

[1]

THE HIGH COURT OF MADHYA PRADESH: JABALPUR**(Division Bench)****WA No.702/2021****(ANKIT PATEL Vs. THE STATE OF MADHYA PRADESH AND OTHERS)****Coram:****Hon'ble Mr. Justice Mohammad Rafiq, Chief Justice****Hon'ble Mr. Justice Vijay Kumar Shukla, Judge****Presence :**

Mr. Ashish Rawat, Advocate for the appellant.

Mr. Aashish Anand Barnard, Deputy Advocate General for the respondents/State.

Whether approved for reporting: **Yes****Law laid down:**

- Writ Appeal under Section 2(1) of the M.P. Uchcha Nyayalaya (Khand Nyay Peeth Ko Appeal) Adhiniyam, 2005 assailing the order passed by the writ court dismissing the petition under Article 226 of the Constitution of India seeking benefit of discount/exemption to the extent of 90% on the motor vehicle tax penalty in terms of Notification dated 02.08.2019 issued by the Transport Department, Govt. of M.P. under Section 21(1) of the M.P. Motor Vehicles Taxation Act, 1991 – **Held** – The union of the words “terms” and “conditions” clearly denotes plural and not a singular. Moreover, all the four conditions have been enumerated one after another and have not been disjuncted by use of the word “or”. Not only, therefore, as per the sub-clause (1) of Clause 1 vehicle should have completed 20 years from the date of manufacture and still registered in the Transport Department but the sub-clause (2) also has to be satisfied. Admittedly, the vehicle of the petitioner does not fulfill the very first condition of having completed 20 years from the date of manufacture and therefore, merely because it is still registered in the Transport Department that by itself will not bring the case of the petitioner within the purview of first clause of the exemption notification. There is, therefore, no need to apply the test contained in the subsequent three sub-clauses namely the sub-clauses (2), (3) and (4). The petitioner is therefore, not entitled to the benefit of Clause 1 of the Notification. Since vehicle of the petitioner is 9 years old, his case will fall in Clause 2(1)2, his vehicle being more than 5 years old but not more than 10 years old registered from the date of notification and thus, disentitling him to the discount of only 40%.
- It is trite that exemptions are to be strictly interpreted in fiscal statute and the important principle of interpretation interpreting them is that in construing an exemption notification, the question of equity does not arise and the exemption provision has to be strictly construed. Any exemption

[2]

notification or any clause of any notification of exemption in regard to taxation has to be strictly construed.

- The interpretation of the exemption notification is required to be made in the light of the words used therein and not by any other method. Nothing can be added or subtracted from what has been stated in the notification granting exemption and that such notifications are required to be strictly construed. When the language is simple, clear and unambiguous, the words used in the notification granting exemption have to be given their natural meaning.
- While exemptions should generally be interpreted strictly and in case of ambiguity it has to be interpreted in favour of the revenue but the expressions regarding beneficiary exemptions have to be interpreted differently, keeping in view the purpose of encouragement of industrial activities, encouraging capital investment, promoting development of industry and trade etc., which exemption provisions may be interpreted liberally.

Reference made:

- (1) Eagle Flask Industries Limited vs. Commissioner of Central Excise, Pune, (2004) 7 SCC 377.
- (2) Commissioner of Central Excise, New Delhi vs. Hari Chand Shri Gopal and others, (2011) 1 SCC 236.
- (3) Hansraj Gordhandas vs. H.H. Dave, Assistant Collector of Central Excise and Customs, Surat and others, AIR 1970 SC 755.
- (4) Ishwar Dutt vs. Land Acquisition Collector and another, (2005) 7 SCC 190.
- (5) State of Gujarat and others vs. Essar Oil Limited and another, (2012) 3 SCC 522.
- (6) Union of India and others vs. Wood Papers Limited and another, (1990) 4 SCC 256.
- (7) Commissioner of Income Tax and another vs. Yokogawa India Limited, (2017) 2 SCC Page 1.
- (8) Commissioner of Central Excise Surat-I vs. Favourite Industries, (2012) 7 SCC 153.
- (9) Commissioner of Customs (Import), Mumbai vs. Dilip Kumar and Company and others.
- (10) Government of Kerala and another vs. mother Superior Adoration Convent, 2021 SCC Online SC 151.
- (11) Commissioner of Customs (Preventive) vs. M. Ambalal & Co., (2011) 2 SCC 74.

