MULAYAM SINGH Vs LAXMAN & ORS

Court: MADHYA PRADESH HIGH COURT

Date of Decision: March 24, 2017

Acts Referred: Constitution of India, Article 226 -
Madhya Pradesh General Sales Tax Act, 1958, Section 12 -
Madhya Pradesh Commercial Tax Act, 1994, Section 17

Hon'ble Judges: S. C. Sharma, Rajeev Kumar Dubey

Bench: Single Bench

Advocate: P. M. Choudhari, Pushyamitra Bhargava, Vivek Sharan

Judgement

1. The petitioner before this Court M/s. Malwa Vanaspati & Chemicals Co. Ltd., is a limited Company duly registered under the Companies Act,

1956 has filed present petition being aggrieved by decision taken by the State Level Committee constituted under notification dated 28/02/1995.

The petitioner''s contention is that the State of Madhya Pradesh with an aim and object to encourage the generation and consumption of electricity

generated through non-conventional power generation system, issued a notification dated 28/02/1995 and granted exemption from payment of

Sales Tax / Commercial Tax as also Central Sales Tax subject to fulfillment of certain terms and conditions as mentioned in the notification.

2. The petitioner''s contention is that the benefit of exemption of payment of taxes was granted under the said notification to the class of dealers

specified in Column-2 to the extent of maximum cumulative quantum of tax as specified in Column-3 thereof for the maximum period as specified

in Column-4 thereof. It has been further stated that notification granted exemption to the dealers who have set up nonconventional sources as also

to the dealers who have set up industrial unit in the State and who have consumed the power generated and sold by the dealers establishing such

nonconventional power generation system.

3. The petitioner''s contention is that by virtue of aforesaid notification the petitioner was entitled for exemption. The petitioner has further stated

that maximum period of exemption for which exemptions are available are specified in Column-4 and according to the aforesaid notification the

exemption to generating unit is six years from the date of commencement of generation of electricity in the system or the date on which cumulative

quantum is achieved, whichever is earlier. Whereas in the case of consumer unit purchasing power from generating unit, the exemption period is six

years from commencement of consumption of power in non-conventional power generating system or date of achievement of cumulative quantum

of tax whichever is earlier irrespective to the fact when the generation of power was started by the generating unit.

4. The petitioner has further stated that the petitioner was entitled for exemption from payment of taxes by virtue of notification dated 28/02/1995,

however, on account of subsequent notification dated 05/09/1998, a cutoff date has been introduced. In the notification dated 28/02/1995 which

has the effect of withdrawing the benefit of exemption to the dealers, who have already set up the non-conventional power generation system after

30/09/1998 but before the issuance of notification dated 05/09/1998. Based upon the subsequent notification, the Sate Level Committee has

passed an order refusing to grant exemption from payment of Commercial Taxes and other taxes to the petitioner.

5. The petitioner''s contention is that subsequent notification cannot be made applicable with retrospective effect and amount which has been

accrued upon power generation system and purchasers like the Company, cannot be extinguished on account of subsequent notification issued by

the State Government.

6. A reply has bee filed in the matter and the respondents have stated in the reply that by virtue of notification dated 05/09/1998 a cutoff date has

been introduced in the earlier notification dated 28/02/1995.

7. The contention of respondent ? State is that Section 12 of the MPGST, 1958 empowers the State Government to issue notification subject to

restrictions and conditions to exempt the payment of tax. Section 12 of the MPGST, 1958 reads as under:-

12. Saving.

(1) The State Government may be notification and subject restrictions and conditions as may be specified therein, exempt whether prospectively or

retrospectively, in whole or in part

(2) 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 dealers from any provision of the Act for such period as may be specified in the notification.

[(iii) Omitted by Act 24 of 1987 from 01/04/1987].

(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 have prospective effect.

(iii) Sub-section (3) of Section 12.- Substituted w.e.f. 01/04/87, vide Act No.24 of 1987. The Sub-section (3) during the period 01-10-78 to 31-

03-87 reds as under:-

(3) Notwithstanding the repeal of the Madhya Pradesh Vikraya Rashi Tatha Kraya Rashi Par Kar Adhiniyam, 1972 (No.8 of 1972), the State

Government may, be notification, exempt any dealer or class of dealers from the payment of tax under the said Adhiniyam for the period it was

force and for that purpose, it shall Adhiniyam have been revived for the purpose of grant of such exemption.

