



**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 26th OF JUNE, 2025

WRIT PETITION No. 2085 of 2006

EICHER MOTORS LTD.

Versus

COMMISSIONER OF COMMERCIAL TAX, INDORE AND OTHERS

Appearance:

*Shri Manoj Munshi, learned Senior Advocate assisted by Shri Mahak
Guru - Advocate for the petitioner.*

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

Reserved on: 18.06.2025

Pronounced on: 26.06.2025

ORDER

Per: Justice Vivek Rusia

This petition has been filed by the petitioner challenging the order dated 03.10.2005 whereby the Additional Commissioner, Commercial Tax, Indore has dismissed Revision Cases No. 37/05/Indore/Regional & 19/05/Indore/Central, filed under Section 62(1) of the Madhya Pradesh Commercial Tax Act, 1994 (hereinafter referred to as the 'MPCT Act') read with Section 9(2) of the Central Sales Tax Act, 1956 (hereinafter referred to as the 'CST Act') affirming the order dated 03.12.2024 passed by the Appellate



Commissioner, Commercial Tax, Indore and order dated 29.06.2022 passed by the Assistant Commissioner, Commercial Tax, Indore Division – 2.

2. FACTS OF THE CASE IN BRIEF :

2.1 The petitioner is a company registered under the Companies Act, 1956 [now Companies Act, 2013] and engaged in the business of manufacturing facilities for motor vehicles in its plant situated at Pithampur, District Dhar (MP). The petitioner is also a registered dealer and an assessee under the provisions of the MP Commercial Tax Act (MPCT Act). The regular assessment of the commercial tax of the petitioner for the Assessment Year 1998-99 was completed by the Assistant Commissioner, Commercial Tax, Indore Zone -2 on 29.06.2002 under Section 27(3) of the MPCT Act.

2.2 Petitioner has challenged the assessment order dated 29.06.2002 by way of appeal before the Appellate Deputy Commissioner, Commercial Tax, Indore under Section 61 of the MPCT Act ,except the claim of Rs. 38,92,585/- allowed by the Assessing Officer, for the period 01.04.1998 to 31.03.1999 (which is a subject matter of this writ petition). Admittedly, the petitioner was declared eligible by the government for exemption from payment of commercial tax under Notification No. A-3-34-94-ST-V(5) dated 28.02.1995 for a period of six years commencing from 29.04.1998 to 28.04.2004 or for the aggregate amount of Rs. 2,97,58,902, whichever is earlier. The appeal was considered on other issues and vide dated 17.12.2003 the first appeal was dismissed. Thereafter, petitioner approached the



Commercial Tax Appellate Board, Bhopal by way of a second appeal. Vide order dated 31.08.2004, the Appellate Board set aside the order dated 17.12.2003 and remitted the matter back to the Assessing Officer for fresh assessment. The Assistant Commissioner Commercial Tax, Indore Division II reopened the case under Section 28(1) of the MPCT Act and reassessed the return of the petitioner vide assessment order dated 23.04.2003 whereby the tax of Rs. 73,81,605/- has been forfeited under Section 73(3) of the MPCT Act and the quantum of exemption of Rs. 2,97,58,902/- has also been reduced. The exemption was reduced up to Rs. 2,58,16,895/- due to forfeiture of Rs. 73,81,605/- on the ground that the petitioner was issued provisional eligibility certificates on 28.01.1999 with effect from 29.08.1998, therefore during the period from 29.04.1998 till 31.01.1999 he was not holding the exemption certificates in his possession and wrongly recovered the taxes.

2.3 Being aggrieved by the aforesaid reassessment order dated 23.04.2003, the petitioner preferred the first appeal before the Appellate Deputy Commissioner which came to be dismissed vide order dated 03.12.2004. Thereafter, the petitioner filed a revision, which was also rejected by the impugned order dated 03.10.2005. Hence, the present petition before this Court.