Significant paragraphs: 6, 9 to 17

Heard through Video Conferencing.

[3]

ORDER (Oral)**(05.08.2021)****Per: Mohammad Rafiq, Chief Justice:**

1. This appeal seeks to challenge the judgment passed by the learned Single Judge in W.P. No.2565/2020 dated 22.03.2021 by which the writ petition filed by the appellant has been dismissed.

2. The appellant in the writ petition challenged the order dated 11.10.2019 (Annexure P-4) wherein the Additional Regional Transport Officer, Chhindwara while granting discount of 40% i.e. Rs.3,78,960/- out of the total demand of Rs.9,47,400/- on the payable amount of motor vehicle tax and penalty in respect of the vehicle No. MP-28-P-0269 registered in the name of the petitioner had raised a demand of Rs.5,68,440/-, calling upon the petitioner to pay the same up to the month of October, 2019.

3. Mr. Ashish Rawat, learned counsel for the petitioner has argued that as per the notification dated 02.08.2019 issued by the Transport Department, Government of Madhya Pradesh under Section 21(1) of the Madhya Pradesh Motor Vehicles Taxation Act, 1991, the respondents were required to give discount/exemption to the extent of 90% on the payable amount of motor vehicle tax and penalty if any one of the four conditions enumerated therein was attracted. Learned counsel argued that all the four conditions are namely; (1) Vehicles which have completed 20 years from the date of manufacture and are still registered in the Transport Department; (2) Vehicles on which the motor vehicle tax and penalty or both are pending and the vehicle owner voluntarily wants to cancel the registration of the

[4]

vehicle; (3) Such vehicles for which Permit, Fitness Certificate and Insurance have not been taken and no case has been registered on the vehicle for any crime within last five years from the date of issue of this notification; (4) The time limit for payment of discounted motor vehicle tax and penalty shall be 31st March, 2020 from the date of issue of notification. Merely because the vehicle of the appellant was 9 years old, the discount only to the extent of 40% as per Clause 2 of the aforesaid exemption notification cannot be justified. It is submitted that Clause 1 of the above notification is independent of Clause 2 and each of the four clauses enumerated therein shall have to be read dis-jointly and not together. According to the petitioner, as per Clause 1 of the exemption notification, entitlement of the petitioner to get discount is to the extent of 90% and, therefore, the petitioner has been wrongfully denied the discount to the extent of 50% on the amount of motor vehicle tax and penalty.

4. Learned counsel for the respondents opposed the writ petition and submitted that learned Single Judge was perfectly justified in dismissing the writ petition. It is submitted that entire exemption notification has to be read in entirety inasmuch as all the clauses of the exemption notification have to be read conjointly and one part cannot be read to the exclusion of another.

5. We have given our anxious consideration to the rival contentions of the learned counsel for the parties.

6. The exemption notification which is relevant for deciding the present writ appeal, reads as under:-

“F 22-124/2019/VIII, In exercise of the powers conferred by sub-section (1) of section 21 of the Madhya Pradesh Motoryan Karadhan Adhiniyam, 1991 (No. 25 of 1991), the State Government, hereby, exempts the motor

[5]

vehicles of all categories and age limit registered before the publication of this notification from the payment of dues of motor vehicle tax and penalty as under:-

1. Exemption of taxes on Astray Vehicles.- The vehicle of this category shall be given 90 percent discount on the payable amount of motor vehicle tax and penalty thereon, subject to the following terms and conditions:-

- (1) Vehicles which have completed 20 years from the date of manufacture and are still registered in the Transport Department.
- (2) Vehicles on which motor vehicle tax or penalty or both are pending and the vehicle owner voluntarily wants to cancel the registration of the vehicle.
- (3) Such vehicles for which Permit, Fitness Certificate and Insurance have not been taken and no case has been registered on the vehicle for any crime within last five years from the date of issue of this notification:

Provided that an affidavit by the owner or a certificate to this effect is issued by the competent authority shall be submitted.