8. From the bare reading of the above provisions the State / respondents vide notification dated 28/02/1995 granted exemption to the dealers who

will set up non-conventional power set up from the non-conventional sources, meaning thereby, the State respondents with the intention to

promote the use of nonconventional sources has issued the notification. Further State respondents has included the dealers who will consume such

power will be given exemption in commercial tax for those years from the date of commencement of the consumption.

9. It is pertinent to mention that the notification dated 28/02/1995 do not provide for any cutoff date for the dealers / investors to set up plant. The

State respondent respectfully submit that the MPGST, 1958 stood repealed by the enactment of the M.P. Commercial Tax Act, 1994 and Section

17 of the Act of 1994, reads as under:-

17. 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

(i) (a) any class of dealers; or

(b) any goods or class of goods, in whole or in part, 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 this Act or any provision of a rule made under Section 80 for such period as may be

specified in the notification.

(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) Notwithstanding the repeal of the Madhya Pradesh General Sales Tax Act, 1958 (No.2 of 1959) (hereinafter referred to as the repealed Act)

the State Government may, by notification exempt -

(i) (a) any class of dealer, or

(b) any goods or class of goods in whole or in part, from the payment of tax under the repealed Act; or

(ii) any dealer or class of dealers from any provision of the repealed Act or the provision of any rule made thereunder, for any period before the

commencement of this Act and for that purpose it shall and shall always be deemed that the provision of Section 12 of the repealed Act have

revived for the purpose of such exemption.

10. From the bare read of Section 17, it clearly reveals that the Section 17 empowers the State Government to issue notification exempting the

payment of tax subject to certain terms and conditions. In light of this power conferred under Section 17 and in the interest of public the State vide

notification dated 05/09/1998 amended the notification dated 28/02/1995 by providing cutoff date for set up of the power generating unit, as

30/09/1998.

11. Learned counsel for the respondent State has further submitted that initially vide notification dated 05/09/1998, the State could not mention the

cutoff date for the set up of unit which was detrimental to the interest of the public at large, as the public money will be used for grant of such

exemption and since the State found that in spite of notification in the year 1995, the units were not set up as no cutoff date was fixed in the

notification dated 28/02/1995.

12. The respondent State further submitted that the notification dated 05/09/1998 providing the cutoff date for the set up of the unit was issued by

the State Government after being satisfied that it was necessary in the public interest to provided for the cutoff date, therefore, under the powers

conferred under Section 17 which even provides for issuance of a notification retrospectively and, therefore, the respondent State is not bound by

the promissory estoppel.

13. The respondent state has submits that the doctrine of promissory estoppels has been crystallized over the years by the various judgments of the

Hon"ble Supreme Court on various grounds and one of the major ground is ""Doctrine of promissory estoppels should be tested against the public

interest if promotion is made based on the public money.

14. His contention is that in the present case, exemption was granted for the set up of power generating unit though nonconventional sources,

which was not done even after issuance of notification and even ambiguity occurred while issuing the notification dated 28/02/1995. Therefore, in

exercise of legislative powers conferred on the State vide section 12 and 17, the State Government has issued a notification providing for cutoff

date and, there can be no promissory estoppel against the exercise of legislative powers, as the State Government is acting on the strength of the

authority vested in it in the management and administration of the taxes, therefore, estoppels cannot and does not apply.

15. Learned counsel for the respondent has placed reliance upon and judgment delivered in the case of M/s. Jeetram Shivkumar & Ors. Vs. State

of Haryana reported in 1980 AIR 1285 and his contention is that the Hon''ble Apex Court in the apex Court has held as under:-

The action taken by the State Government is strictly in conformity with the powers conferred on it under Section 70 (2) (c) of the Act. It

exempted the petitioners from payment of octroi Duty for a particular period and ultimately withdrew the exemption. The action of the Government

cannot be questioned as it is in exercise of its statutory functions. The plea of estoppel is not available against the State in the exercise of its

legislative or statutory functions. The Government have power to direct the Municipality to collect the octroi Tax if the Municipality fails to take

action by itself under Section 62A(3). Further, even on facts, this plea is not available as against the Government as it is not the case of the

petitioners that they acted on the representation of the Government. We, therefore, agree with the view of the Full Bench that the plea of estoppel

is not available against the Government for questioning the validity of the impugned Government order.

