the petitioners, relying on a number of decisions of various High Courts including those of the Supreme Court, urged

that the respondent-State had granted exemption to the new industrial units from payment of sales tax by 1981 notification but withdrew the same

by the impugned notification dated 3rd July, 1987 (annexure-G) and denied eligibility certificate to the petitioners and, therefore, this action of the

respondent-State is hit by the doctrine of promissory estoppel. We do not propose to refer to all those decisions cited by the learned counsel in

support of this contention as it is now well-settled that where one party has by his words or conduct made to the other a clear and unequivocal

representation or promise which is intended to create legal relations or effect a legal relationship to arise in future, knowing or intending that it

would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be

binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so, having regard to the

dealings which have taken place between the parties. The leading authority on this point is the case of Motilal Padampat Sugar Mills Co. Ltd. Vs.

State of Uttar Pradesh and Others, . But the question before us in these petitions is whether the petitioners actually acted upon 1981 notification

and they were in fact not aware of the fact that the exemption is not available to their industrial units because they were traditional industries. In our

opinion the petitioners were well aware of the fact that the exemption was not available to their units and they had not established their units

because of the exemption.

In this behalf firstly it may be pointed out that all the petitioners had established their industrial units after the Government issued the executive

instructions (annexure-R III) dated 12th January, 1983, of which Clause 5(b) specifically speaks that the concessions will not be available to

traditional industries like flour mills and dall mills, etc. To say that the petitioners were not aware of these executive instructions would be incorrect

because Clause 6 of these instructions contemplates that new industrial units desirous of availing the said concessions shall have to apply in form I

accompanied with a declaration in form II appended to the said instructions and the petitioners applied in form I with declaration in form II (see

annexures-D, DI and D2 in M. P. No. 2710 of 1987). Further these applications for exemption, were made by the petitioners only after the order

dated 7th October, 1986 was passed in G.S. Ball and Flour Mills v. State of M.P. (M.P. No. 1861 of 1983-Madhya Pradesh High Court) which

shows that the petitioners were aware of the fact that they were not entitled to exemption and it was only after the aforesaid decisions that they

considered to apply for exemption. This fact is further fortified from the conduct of the petitioners themselves as they continued to submit returns

right from 1983 onwards and continued to pay the tax as assessed against them without taking any steps to claim exemption. In this behalf

paragraphs 8 and 9 of the petition are self-explanatory. Thus having regard to all these facts, the question of application of principle of promissory

estoppel in the present case does not arise and the petitions deserve to be dismissed.

In the result, both the petitions fail and are hereby dismissed. There shall, however, be no order as to costs. The outstanding amount of security

may be refunded to the petitioners of these cases.