- (4) The time limit for payment of discounted motor vehicle tax and penalty shall be 31st March, 2020 from the date of issue of notification.

2. Discount for one time payment:-

(1) Discount for one time payment of default motor vehicle tax and penalty on vehicles shall be as follows subject of the terms and conditions described in sub rule (2) :-

S.No.	Period of Registration	Discount of Default amount
1.	Upto 5 years old registered vehicles from the date of Notification	20 percent
2.	More than 5 years but not more than 10 years old registered vehicles from the date of Notification.	40 percent
3.	More than 10 years but not more than 15 years old registered vehicles from the date of Notification.	50 percent
4.	More than 15 years' old registered old registered vehicles from the date of Notification.	70 percent

[6]

(2) Terms and conditions:-

- (a) The time limit for payment of discounted motor vehicle tax and penalty shall be 31st March, 2020 from the date of issuance of Notification.
- (b) The age limit of the vehicles which have default motor vehicle tax and penalty shall be counted from the date of issuance of the Notification.
- (c) After the date of issue of notification the motor vehicle tax and penalty of vehicles shall be counted as per the existent rates.”

7. While Clause 1 of the above exemption notification provides that the astray vehicles shall be given 90% discount on the payable amount of motor vehicle tax and penalty thereon, subject to fulfillment of the four conditions enumerated therein. Clause 2 of the Exemption Notification provides for discount of onetime payment on fulfillment of the conditions enumerated therein. Both these clauses are independent of each other. While Clause 1 has provided for exemption/discount to the extent of 90% on fulfillment of the four conditions enumerated therein as it specifically provides that such 90% discount on the payable amount of motor vehicle tax and penalty “shall be given” “subject to the following terms and conditions”. Use of the words “terms” and “conditions” clearly denotes plural of the conditions and not singular. Moreover, all the four conditions have been enumerated one after another and have not been disjuncted by use of the word “or”. Not only, therefore, as per the sub-clause (1) of Clause 1 vehicle should have completed 20 years from the date of manufacture and still registered with the Transport Department but sub-clause (2) also has to be satisfied that such vehicle owner, on which motor vehicle tax or penalty or both are pending, voluntarily wants to get the registration of the vehicle cancelled and third condition is that permit, fitness certificate and insurance on such

[7]

vehicle have not been taken and no case has been registered on the vehicle for any crime for the last five years and fourth condition is that the time limit for payment of discounted motor vehicle tax and penalty shall be up to 31.03.2020.

8. Admittedly, the vehicle of the petitioner does not fulfill the very first condition of having completed 20 years from the date of manufacture and, therefore, merely because it is still registered with the Transport Department, that by itself will not bring the case of the petitioner within the purview of the first clause of the exemption notification. There is therefore no need to apply the test contained in the subsequent three sub-clauses namely the sub-clauses (2), (3) and (4). Moreover, it is not disputed that the vehicle of the petitioner is only 9 years old. Therefore, the learned Single Judge rightly held that the petitioner does not fulfill the conditions which are mentioned in Clause 1 and, therefore, he is not entitled to the benefit of discount of 90% as per Clause 1 of the notification. Since vehicle of the petitioner is only 9 years old, his case will fall in Clause 2(1)2. His vehicle being more than 5 years old but not more than 10 years old registered from the date of notification, would entitle him to the discount of only 40%.

9. It is trite that exemptions are to be strictly interpreted in fiscal statute and the important principle of interpretation interpreting them is that in construing an exemption notification, the question of equity does not arise and the exemption provision has to be strictly construed. Any exemption notification or any clause of any notification of exemption in regard to taxation has to be strictly construed. Reference in this connection can be made to judgment of the Supreme Court in **Eagle Flask Industries**

[8]

Limited vs. Commissioner of Central Excise, Pune, (2004) 7 SCC 377

wherein it was held that if the exemption is available on complying with certain conditions, the conditions have to be strictly complied with.