16. The respondent State further submits that the Hon''ble Apex Court in the case of Shri Bakul Oil Industries Vs. State of Gujarat reported in

AIR 1987 SC 142 has held as under:-

It is not sufficient to rely on the commissioning of an industry after completion of construction work which had been commenced long before the

Notification was made by the Government. In respect of such an industry as .the present one, the issuance of a Notification granting tax exemption

would only constitute a fortuitous circumstance and by no stretch of imagination can it ever be said that the commissioning of the industry was

directly the outcome of the Government''s Notification granting tax exemption. The concession offered by the Government under the first

Notification dated 29.4.70 did not prescribe any period or time limit, and hence the appellants cannot claim anything more than the benefit of the

Notification for such period the exemption was in force. Once the Government decided, in exercise of the powers vested in it, to revoke the

original Notification, the benefit of exemption from sales tax en- joyed by the appellants came to an automatic end. The period of five years

mentioned in the second Notification will have no reference to the appellants'' oil mill commissioned much earlier because the Notification had only

prospective effect. We have, therefore, to affirm the view of the High Court that the appellants will be entitled to the benefit of tax exemption only

for the limited period during which the concession was offered by the Government. We find no merit in the appeal and accordingly it stands

dismissed. No order as to costs.

17. He has also placed reliance upon a judgment delivered in the case of State of Rajasthan & Anr. Vs. M/s. Mahaveer Oil Industries & Ors.

reported in AIR 1999 (6) SC 2302. Paragraph No.14 and 15 of the aforesaid judgment reads as under:-

14. Are the respondents justified in holding the State to the promise made by it in the form of an incentive scheme which is made available for a

specified period of time, when new industries are set up on the basis of that scheme relying on the promise of benefits held out by it? Public interest

requires that the State be held bound by the promise held out by it in such a situation. But this does not preclude the State from withdrawing the

benefit prospectively even during the period of the scheme, if public interest so requires. Even in a case where a party has acted on the promise, if

there is any supervening public interest which requires that the benefit be withdrawn or the scheme be modified, that supervening public interest

would prevail over any promissory estoppel.

15. After examining a large number of authorities, this Court in the case of Kasinka Trading and Anr. v. Union of India and Anr. (1995 (1) SCC

274) : (1995 AIR SCW 680 : AIR 1995 SC 872) held that when there was a supervening public interest in withdrawing the promise held out, the

Government cannot be estopped from withdrawing the benefit held out under an existing scheme. In the case of Shrijee Sales Corporation and

Anr. v. Union of India (1997) 3 SCC 398, once again this Court after examining a number of authorities has held that if any supervening public

interest so demands, the benefit under any incentive scheme can be withdrawn. The same view has been again reiterated in Union of India and Ors.

v. Godhawani Brothers and Anr. (1997 (11) SCC 173) : (1998 AIR SCW 4129 : AIR 1999 SC 1604).

18. Further reliance has been placed upon a judgment delivered by the apex Court in the case of State of Rajasthan & Anr. Vs. M/s. J. K.

Udaipur Udyog Ltd. & Anr. reported in S.T.C. Page 439. Paragraph No.25 of the aforesaid judgment reads as under:-

An exemption is by definition a freedom from an obligation which the exemptee is otherwise liable to discharge. It is a privilege granting an

advantage not available to others. An exemption granted under a statutory provision in a fiscal statute has been held to be a concession granted by

the State Government so that the beneficiaries of such concession are not required to pay the tax or duty they are otherwise liable to pay under

such statute. The recipient of a concession has no legally enforceable right against the Government to grant a concession except to enjoy the

benefits of the concession during the period of its grant. This right to enjoy is a defeasible one in the sense that it may be taken away in exercise of

the very power under which the exemption was granted.

19. The respondent State further submitted that under the legislative competence and the authority has issued the notification granting exemption

which was clarified by providing cutoff date in the interest of public and the Hon''ble Supreme Court has held that if public interest so require, the

grant of benefit clan even be withdrawn or modified even retrospectively, as the supervening public interest will prevail over promissory estoppels.