SUBMISSIONS OF THE PETITIONER

3. Shri Manoj Munshi, learned Senior Counsel appearing for the petitioner submitted that in the original assessment order dated 29.06.2002,



the Assessing Officer had accepted the claim of the petitioner and allowed the exemption w.e.f 01.02.1999. But thereafter, the Assessing Officer vide reassessment order dated 23.04.2003 under Section 28(1) has wrongly reopened the said concluded issue and forfeited the amount of Rs. 73,81,605/- out of the tax of Rs. 76,61,873/- deposited by the petitioner. The Assessing Officer not only forfeited the amount of tax of Rs. 73,81,605/- but also reduced the quantum of exemption of Rs. 2,97,58,902/- to an aggregate amount of Rs. 2,58,16,895/- thereby leaving the un-availed balance of Rs. 39,42,007/- for the next years. It is further submitted by learned senior counsel that as per the notification, petitioner was eligible to avail exemption from the date of installation of the Wind Generator irrespective of the date of issuance of eligibility certificates. The petitioner was issued eligibility certificates on 28.01.1999 with retrospective effect from 29.04.1998 to 31.01.1999 during which period, the petitioner bonafidely sold the product, collected the tax and deposited the same with the department. Even if the amount of Rs. 73,81,605/- has been forfeited, the reduction of the quantum of exemption during the period 29.04.1998 to 31.03.1999 is illegal and bad in law. The first appellate authority as well as the revisional authority has wrongly considered the issue and dismissed the appeal as well as the revision.

4. Shri Munshi, learned Senior Counsel further submitted that the Assessing Officer had already granted exemption to the petitioner and the department did not challenge the same by way of appeal therefore, at the stage



of reassessment the Assessing Officer could not have considered the issue of exemption and passed an order of forfeiture reducing the available quantum of exemption of tax by an aggregate amount Rs. 2,58,16,895/- and left the balance of Rs. 39,42,007/- for the next year. In support of his aforesaid contention, learned Senior Counsel has placed reliance on the judgment passed by the Division Bench of this Court in case of ***Commissioner of Sales Tax vs. Akshaya Industries, Bhopal*** reported in (1996) TLD 10 (MCC No. 538/1986); judgment passed by the High Court of Kerala in case of ***Assistant Secretary of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam vs. Jimmy Antony*** reported in (1998) 108 STC 107 and; the judgment passed by the Rajasthan Taxation Tribunal in case of ***Bikaner Transformers Udyog vs. State of Rajasthan & Anr.*** reported in (1999) 114 STC 172.

SUBMISSIONS OF THE RESPONDENTS

5. *Per contra* Shri Bhuwan Gautam, learned Government Advocate for the State submitted that the eligibility certificate was issued to the petitioner subject to the conditions specified in the notification in question. The period of exemptions i.e. 6 years had to start from the date of commencement of the consumption of the power generated in the non-conventional power generation system or the date on which the cumulative quantum worth Rs. 2,97,58,902/- referred to in column (3) is achieved, whichever is earlier, as has been specified in column (4) against Sl. No. 2 of the said notification. For the eligibility criteria in para (3), it is mentioned that



the consumption of electrical energy generated in the non-conventional power generation system started on 29.04.1998, therefore, the period of exemption would start from 29.04.1998. Learned Government Advocate further submitted that the petitioner had wholly availed the facility of exemption of payment of tax under the said notification, therefore, it cannot change the option. It is not the discretion of the petitioner from which date the facility of exemption will start nor can it pick and choose a transaction on which it will avail the facility of exemption and on which it will not avail the facility of tax exemption. The eligibility certificates issued to the petitioner are binding on the assessing authority as has been held by this Court in the case of ***CST vs. Madhya Bharat Papers Ltd.***, reported in (1996) 29 VKN 230. A similar view has been expressed by the High Court of Karnataka in the case of ***Wipro Infotech Ltd. vs. Addl. Dy. CCT*** reported in (2000) 117 STC 244 (kar).