10. The Supreme Court in **Commissioner of Central Excise, New Delhi vs. Hari Chand Shri Gopal and others** reported in (2011) 1 SCC 236 following the ratio of its earlier judgment in **Hansraj Gordhandas vs H.H. Dave, Assistant Collector of Central Excise and Customs, Surat and others** reported in AIR 1970 SC 755, answered this question. In the facts of that case, while reiterating the settled principles qua the test of construction of exemption clause with the mandatory requirement to be complied with and distinction between the eligibility criteria with reference to the condition which need to be strictly complied with, the Supreme Court held that it is well settled law that a person who claims exemption or concession has to establish that he is entitled to that exemption or concession. A provision providing for an exemption, concession or exception, as the case may be, has to be construed strictly with certain exceptions depending upon the settings on which the provision has been placed in the Statute and the object and purpose to be achieved. It was held that if exemption is available on complying with certain conditions, the conditions have to be complied with, the mandatory requirements of those conditions must be obeyed or fulfilled exactly.

11. The Supreme Court in **Ishwar Dutt vs. Land Acquisition Collector and another**, reported in (2005) 7 SCC 190 categorically held that *“in case of ambiguity, a taxing statute should be construed in favour of the assessee assuming that the said principle is good and sound, does not apply to the*

[9]

construction of an exception or an exempting provision and they have to be construed strictly". The Supreme Court further held that "*a person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt or ambiguity, benefit of it must go to the State*". Similar view has been taken by the Supreme Court in **State of Gujarat and others vs. Essar Oil Limited and another, (2012) 3 SCC 522**.

12. The Supreme Court in **Commissioner of Income Tax and another vs. Yokogawa India Limited, (2017) 2 SCC Page 1** held as under:-

"8. The cardinal principles of interpretation of taxing statutes centers around the opinion of Rowlatt, J. in Cape Brandy Syndicate vs. Inland Revenue Commissioners which has virtually become the locus classicus. The above would dispense with the necessity of any further elaboration of the subject notwithstanding the numerous precedents available inasmuch as the evolution of all such principles are within the four corners of the following opinion of Rowlatt, J. (Cape Brandy case, KB p.71)

"...in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

13. It is trite that the interpretation of the exemption notification is required to be made in the light of the words used therein and not by any other method. Nothing can be added or subtracted from what has been stated in the notification granting exemption and that such notifications are required to be strictly construed. When the language is simple, clear and unambiguous, the words used in the notification granting exemption have to be given their natural meaning. We may in this connection refer to judgment of the Supreme Court in **Commissioner of Central Excise Surat-I vs. Favourite Industries**, reported in **(2012) 7 SCC 153** wherein it was held as under:-

[10]

“35. The notification requires to be interpreted in the light of the words employed by it and not on any other basis. There cannot be any addition or subtraction from the notification for the reason the exemption notification requires to be strictly construed by the Courts. The wordings of the exemption notification have to be given its natural meaning, when the wordings are simple, clear and unambiguous.”

14. The principle of law enunciated by the Supreme Court in **Union of India and others vs. Wood Papers Limited and another, (1990) 4 SCC 256** is that liberal and strict construction of an exemption provision is to be invoked at different stages of interpreting it. In order to decide whether the subject falls in the exemption clause, which being in the nature of exception, has to be construed strictly. But once the doubt about its applicability is clear and the subject is found to fall in its scope, then full play should be given to it. Relevant discussion about this is to be found in Para-4 of the report, which reads hereunder:-

“4. Entitlement of exemption depends on construction of the expression "any factory commencing production" used in the Table extracted above. Literally exemption is freedom from liability, tax or duty. Fiscally it may assume varying shapes, specially in a growing economy. For instance tax holiday to new units, concessional rate of tax to goods or persons for limited period or with the specific objective etc. That is why its construction, unlike charging provision, has to be tested on different touchstone. Infact an exemption provision is like an exception and on normal principle of construction or interpretation of statutes it is construed strictly either because of legislative intention or on economic justification of inequitable burden or progressive approach of fiscal provisions intended to augment state revenue. But once exception or exemption becomes applicable no rule or principle requires it to be construed strictly. Truly, speaking liberal and strict construction of an exemption provision are to be invoked at different stages of interpreting it. When the question is whether a subject falls in the notification or in the exemption clause then it being in nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction. Therefore, the first exercise that has to be undertaken is if the production of packing and wrapping material in the factory as it existed prior to 1964 is covered in the notification.”