20. The contention of the respondent is that since no cutoff date was provided, therefore, the cutoff date was provided vide notification dated

14/09/1995 and since the dealer required to set up the power generating system generating electrical energy from non-conventional sources or

before 30/06/1998 has failed to set up the unit, therefore, the exemption as provided in the notification to the dealer who sets up non-conventional

unit and even to the dealers who were supposed to use the said energy will not be eligible for exemption vide notification dated 14/09/1995.

21. The respondent submits that the notification dated 05/09/1998 is not ultra vires rather the same has been issued under the legal authority and,

therefore, does not deserves to be quashed or declared void and unconstitutional by this Court.

22. Heard learned counsel for the parties at length and perused the record.

23. In the instant case petitioner has filed present petition under Article 226 of the Constitution of India challenging the validity of notification

No.A-3-32-94-ST-V(66) dated 05/09/1998 issued by the State Government of Madhya Pradesh for amending the earlier notification No.A-3-

32-94-ST-V(5) dated 28/02/1995 whereby the State Government has introduced a cutoff date as 30/06/1998 in the notification No.5 dated

28/02/1995 and has further introduced certain new conditions for exemption in respect of non-conventional power generation system commencing

generation of electricity after the cutoff date 30/06/1998. The amending notification has the effect of retrospective withdrawal of the exemption to

the nonconventional power generation system which commenced generation of electricity between the period from 01/07/1998 to 04/09/1998.

24. The State Government vide original notification No.A- 32-94-ST-V(5) dated 28/02/1995 granted exemption from payment of tax under the

State as also the Central Sales Tax Act to certain class of dealer specified in the said notification to the extent and for the period specified therein.

The notification granted benefit of exemption to the dealers setting up of the nonconventional power generating system generating electrical energy

fro non-conventional sources in any of the districts in Madhya Pradesh. It also granted similar exemption to the dealers who has set up industrial

unit in Madhya Pradesh consuming the power generated and sold by the above class of dealers i.e. dealers setting up of non-conventional power

generation system subject to the conditions and extent specified in the notification. The petitioner Company admittedly falls in second category i.e.

consumer unit.

25. The notification dated 28/02/1995 did not prescribed any cutoff date and thus the exemption was available to the dealer setting up of the non-

conventional power generation system from the date of commencement of the generation of power in such system and from the date of

consumption of the power to the dealers consuming electricity generated. However, the amending notification i.e. notification dated 05/09/1998

prescribed fresh conditions which require that the generation of electricity ought to commence up to 30/06/1998 when the power generating unit

set up on the land owned by the dealer. The exemption after that date was available in case of the units set up on government lands only if the

permission to use government land was sought before 30/06/1998 (cutoff date), permission is granted by State Government after the date and the

generation of power had started within one years from the date of grant of permission by the government.

26. The effect of such amendment is that the power generation units set up on government lands in which permission has been granted by

government prior to that date but the generation of power started between 01/07/1998 to 04/09/1998 i.e. prior to issuance of amending

notification have been deprived of the benefit of exemption, which was otherwise available to such units and consumers of such units by virtue of

earlier notification dated 28/02/1995. In effect and substance in respect of the dealers setting up of the non-conventional power generation system

in whose case the generation of power in the unit started between the above period as also the dealers consuming such power, the benefit of

exemption has been retrospectively withdrawn by the State Government. The present petitioner is among such unfortunate dealers who are victims

of such retrospective withdrawal of benefit.

27. It is evident from a bare perusal of the factual position narrated in the petition (which is not disputed by the respondents in their reply) that the

petitioner has purchased the electricity generated by non-conventional power generation sources i.e. Wind Electricity Generators (WEG) set up by

one M/s. CEPCO Industries Pvt. Ltd. at Location Nos.46 and 49 at Village Jam Godhrani, Distt. Dewas (M.P.). It is also an admitted position

that the permission to the said WEGs was granted by MPEB vide permission dated 23/07/1998 and the WEGs were successfully commissioned

on 25/07/1998 as is clear from the certificates issued by MPEB and joint commissioning certificate issued by CEPCO Industries Pvt. Ltd., Chief

Engineer (Commercial MPEB) and M. P. Wind Farms Ltd. (Nodal agency of the State of M. P.) which have already been enclosed in the writ

petition as Annex.- P/11 and P/12 at page No.73 and 74 respectively.