6. Learned Government Advocate for the respondents also submitted that the petitioner also purchased raw materials and incidental goods against the declaration without payment of tax. On such purchases, the purchase tax is calculated under Section 9 or 10 of the MPCT Act, as the case may be. While assessing the case of the petitioner for the years 1998-99, the Assessing Officer did not calculate the purchase tax on purchases which were made against the declaration by the petitioner therefore, such purchases escaped assessment of tax under Section 10 of the MPCT Act and the quantum of cumulative tax was not determined in accordance with the provisions of



notification therefore, the Assessing Officer after scrutiny of the assessment reopened the case under Section 28(1) of the MPCT Act. Under these circumstances, the contention of the petitioner that there was no ground for reopening the case under Section 28(1) of the Act is incorrect.

7. Learned Government Advocate for the respondent further submitted that as regards the forfeiture of tax under Section 73(3) of the MPCT Act, the petitioner was not entitled to collect tax because it was exempted from payment of tax. Therefore, even being a registered dealer in view of the notification, the petitioner was not entitled to collect tax on the goods which were exempted from payment of tax. The Apex Court in the case of *Mafatlal Industries Ltd. vs. Union of India & Ors.* reported in (1998) 111 STC 467 (SC) held that the doctrine of *Unjust Enrichment* is just a statutory doctrine; no person can seek to collect tax or duty from both ends. In other words, he cannot collect the duty from the purchaser at one end and also collect the same from the State on the ground that it has been collected from him contrary to law.

APPRECIATIONS AND CONCLUSION

8. The Government of Madhya Pradesh in exercise of the power conferred under Section 12 of the Madhya Pradesh General Sales Tax Act, 1958 and Section 8(5) of the Central Sales Tax Act, 1956 issued a notification No. A-3-32-94-ST-V(5) dated 28.02.1995 in respect of exemption from payment of commercial tax for the non-conventional power generating units.



The State Government exempted from payment of tax under Sections 6 and 7 of the Central Act to the class of dealers specified in Class II of the schedule to the extent of the maximum cumulative quantum of tax under the Act and the Central Act specified in column (3) to a dealer who sets up non-conventional power generation system generating electrical energy from non-conventional sources in any of the districts in Madhya Pradesh and has commenced generation therein. The maximum period within which the quantum of exemption was given was 6 years from the date of commencement of the generation in the non-conventional power generation system or the date on which the cumulative quantum specified in column (3) is achieved, whichever is earlier. The facility of exemption of payment of tax under this notification was made available with respect to raw material consumed or used and incidental goods used in the generation of electrical energy. The maximum period of eligibility shall commence from the date of commencement of generation of a non-conventional power generation system in respect of a dealer specified in serial number 1 of the Schedule. It has been clarified that if the dealer avails the exemption from payment of tax up to the cumulative quantum specified in column (3) of the schedule on a date earlier than the last date of the period of eligibility, the facility of exemption from the payment of tax shall cease from the date next following such achievement and the eligibility certificate shall automatically cease to be in force on and from such date. As per para 6(b) of the notification, exemption under this notification



shall be available subject to the condition that 'the dealer shall obtain a provisional/permanent eligibility certificate from the officer authorised for the purpose in the form and manner specified in the Annexure specifying *inter-alia* the goods in respect of which the exemption is available.

9. In the present case, the provisional eligibility certificates were issued to the petitioner on 28.01.1999 with retrospective effect i.e. from 29.04.1998. In the certificates, the date of commencement of generation of the non-conventional power generation system was mentioned as 29.04.1998 to the extent of cumulative quantum of tax payable by him under the Madhya Pradesh General Sales Tax Act, 1958 and the Central Tax Act, 1956 which is 100% of Rs. 1,48,79,451.00 (aggregating to Rs. 2,97,58,902/-) for a period of 6 years or for the period up to the date earlier to the date of expiry of the said period of 6 years on which the industry achieves the said cumulative quantum, whichever is earlier. Therefore, the petitioner being a dealer has been declared eligible to wholly avail the facility of exemption of payment of tax payable by him in respect of the good specified therein intended for consumption or use by him as raw material or for use as incidental goods in the generation of electrical energy/manufacture of other goods.

10. During the argument Shri Manoj Munshi, learned Senior Counsel for the petitioner has fairly admitted that the petitioner is not challenging the forfeiture of the amount of tax paid by him but challenging the reduction of



cumulative quantum of tax exemption Rs. 73,81,605.00 out of Rs. 2,97,58,902/- by the second Assessing Officer u/s 28(1) of the MPCT Act.