[11]

15. The Constitution Bench of Supreme Court in **Commissioner of Customs (Import), Mumbai vs. Dilip Kumar and Company and others** reported in (2018) 9 SCC 1, was called upon to decide the correctness of ratio of **M/s. Sun Export Corporation, Bombay vs. Collector of Customs** reported in 1997 (6) SCC 564, which held that when there is an ambiguity in a tax exemption provision or notification with regard to its applicability with reference to entitlement of assessee, it must be interpreted so as to favour the assessee claiming the benefit of such exemption. The Constitution Bench answered the reference in following terms:

“66. To sum up, we answer the reference holding as under:

66.1. Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.

66.2 When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the Revenue.

66.3. The ratio in Sun Export case is not correct and all the decisions which took similar view as in Sun Export case stand overruled.”

16. The Supreme Court in **Government of Kerala and another vs. Mother Superior Adoration Convent** reported in 2021 SCC Online SC 151 held that the Constitution Bench in **Dilip Kumar and Company (supra)** did not refer to the line of authority which made a distinction between exemption provisions generally and exemption provisions which have a beneficial purpose and observed that the aforesaid Constitution Bench judgment cannot be held to have done away sub-silentio the line of judgments qua beneficial exemptions. In this connection reference was

[12]

made to the judgment of **Wood Paper Limited (supra)** making distinction between two categories of exemption clauses/provisions. The Supreme Court in **Wood Paper Limited (supra)** held that tax holiday to new units, concessional rate of tax to goods or persons for limited period or with the specific objective is freedom from liability of tax or duty, which assume shapes in a growing economy. If an exemption provision is like an exception, on normal principle of construction or interpretation of statutes, it is construed strictly either because of legislative intention or on economic justification of inequitable burden or progressive approach of fiscal provisions intended to augment State revenue. But once exception or exemption becomes applicable, no rule or principle requires to be construed strictly. The Supreme Court in **Mother Superior Adoration Convent (supra)** held that object of granting exemption from payment of sales tax has always been for encouraging capital investment and establishment of industrial units for the purpose of increasing production of goods and promoting the development of industry in the State.

17. The Supreme Court in **Commissioner of Customs (Preventive) v. M. Ambalal & Co.** reported in **(2011) 2 SCC 74** made a clear distinction between exemptions which are to be strictly interpreted as opposed to beneficial exemptions having as their purpose - encouragement or promotion of certain activities. This case felicitously summarized the law as follows:

“16. It is settled law that the notification has to be read as a whole. If any of the conditions laid down in the notification is not fulfilled, the party is not entitled to the benefit of that notification. The rule regarding exemptions is that exemptions should generally be strictly interpreted but

[13]

beneficial exemptions having their purpose as encouragement or promotion of certain activities should be liberally interpreted. This composite rule is not stated in any particular judgment in so many words. In fact, majority of judgments emphasise that exemptions are to be strictly interpreted while some of them insist that exemptions in fiscal statutes are to be liberally interpreted giving an apparent impression that they are contradictory to each other. But this is only apparent. A close scrutiny will reveal that there is no real contradiction amongst the judgments at all. The synthesis of the views is quite clearly that the general rule is strict interpretation while special rule in the case of beneficial and promotional exemption is liberal interpretation. The two go very well with each other because they relate to two different sets of circumstances.”

18. In view of the above, it must be held that while exemptions should generally be interpreted strictly and in case of ambiguity it has to be interpreted in favour of the revenue but the expressions regarding beneficiary exemptions have to be interpreted differently, keeping in view the purpose of encouragement of industrial activities, encouraging capital investment, promoting development of industry and trade etc., which exemption provisions may be interpreted liberally. Admittedly, the exemption notification in the present case does not fall in any of these categories.

19. In view of the above discussion, we do not find any merit in this appeal which is accordingly **dismissed**. If, however, the petitioner deposits the amount determined by the respondent as per order dated 11.10.2019 (Annexure P-4), the competent authority shall consider and decide his application for cancellation of the registration within a period of 45 days.

(Mohammad Rafiq)
Chief Justice

(Vijay Kumar Shukla)
Judge