28. It is also evident that the wheeling of power in the above two WEGs at location Nos.46 and 49 set up by said CEPCO Industries Pvt. Ltd.

had admittedly started on 25/07/1998 i.e. before the issuance of notification dated 05/09/1998 which introduced the cutoff date of 30/06/1998 in

the parent notification dated 28/02/1995, the respondent No.1 the State Level Committee constituted for adjudicating the eligibility under

notification dated 28/02/1995 has vide its impugned order dated 11/07/2014 has refused to grant the eligibility certificate to petitioner on the

ground that the benefit of exemption under the notification dated 28/02/1995 was available only to those units which were established and

commissioned prior to 30/06/1998 and since units at location Nos.46 and 49 were established after the cutoff dates, the petitioner is not eligible

for exemption under said notification dated 28/02/1995. The said order of the State Level Committee is also subject matter of challenge in the

present writ petition.

29. In the present case the issue involved is about the validity of the above order, which in turn has refused to grant the benefit of exemption to the

petitioner on the basis of the cutoff date which has been introduced after the date of commissioning of the power generating units. The introduction

of cutoff date being by a subsequent notification cannot affect petitioner"s right which had already accrued under parent notification dated

28/02/1995.

30. The contention of learned counsel for the petitioner is that the cutoff date of 30/06/1998 is not applicable in petitioner"s case, since the

generation of power in the units in question had already commenced prior to the issuance of the amending notification dated 05/09/1998, the

petitioner"s right would be governed by the earlier notification dated 28/02/1995. He has placed reliance upon judgments delivered by the Division

Bench of this Court in the case of Sunpet Pack Jabalpur Pvt. Ltd. Vs. State of M. P. reported in (2011) 18 STJ 614 and Sunpet Pack Jabalpur

Pvt. Ltd. Vs. State of M.P. & Ors. reported in (2014) 24 STJ 325 wherein this Court in similar circumstances has directed the SLC to decide the

case strictly in accordance with unamended notification.

31. His further contention is that although Section 12 of MPGST Act and Section 17 of the MPCT Act (both repealed) enabled the government to

withdraw / rescind any exemption notification before the expiry of its period but both the provisions specifically provided that such notification

rescinding the benefit shall have a prospective effect. Thus, no retrospective withdrawal of exemption is permissible under the law. Accordingly, the

notification dated 05/09/1998 to the extent it retrospectively withdraws the benefits of exemption in cases like petitioner is contrary to the above

statutory provisions and therefore, ultra vires to that extent.

32. In the considered opinion of this Court, no retrospective withdrawal of exemption is permissible. In the case of State of M. P. Vs. G. S. Dall &

Flour Mills reported in (1991) 6 TLD 198, the apex Court has held that while a notification can be prospective or retrospective, only a

prospective operation can be given to a notification rescinding an exemption granted earlier. Paragraph No.31 of the aforesaid judgment reads as

under:-

A reference has now to be made to the notification of 3/7/87 amending the 1981 notification with retrospective effect so as to exclude what may

be described in brief as `traditional industries" though, like rule 14 of the deferment rules, the exclusion extends even to certain other non-traditional

units operating in certain situations. Though this notification purports to be retrospective, it cannot be given such effect for a simple reason. We

have held that the 1981 notification clearly envisages no exclusion of any industry which fulfills the terms of the notification from availing of the

exemption granted under it. In view of this interpretation, the 1987 amendment has the effect of rescinding the exemption granted by the 1981

notification in respect of the industries mentioned by it. S. 12 is clear that, while a notification under it can be prospective or retrospective, only

prospective operation can be given to a notification rescinding an exemption granted earlier. In the interpretation we have placed on the

notification, the 3/7/87 notification cannot be treated as one merely clarifying an ambiguity in the earlier one and hence capable of being

retrospective: it enacts the rescission of the earlier exemption and, hence, can operate only prospectively. It cannot take away the exemption

conferred by the earlier notification.

