



**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE**

**HON'BLE SHRI JUSTICE VIVEK RUSIA
&
HON'BLE SHRI JUSTICE BINOD KUMAR DWIVEDI**

ON THE 8th OF JULY, 2025

WRIT PETITION No. 4832 of 2006

M/S MAN INDUSTRIES (INDIA) LTD.

Versus

INDUSTRIES COMMISSIONER, COMM.& IND.DEP AND OTHERS

Appearance:

*Shri P.M.Choudhary, learned Senior Advocate assisted by Shri Anand Prabhawalkar – Advocate for the petitioner.
Shri Bhuwan Gautam – Government Advocate for the respondent/State.*

WITH

WRIT PETITION No. 10475 of 2010

M/S MAN INDUSTRIES (INDIA) LTD.THR.DEVENDRA

Versus

***THE ASSISTANT COMMISSIONER OF COMMERCIAL TAX AND 03
ORS. AND OTHERS***

Appearance:

*Shri P.M.Choudhary, learned Senior Advocate assisted by Shri Anand Prabhawalkar – Advocate for the petitioner.
Shri Bhuwan Gautam – Government Advocate for the respondent/State.*



WRIT PETITION No. 11077 of 2013

***M/S MAN INDUSTRIES (INDIA) LTD. (SPEC DIVISION) THRU.
PAWAN KUMAR GOYAL***

Versus

***THE ASSISTANT COMMISSIONER OF COMMERCIAL TAX AND 3
ORS. AND OTHERS***

Appearance:

Shri P.M.Choudhary, learned Senior Advocate assisted by Shri Anand Prabhawalkar – Advocate for the petitioner.

Shri Bhuwan Gautam – Government Advocate for the respondent/State.

WRIT PETITION No. 11081 of 2013

***M/S MAN INDUSTRIES (INDIA) LTD. (SPEC DIVISION) THRU.
PAWAN KUMAR GOYAL***

Versus

***THE ASSISTANT COMMISSIONER OF COMMERCIAL TAX AND 3
ORS. AND OTHERS***

Appearance:

Shri P.M.Choudhary, learned Senior Advocate assisted by Shri Anand Prabhawalkar – Advocate for the petitioner.

Shri Bhuwan Gautam – Government Advocate for the respondent/State.

WRIT PETITION No. 20541 of 2020

***M/S MAN INDUSTRIES INDIA LTD THR. ITS AUTHORISED
SIGNATORY MR. SANJAY JAIN***

Versus

***THE DIVISIONAL DEPUTY COMMISSIONER OF COMMERCIAL TAX
AND OTHERS***



Appearance:

Shri P.M.Choudhary, learned Senior Advocate assisted by Shri Anand Prabhawalkar – Advocate for the petitioner.

Shri Bhuwan Gautam – Government Advocate for the respondent/State.

WRIT PETITION No. 20550 of 2020

***M/S MAN INDUSTRIES INDIA LTD THROUGH ITS AUTHORIZED
SIGNATORY MR. SANJAY JAIN***

Versus

***ADDITIONAL DIVISIONAL DEPUTY COMMISSIONER OF
COMMERCIAL TAX AND OTHERS***

Appearance:

Shri P.M.Choudhary, learned Senior Advocate assisted by Shri Anand Prabhawalkar – Advocate for the petitioner.

Shri Bhuwan Gautam – Government Advocate for the respondent/State.

Reserved on: 02.07.2025

Pronounced on: 08.07.2025

ORDER

Regard being had to the similitude of controversy involved in the aforementioned petitions, they are being heard analogously and disposed of by this common order. For the sake of convenience, the facts of Writ Petition No. 4832 of 2006 are taken.

2. The petitioner has filed this present petition challenging the order No. 18/FA(5)/2003/363 dated 17.02.2006 passed by respondent No.1/Industries Commissioner refusing to recognize and certify the



petitioner's new SPEC industrial division as "Non Resident Dealer" for the purpose of grant of exemption under notification No. A-3(1)-95-ST-V (43) dated 06.06.1995

3. The facts of the case in brief are as follows:

3.1 The petitioner is a public limited company duly incorporated and registered under the Companies Act, 1956 (Now 2013) and is engaged in the business of manufacture and sale of Aluminum sections, submerged arc welded MS pipes and coating on pipes, etc. The petitioner has set up various units for the purpose of manufacturing of various other products like the Aluminum division, Saw Pipe division, SPEC division, pipe coating and complex set up.