11. It is not disputed that the petitioner deposited the tax of Rs. 76,61,873/- to the Government for the period from 01.04.1998 till 31.01.1999 awaiting issuance of provisional certificates of exemption. The provisional certificates were issued on 28.01.1999 granting exemption w.e.f. 29.04.1998. The petitioner paid tax from 01.04.1998 till 31.01.1999 which has been declared illegal. In our considered opinion, the amount has wrongly been declared illegal because the petitioner did not possess the provisional exemption certificate therefore, as a bonafide tax payer, paid the taxes from 01.04.1998 till 31.01.1999.

12. Petitioner applied for issuance of provisional certificates much prior to the date of issuance declaring the date of production as 29.04.1998. As per the language of the notification, the exemption period shall commence from the date of start of production which the petitioner declared and the same was mentioned in the exemption certificates i.e. 29.04.1998. Therefore, the amount of Rs. 73,81,605 out of the tax paid of Rs. 76,61,873 from 01.04.1998 to 28.01.1999 has been forfeited as the same cannot be returned to the petitioner under the doctrine of *Unjust Enrichment* and the petitioner is not claiming refund of the same but the said amount of tax is not liable to be reduced from the total amount of exemption given to the petitioner. The petitioner is entitled to an exemption for the period of 6 years or achievement



of a total amount of Rs. 2,97,58,902/-, whichever is earlier. Once tax collected for the said period is forfeited treating it to be illegally paid, the reduction of said amount from the cumulative quantum of tax exemption of Rs. 2,97,58,902/- amounts to double jeopardy.

13. As per the notification, exemption was granted to the petitioner for the maximum period of six years commencing from the date of commencement of the generation in the non-conventional power generation system (i.e. 29.04.1998 to 28.04.2004) or the date on which the cumulative quantum of tax Rs. 2,97,58,902/- as specified in column (3) is achieved, whichever is earlier, therefore within the period of 6 years the petitioner was permitted to achieve cumulative quantum of tax. If the petitioner can achieve the given target of Rs. 2,97,58,902/- within 2 or 3 years then the remaining period will cease and *vice versa* if the petitioner cannot avail the targeted quantum of tax in six years the remaining amount out of Rs. 2,97,58,902/- will not be available. Hence both limits i.e. monetary cumulative quantum of tax Rs. 2,97,58,902/- or 6 years time period (29.04.1998 to 28.04.2004) were given to the petitioner, whichever is achieved first. Even if the 6 years period is liable to be commenced from the date of generation of non-conventional power generation system i.e. 29.04.1998 the petitioner had sufficient time to avail the target of cumulative quantum of tax Rs. 2,97,58,902/-. Hence the amount of tax Rs. 73,81,605/- paid by the petitioner has wrongly been deducted from the total cumulative quantum of tax Rs. 2,97,58,902/-. The first



Assessing Officer had already allowed the exemption from 01.02.1999 which was not challenged by either of the parties therefore, after remand on other issues this date ought not to have been changed by the second Assessing Officer. Even the learned Commissioner / Revisional authority has wrongly deducted Rs. 73,81,605/- paid by the petitioner from the total cumulative quantum of tax of Rs. 2,97,58,902/-.

14. Hence, in view of the above the writ petition is **partly allowed**. The order dated 03.10.2005 passed by the Additional Commissioner, Commercial Tax, Indore, the order dated 29.06.2022 passed by the Assistant Commissioner, Commercial Tax, Indore Division – 2 and the order dated 03.12.2024 passed by the Appellate Commissioner, Commercial Tax, Indore are hereby set aside to the extent of deduction of Rs. 73,81,605/- paid by the petitioner from the cumulative quantum of tax exemption of Rs. 2,97,58,902/-.

The petition stands partly allowed and disposed of.

No order as to cost.

(VIVEK RUSIA)
JUDGE

(BINOD KUMAR DWIVEDI)
JUDGE