33. In the case of State of U.P. & Others Vs. Deepak Fertilizers and Petrochemical Corporation Ltd. reported in (2007) 11 STJ 419, the apex

Court in paragraphs No. 7 to 10 of the aforesaid judgment has held as under:-

7. In the writ petition, the first grievance of the respondent was that the notification dated 10th April, 1995 could not have been issued with

retrospective effect. Relying on a decision of the Allahabad High Court, namely, Ganesh International & Anr. v. Assistant Commissioner and Ors.

[(2001) 124 STC 600 (All)], the High Court held that the notification dated 10th April, 1995 shall apply prospectively and not retrospectively.

The learned counsel appearing on behalf of the appellants have not seriously challenged this part of the impugned order of the High Court.

However, since this question arose before us and the High Court decided the same against the appellants relying on a decision of its court, we

prefer to deal with the question in this judgment. Let us, therefore, examine whether, in the facts and circumstances of the case, the notification

dated 10th April 1995 which denied exemption to NPK 23:23:0 retrospectively can be held to be invalid as held by the High Court in the

impugned order. Before proceeding further we may reiterate that the notification dated 2nd November, 1994 as quoted herein earlier permits

exemption from taxes on the sale of Potassium Phosphatic Fertilizer from 1st November, 1994 to 31st March, 1995. In the notification dated 2nd

November, 1994 exemption, therefore, was allowed on sale of all categories of Potassium Phosphatic Fertilizer which, however, was withdrawn in

respect of the product of the respondent, namely, NPK 23:23:0 by the notification dated 10th April, 1995.

8. Now the question arises whether by the notification dated 10th April, 1995 retrospectively, the exemption granted to the product of the

respondent namely NPK 23:23:0 could be withdrawn. The High Court held that such exemption could not be withdrawn by the notification dated

10th April, 1995 with retrospective effect. The learned counsel for the appellants, however, submitted that the High Court fell in error in holding

that retrospective withdrawal of the exemption granted by the notification dated 2nd November, 1994 could not be permitted. However, the

learned counsel for the respondent submitted that such retrospective withdrawal was not permissible.

9. We have heard learned counsel for the parties on this aspect. After taking into consideration, the notifications dated 2nd November, 1994 and

10th April, 1995 we have no hesitation in our mind to hold that the High Court was fully justified in holding that exemption granted to the

respondent by the notification dated 2nd November, 1994 could not be withdrawn by a subsequent notification with retrospective effect. In this

connection, we may rely on Section 25 of the Act itself which runs as under:

Sec.25 : Power to issue notification with retrospective effect:

Where the State Government is satisfied that it is necessary so to do in the public interest, it may issue a notification under Section 3-A or Section

3-D, or Section 4 or Section 4-B so as to make if effective from a date not earlier than six months from the date of issuance of such notification:

Provided that no notification having the effect of increasing the liability to tax of dealer shall be issued with retrospective effect under this section.

(Emphasis supplied ? Here italicised)

10. For this aspect, proviso to Section 25 of the Act is important. A bare perusal of the proviso to Section 25 of the Act would clearly show that

no notification having the effect of increasing the tax liability shall be issued with retrospective effect under the aforesaid section. In our view, the

High Court was justified in holding that exemption could not be withdrawn with retrospective effect by issuance of subsequent notification dated

10th April, 1995, superseding the notification dated 2nd November, 1994. Restricting the exemption of tax to certain fertilizers in the same class of

chemical fertilizers certainly amounted to increasing the liability to tax of the dealer with retrospective effect, which in our opinion, cannot be issued

in view of the proviso to Section 25 of the Act. Accordingly, we hold that the notification dated 10th April, 1995, denying exemption to NPK

23:23:0 retrospectively is illegal and invalid and are in agreement with the view expressed by the High Court on this question.

34. In the case of State of Haryana Vs. Anil Pesticides Ltd. & Another reported in (2011) 19 STJ 11, the Hon"ble Supreme Court in paragraph

No.7 has held as under:-

7. It appears that notification dated 16th December 1996 was challenged by some of the industrial units whose products were included in the

negative list for the first time by virtue of the said notification, before the Punjab & Haryana High Court. Having failed before the High Court, the

Dealers filed appeals before this Court, inter-alia, contending that the notification deleting Note 2 to Schedule III with retrospective effect and

thereby disentitling the Dealers to the benefit of exemption was illegal because Section 64(2A) of the Act had come into force in the year 2001.