3.2 The petitioner established the "Saw Pipe Division", mainly for the purpose of manufacture and sale of large diameter welded steel pipes over 400 mm dia. The said unit commenced production w.e.f 17.02.1996. The competent authority of respondents issued an eligibility certificate dated 22.05.1998 under notification No. A-3-24-94-ST-V(108) dated 06.10.1994 under which the said unit became entitled to get an exemption for the period of 9 years from 17.02.1996 to 16.02.2005.

3.3 Apart from the aforesaid notification, the State Government has issued another notification No. 3(1)-95-ST-V (43) dated 06.06.1995 for giving



exemption from payment of taxes for 11 years subject to fulfillment of various conditions *viz* new units put up by non-resident Indians (NRI) or 100% export oriented units (hereinafter referred to as 'Non-Resident Dealer'). The said notification grants an exemption under Sections 6 & 7 of the Madhya Pradesh Goods and Service Tax Act, 2017 (hereinafter referred to as the 'MPGST Act') and Sections 9 & 10 of the M.P. Commercial Tax Act, 1994 (hereinafter referred to as the 'MPCT Act') and also under the Central Sales Tax Act to various class of dealers specified in Schedule I & II to the said notification. The benefits under the said notification are available to the dealers who are registered under the provisions of the Sales Tax Act as also under the CST Act and who are also registered with and certified by the Commerce & Industries Department of the Government of M.P. on or before December 1999 to be a Non-Resident Dealer or to be a dealer establishing a 100% Export oriented unit or a dealer converting his existing unit to the 100% export oriented unit or a dealer whose industrial unit is an export-oriented unit or a dealer whose industrial unit is an export-oriented unit. A non-resident could be regarded as a Non Resident Dealer establishing a new unit if its capital investment is at least 26% of the equity invested by the private promoters. Condition No. 6 of the notification No. 43 dated 6.6.1995 further provides that a dealer claiming exemption as Non Resident Dealer establishing an NRI Unit is entitled to



avail the facility of exemption under this notification after the expiry of the period of three years from the date of commencement of the commercial production of the said unit, during which he is required to hold its equity to the extent of a minimum of 26% of the equity invested by private promoters. The new notification requires that for recognition as an NRI unit, the equity participation by the NRI must be a minimum of 26% of the total equity participation by the Indian Promoters.

3.4 The petitioner's Saw Pipe Division commenced its commercial production w.e.f. 17.02.1996 and fulfilled the conditions of the notification No. 43 dated 06.06.1995. Therefore, respondent No.1/Industries Commissioner, Bhopal issued a certificate dated 24.10.2002 certifying the petitioner's Saw Pipes Division as a Non-Resident Dealer. The eligibility period granted under the earlier notification No. 108 dated 06.10.1994 was also amended and the period of exemption was granted for 11 years. A similar benefit of exemption was also granted to the petitioner in respect of Entry Tax from 5 years to 11 years.

3.5 According to the petitioner after some time another manufacturing plant was set up in the name of 'SPEC Division' w.e.f. 22.04.1999 by investing fresh investment for the equity of Rs. 300 lakhs by the NRI promoters i.e. much more than the requisite 26% of the equity



invested by the private promoters. According to the petitioner, this new SPEC division satisfies the requisite condition for grant of exemption under notification No. 43 dated 06.06.1995. The petitioner approached the competent authority of respondents by way of an application for grant of eligibility certificate initially issued under notification No. 108 dated 06.10.1994 and the said certificate was issued to the petitioner on 27.03.2002. After obtaining the said certificate, the petitioner became entitled to an exemption of payment of commercial tax for the period of 9 years from 22.04.1999 to 21.04.2008 meaning thereby the commercial production under the SPEC division commenced from 22.04.1999. According to the petitioner, the total capital investment in the new unit reached the tune of Rs. 2002.32 lakhs and a certificate to that effect has been issued. Since, the SPEC division started its production w.e.f. 22.04.1999 i.e. before the cut off date of 31.12.1999 and the petitioner already possess the status of Non Resident Dealer since the time it established its Saw Pipe Division, the petitioner claimed a certificate of exemption under notification dated 06.06.1995. The petitioner submitted an application to the Industries Commissioner on 22.12.2002. The Industries Commissioner vide **impugned order dated 17.02.2006** has refused to recognize the petitioner as Non Resident Dealer under the notification No. 43 dated 06.06.1995 on the ground that the original



investment made by the NRI promoter at the time of the establishment of Saw Pipe Division had already been considered at the time of grant of exemption to the said division and the same cannot be considered again for exemption for the new SPEC division as Non Resident Dealer irrespective of the fact that the said investment in the equity of the company satisfies the condition regarding the retention of equity for the lock-in period for three years. Being aggrieved by the aforesaid rejection, petitioners have filed the present petitions.

Submissions of the Senior Counsel for the petitioner

4. Shri Choudhary learned Senior Counsel for the petitioner submitted that respondent No. 1 had misinterpreted the condition No. 6 of the notification No.43 dated 06.06.1995 that NRI investment in a particular unit i.e. Saw Pipe Division and the same cannot again be considered while considering the grant of exemption to new unit i.e. SPEC division. The impugned order is contrary to the provision of the Companies Act, 1956 in which the company is not required to introduce fresh capital or float fresh share capital whenever commencing a new activity. A company having its own resources can always commence its new activity without the issue of fresh share capital. The capital investment in the fixed assets is preferable to the investment in land, building, plant & machinery etc. whereas the investment/capital investment in equity is referable to an investment in the



share capital of the company. It is further submitted that in the subscribed capital of Rs. 15,91,16,670/- of the petitioner company, the promoters' participation both NRI and Indian was Rs. 4,77,39,405/- and the investment in the equity by the NRI promoters was Rs. 1,66,65,405/- which is equal to 34.91% of the Indian promoters which satisfy the condition regarding NRI investment in the equity under the notification No. 43 dated 06.06.1995. Hence, Non-Resident Dealer was granted to the petitioner for the saw pipe division and the same status is liable to be continued in the SPEC division.

5. In support of his contentions, the learned Senior Counsel has placed on the judgment passed by the Division Bench of High Court of Telangana in case of *State of Andhra Pradesh vs. Deccan Cements Ltd. reported in (2024) 126 GSTR 77* wherein it has been held that, only because a company is having two different registered units, it cannot be treated as two different persons and in the given circumstances if Unit-I transfers clinker to Unit-II, the same cannot be treated as a sale because a single balance sheet is prepared by the company in respect of all the units and divisions owned and controlled by the company. Learned Senior Counsel has also placed reliance on the judgment of the Apex Court in the case of Commissioner of *Trade Tax, U.P. vs. D.S.M. Group of Industries reported in (2005) 139 STC 269* wherein the Apex Court has held that, wherever the words "expansion, modernization



or diversification" are used, there are no qualifying words to the effect "in any one". The purpose of the notification is to encourage increased production and to give benefits to industries which have invested Rs. 50 crores or more in the State and whose production had thus increased. The term unit has the same meaning as defined in Section 4A of the U.P.Trade Tax Act, 1948 i.e. an industrial undertaking. The expansion, modernization and diversification in its industrial undertaking which is considered to be the unit.

6. In view of the above submissions, it is prayed by the learned senior counsel that the impugned order deserves to be set aside and the benefit of notification No. 43 dated 06.06.1995 be granted to the petitioner by extending the period of exemption from 9 years to 11 years in respect of SPEC division (NRI unit).

Submissions of the counsel for the respondents

7. *Per contra*, Shri Bhuwan Gautam, learned Government Advocate for the respondent/State opposed the aforesaid prayer and submitted M/s Man Industries (India) Ltd. [Saw Pipe Division] is a separate legal entity, separate unit and exists as a separate dealer registered with the Commercial Tax Department for all purposes like assessment etc. for which a Registration Certificate dated 15.09.1994 was issued under the MP GST Act, 1958. Similarly, the unit (Saw Pipe Division) has a distinct registration under the



Central Sales Tax Act, 1956. The exemption certificate was issued for the Saw Pipe Division only and at that time, the SPEC division was not in existence. Later on, the SPEC division was established with a separate legal entity and a separate registration number and certificate to that effect was issued on 05.11.1998. Therefore, the unit of Saw Pipe Division and SPEC division are two different entities and cannot be intermingled or mixed by any stretch of the imagination for availing the benefit of tax exemption. The plea taken by the petitioner cannot be accepted that both the units are entitled to exemption having NRI status. The investment of NRI made in the Saw Pipe Division cannot be extended to the SPEC division because it is not an NRI investment for all practical purposes and it was only an internal arrangement made by the petitioner without prior approval from the RBI.

8. The decision of granting the tax exemption is a part of the State Government's policy to attract foreign investment especially through NRIs. Therefore, the NRI funds once invested into a particular unit i.e. in the Saw Pipe Division cannot be utilized by way of internal arrangement in the new SPEC division. The petitioner was required to show fresh NRI investment into the SPEC division. Therefore, no interference is liable to be made, and the petitions deserve to be dismissed.