Accepting the said plea of the Dealers, this Court in Mahabir Vegetable Oils (P) Ltd. & Anr. Vs. State of Haryana & Ors.1 held that afore-

extracted Note 2 could not be given retrospective effect. It was observed thus:- (Para 44, SCC)

By reason of Note 2, certain rights were conferred. Although there lies a distinction between vested rights and accrued rights as by reason of a

delegated legislation, a right cannot be taken away. The amendments carried out in 1996 as also the subsequent amendments made prior to 2001,

could not, thus, have taken away the rights of the appellant with retrospective effect.

35. A Division Bench of this Court in the case of Ambika Refinery Vs. State of M. P. & Others reported in (2012) 20 STJ 563 in paragraphs

No.10 and 12 has held as under:-

10. The contention of the petitioner is that when the State Government had granted exemption to the petitioner under Section 10 of Entry Tax Act

till 31 st of March,2007 then such exemption could not have been restricted vide another Notification dated 12th of April,2007 till 31st of

March,2004, that too with retrospective effect. Reliance is placed by the petitioner to a judgment of Apex Court in State of U.P. & Ors. Vs.

Deepak Fertilizers & Petrochemical Corporation Ltd. AIR 2007 SC 2123 and submitted that such notification may be quashed.

12. The position of the present case is similar. The exemption which was granted vide earlier notifications was available to the petitioner up to 31 st

of March,2007, but vide notification dated 12th April,2007 it was restricted up to 31 st of March,2004, meaning thereby, for a period near about

3 years, petitioner has been held liable for payment of entry tax for which, there was no power with the State Government to withdraw such

exemption with retrospective effect. If an exemption was granted by the State Government by issuing continuous two notifications, then the

aforesaid exemption could not have been withdrawn by the State Government vide Annexure P/1 with retrospective effect. Issuance of

Notification (Annexure P/1) is having far reaching consequences on the petitioner, and in such a situation, the State Government could not have

withdrawn such exemption with retrospective effect.

36. Again a Division of this Court in the case of Dhannalal Labhchand & Others Vs. Sales Tax Officer, Seoni & Anr. reported in (2005) 5 STJ

356 in paragraphs No.2 and 3 has held as under:-

2. The first ground which has been been urged by the learned counsel for the petitioners in challenge to the aforesaid notification dated

07/01/1981 is that even though Section 12(2) of the Act permits that any notification issued under the said 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, the rescission

cannot be made with retrospective effect. In support of this submission, reliance has been placed on the last sentence of Section 12(2), it reads as

hereunder:-

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

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

According to the learned counsel for the petitioners, the aforesaid last sentence in Section 12(2) excludes issuance of a notification rescinding an

earlier notification with retrospective effect. Reliance on this submission has also been placed on the decision of a Division Bench of this Court in

Vijay Dal Mill. Vs. State of M. P. 1982 MPLJ 523. In that case, while dealing with the power of exemption contained in Section 8(5) of the

Central Sales Tax Act, 1956, it was held that an exemption granted by a notification under Section 8(5) could not be withdrawn retrospectively.

3. Having heard learned counsel for the parties, we are of the opinion that in view of the decision of this Court in case of Vijay Dal Mill (supra) and

the specific language of Section 12(2) itself, the impugned notification dated 07/01/1981, in so far as it cancels the earlier notification dated

07/04/1967 with effect from 01/10/1978, deserves to be quashed. Of course, cancellation of the notification dated 07/04/1967 by the impugned

notification with effect from the date the impugned notification dated 07/01/1981 shall be valid inasmuch as it is settled law that an exemption as

aforesaid in the nature of concession can be withdrawn at the instance of the authority granting the exemption.

37. Division Bench of this Court in the case of Sayaji Hotels Ltd. Vs. State of M. P. & Others reported in (2015) 26 STJ 464 in paragraphs

No.14, 15, 21, 22 and 23 has held as under:-

14. The apex court in the case of Mahabir Vegetable Oils Pvt. Ltd. v. State of Haryana reported a [2006] 145 STC 350 (SC); [2006] 8 STJ

689 (SC) had held that there lies a distinction between vested rights and accrued rights. VATLaws (Readable Version) - Monday, October 10,

2016 This copy was printed from VATLaws licensed to: Rsgoyal By delegated legislation, a vested right cannot be taken away. Thus, amend

ments carried out in 1996, cannot take away the rights of dealer with ret rospective effect. He also placed reliance on the decision of the apex

court in the case of State of Haryana v. Anil Pesticides Ltd. reported as [2011] 19 STJ 11 (SC), Ruchi Fabrics Ltd. v. State of M. P. reported as

[2000] 117 STC 273 (SC); [1993] 32 VKN 449, State of Madhya Pradesh v. G. S. Dall and Flour Mills reported as [1991] 80 STC 138 (SC);

[1991] 187 ITR 478 (SC); 24 VKN 224 and the Division Bench decision of the M. P. High Court in the case of Ambika Refinery v. State of M.

P. reported as [2012] 53 VST 146 (MP); [2012] 20 STJ 563 and submitted that the amendment could not be given retrospective effect and

could not have taken away the rights of the petitioner with retrospective effect and prayed for its quashment.

15. It is clear from the specific provisions contained in the notification dated March 31, 2006 that dealers who are continuing to avail of facility of

exemption, which availed of the facility over the unexpired period of eligibility certificate shall also be eligible to first adjust balance of input-tax

rebate if any, against any other tax liability of self and to transfer remaining balance for adjustment against tax liability of any other registered dealer,

if desired. Therefore, the dealer who was continuing with the facility of exemption under the eligibility certificate earlier issued has not been said to

any adverse consequence and rather, sufficient liberty is granted to such dealers for making necessary adjustment of rebate or claiming rebates or

exemption. The petitioner who is continuing with the facility of exemption as on April 1, 2006 will continue to collect tax from its customers, and to

compute his tax liability by taking input tax rebates from the tax collected on sales. Further, he will be eligible to retain tax collected, which is in

excess of its input-tax rebate and the amount so, retained shall be included in computation of cumulative quantum of tax benefits.

21. It is a fundamental rule of law that no statute shall be construed to have a retrospective operation unless such a construction appears very

clearly in the terms of the Act, or arises by necessary and distinct implication.

22. The honourable Supreme Court held that a subordinate legislation can be given a retrospective effect, if any power is contained in this behalf in

the main Act. Rule-making power is a species of delegated legislation. A delegatee therefor can make rules only within the four-corners thereof.

No statute can be construed to have a retrospective operation unless such a construction appears very clearly in terms of the Act?by a delegated

legislation the right accrued to the petitioner cannot be taken away. Thus, the Supreme Court held that the amendments carried out could not take

away the rights of the petitioner with the retrospective effect. In the case in hand, the exemption, which was granted already earlier notification was

available to the petitioner up to November 4, 2006, but vide notification dated September 15, 2006, it was restricted up to March 31, 2006,

meaning thereby, for a period of near about six months, the petitioner has been liable for payment of tax for which there was no power with the

State Government to withdraw such exemption with retrospective effect. The aforesaid exemption could not have been withdrawn by the State

Government vide notification dated September 15, 2006 with retrospective effect.

23. In the result, this petition is allowed in part notification dated March 31, 2006 and September 15, 2006, insofar as it relates to the petitioner

only, restricting the withdrawal of exemption retrospectively with effect from March 31, 2006 is not sustainable under the law. The petitioner who

was extended the benefit of exemption from payment of tax shall be entitled to get the aforesaid exemption till September 15, 2006. The impugned

orders are quashed to the extent as indicated herein above.

38. In light of the aforesaid judgments, it can be safely gathered that the subsequent notification cannot be construed to have a retrospective

operation. A right which has already accrued in favour of the petitioner cannot be extinguished by a subsequent notification, specially when the

petitioner has acted upon on the basis of first notification dated 28/02/1995.

39. Resultantly, the impugned notification to the extent it is made applicable with retrospective effect is hereby quashed. The matter is remanded

back to the State Level Committee to pass a fresh order by taking into account the first notification issued by the State Government dated

28/02/1995. The exercise of passing a fresh order be concluded within a period of 90 days from today.

40. With the aforesaid, writ petition stands disposed of. Certified Copy as per rules.