Appreciation and conclusion

9. The Directorate of Industries issued eligibility certificate No. 463 dated 22.05.1998 under the notification No. 108 dated 06.10.1994 to M/s Man Industries (India) Ltd. (Saw Pipe Division) at Plan No. 257 B and 258 B, Sector – I, Pithampur, District Dhar (MP) in order to avail the facility of exemption from payment of tax under category C from 17.02.1996 to 16.02.2007. Thereafter, this notification No. 43 dated 06.06.1995 came into operation. The petitioner applied under this notification and obtained certificate of a Non Resident Dealer by fulfilling the conditions mentioned in the certificate for Saw Pipe Division. The certificate to that effect was issued on 24.10.2002 as Non Resident Dealer w.e.f. 17.02.1996 followed by the amended certificate dated 05.08.2003. The petitioner also obtained an eligibility certificate for exemption of Entry Tax on 05.08.2003 in the name of M/s Man Industries Ltd. (Saw Pipe Division) to get exemption from payment of Entry Tax under the Commercial Tax Department Notification No. 43 dated 06.06.1995 for 11 years.

10. The petitioner established SPEC division and applied for an eligibility certificate for availing facility of exemption from payment of tax under notification No. 108 dated 06.10.1994 and independent certificate No. 746 dated 27.03.2002 was issued by the Directorate of Industries in the name



of M/s Man Industries Ltd. (SPEC Division) (Name of dealer) to avail the facility of exemption of payment of tax from the date of commencement i.e. 22.04.1999 to 21.04.2008. Vide amended certificate dated 05.08.2008, the facility of exemption of payment of tax under the CTD notification No. 108 dated 06.10.1994 was given for the remaining period from 26.04.2001 to 21.04.2008 to SPEC division. Similarly, the certificate of eligibility for Entry Tax was also issued on 13.02.2005 to the SPEC division for the period from 24.02.1998 to 23.04.1999. Therefore, the petitioner obtained two separate registrations and eligibility certificates for Saw Pipe Division and SPEC Division treating both to be separate manufacturing units. Thereafter, on 27.12.2002, the petitioner applied for registration of SPEC division as an NRI unit disclosing that the investment made by the NRI promoter is 100% which is more than 26% as prescribed under Schedule I of the notification dated 06.06.1995.

11. The petitioner took up an expansion and set up the SPEC division under its expansion programme as a new unit for the manufacture of spirally welded pipes and coating pipes in the year 1999. The SPEC Division commenced production on 22.04.1999 in the first phase and thereafter in April 2001 in the second phase. The petitioner produced documents to show the investment of an additional Rs. 3.00 crores in the SPEC division to get the



status of Non Resident Dealer but the Directorate of Industries after examining the record found that the investment of Rs. 3.00 crores was made from 08.03.2001 to 10.04.2001 i.e. after the date of production i.e. 22.04.1999. Therefore, the NRI investment was not found made prior to the establishment of the SPEC division. The NRI investment of Rs. 1,66,65,406/- invested in the Saw Pipe Division had a lock-in period of three years and could not have been transferred in the SPEC division.

12. The conditions for grant of Non Resident Dealer under the notification No. 43 dated 06.06.1995 are reproduced below :

- “(a) specified in column (2) of the Schedule I below to the extent of the maximum cumulative quantum of tax under the repealed Act or Adhiniyam and the Central Act specified in column (3), for the maximum period specified in column (4), subject to the restrictions and conditions specified in column (5) of the said Schedule; and
(b) specified in column (1) of Schedule II below to the extent specified in column (2), for the period specified in the column (3), subject to the restrictions and conditions specified in column (4) of the said Schedule.

Who,-

- (i) are registered under the Adhiniyam and/or the Central Act;
- (ii) are registered with and certified by the Commerce and Industries Department, Government of Madhya Pradesh on or before 31st December, 1999 to be-
 - (a) a non-resident dealer establishing a new industrial Unit wherein his capital investment is atleast [26] percent of the equity invested by the private promoters, hereinafter referred to as the N.R.I. Industrial Unit;
 - (b) a dealer establishing a hundred percent export oriented industrial unit or converting his existing industrial unit into a hundred percent export oriented industrial unit; or
 - (c) a dealer whose industrial unit is an exporting industrial unit;
- (iii) commences commercial production or converts its existing industrial unit into hundred percent export oriented



industrial unit or whose existing industrial unit is recognized as an exporting industrial unit on or after 6th May, 1994 but on or before 31st December, 1999 or having taken the following effective steps on or before 31st December, 1999 commences commercial production on or after the said date but on or before 31st December, 2001,-

- (a) has obtained allotment/possession of land for the factory, and
- (b) has applied for finances from a regular financial institution; and
- (iv) hold an eligibility certificate issued by a competent authority to avail of the facility of exemption from payment of tax under this notification.”

13. On the basis of the aforesaid conditions, the petitioner had already got the status of Non Resident Dealer for its Saw Pipe Division. Therefore, the capital investment of 26% of equity invested by private promoters had been exhausted in the Saw Pipe Division for getting the status of Non Resident Dealer which was prior to 31.12.1999, hence the same NRI investment cannot be utilized to obtain Non Resident Dealer for another SPEC unit. The Directorate of Industries has rightly held about the lock-in period which is provided under para 6 which says that the dealer specified in serial number 1 of Schedule I and II shall be eligible to avail the facility of exemption from payment of tax under this notification after the expiry of a period of three years from the date of commencement of commercial production during which he is required to hold his equity which would be minimum 26% of the equity invested by the private promoters. The capital investment in fixed asset is also defined in para 13. More importantly, the



New Industrial Unit is also defined and as per (iv) the dealer manufactures in the new industrial unit products different from those manufactured in the existing industrial unit. Para 6 is reproduced below :

(6) New Industrial unit means an industrial unit established by a registered dealer in any district in the State of Madhya Pradesh for the manufacture of any goods, certified to be a new industrial unit by an authority authorised for the purpose by the Commerce and Industries Department of the Government of the Madhya Pradesh, wherein, he commence commercial production on or after 6th May, 1994 and shall include and industrial unit which is established by him in the premises of his industrial unit subject to the condition that he complies with the following requirements :

- (i) the industrial unit is separately registered as a new industrial unit with an authority authorised for the purpose by the Commerce and Industrial Department of the Government of Madhya Pradesh;
- (ii) separate factory licence/central excise licence, if necessary, and separate registration certificate under the Adhiniyam and the Central Act is obtained in respect of the new industrial unit;
- (iii) separate building/she for the new industrial unit is constructed, new plant and machinery is installed therein and separate electric power connection or additional electricity load with a separate meter has been sanctioned for this new industrial unit by the Madhya Pradesh Electricity Board;
- (iv) the dealer manufactures in the new industrial unit products different from those manufactured in the existing industrial unit;
- (v) separate books of accounts are maintained for the new industrial unit; and
- (vi) the new industrial unit is independent of the existing industrial unit and is not dependent on the existing industrial unit in any manner;

14. In the present case, the petitioner first established the Saw Pipe Division for the production of large-diameter welded steel pipes over 400 mm. Thereafter, the SPEC division was established for production of coated and



uncoated spirally, Saw welded tubes and pipes and coating of pipes. As per aforesaid para 6 of the notification No. 43 dated 6.6.1995 the SPEC Division has rightly treated as separate and distinct unit of the petitioner by the respondents.

15. So far as the judgment of the High Court of Telangana relied upon by the petitioner in the case of *Deccan Cements (supra)*, it is a case where the dealer has two adjacent units manufacturing cement and there is the transfer of clinker from one unit to another unit, the same cannot be treated as a sale. Further, in case of *DSM Group of Industries (supra)*, it is a case of expansion, modernization and diversification of a unit therefore, it was not treated as a separate unit. But in the present case, both the units are engaged in the manufacturing of different products and under the notification if the products are different then both the units are treated to be separate units.

16. As the petitioner is not granted the benefit of Non Resident Dealer status in respect of SPEC division for the period of 11 years, therefore, the respondent assessed the tax payable by the petitioner for the AY 2005-06, 2006-07, 2007-08, 2008-09 and 2009-10. The petitioner has challenged the revision orders passed by the competent authority under the MP Commercial Board by way of connected writ petitions No. 10475/2010, 11077/2013, 11081/2013, 20541/2020 and 20550/2020. Since, it has been held that the



petitioner is not entitled to Non Resident Dealer status in respect of the SPEC division, therefore the respondents have rightly assessed the tax payable by the petitioner for the respective assessment years.

17. Hence, finding no ground for interference, the writ petitions are dismissed.

18. Let a copy of this order be placed in the record of connected writ petitions No. 10475/2010, 11077/2013, 11081/2013, 20541/2020 and 20550/2020.

(VIVEK RUSIA)
JUDGE

(BINOD KUMAR DWIVEDI)
JUDGE