State Of Madhya Pradesh And Anr vs G.S. Dall And Flour Mills on 19 September, 1990

Equivalent citations: 1991 AIR 772, 1990 SCR SUPL. (1) 590, AIR 1991 SUPREME COURT 772, 1991 (1) UPTC 99, 1991 ALL TAXJ 113, (1990) 4 JT 430 (SC), 1992 (1) SCC(SUPP) 150, (1991) 187 ITR 478, (1991) 80 STC 138, (1991) 5 CORLA 83

Author: K.N. Saikia

Bench: K.N. Saikia

PETITIONER:
STATE OF MADHYA PRADESH AND ANR.

Vs.

RESPONDENT:
G.S. DALL AND FLOUR MILLS

DATE OF JUDGMENT19/09/1990

BENCH:
RANGNATHAN, S.
BENCH:
RANGNATHAN, S.
MUKHARJI, SABYASACHI (CJ)
SAIKIA, K.N. (J)

CITATION:
1991 AIR 772 1990 SCR Supl. (1) 590
1992 SCC Supl. (1) 150 JT 1990 (4) 430
1990 SCALE (2)756
CITATOR INFO :
E&D 1992 SC2014 (23)

ACT:
M.P. Sales Tax Act, 1958/M.P. (Deferment of payment of Tax) Rules, 1983. Section 12/Rule 13--Sales Tax--Eligibility for exemption --Effect of Notification dated July 3, 1987.

HEADNOTE:
In exercise of the powers conferred by section 12 of the Madhya Pradesh General Sales Tax Act, 1958 the State Government issued a notification dated 23.10.1981 exempting the specified class of dealers who had set up industry in any of

the specified districts of Madhya Pradesh and had commenced production after 1st April, 1981 from payment of tax under the said Act for a specified period subject to certain restrictions and conditions. However, when the assesses approached the Director of Industries for the certificate of exemption, it was denied to them on the ground that the industries run by them were "traditional industries" which were not eligible for exemption.

The assesses went to the court and urged that the concept of "traditional industries" was one unspecified in the notification, and that the authorities had no jurisdiction to travel outside the terms of the notification and import extraneous considerations to deny the assesses an exemption they were entitled to under the notification.

The State on the other hand, relied on the provisions of the M.P. (Deferment of payment of Tax) Rules, 1983. notified on 1.9.83 (in particular, rule 13 thereof) and on certain instructions that had been issued by the Government on 12.1.1983 pertaining to the "grant of certificate of eligibility to new industrial units claiming exemption from or deferment of payment of sales tax".

The assessee's claim for exemption from sales tax was accepted by the Division Bench of the High Court in the case of G.S. Dhall & Flour Mills and, following it, in the case of Mohd. Ismail. The Division Bench took the view that these rules and instructions had no relevance to the claim for exemption put forward under the notification of 23.10.1981 and that, in any event, the executive instructions could not override the provisions of the statutory notification.
591

Subsequent to the decision of the Division Bench, the State Government issued a notification on 3.7.1987, intended obviously to overcome the effect of the said decision.

Subsequently, however, a Full Bench of the High Court, in the case of Jagadamba Industries disapproved the view taken by the Division Bench in G.S. Dhall case. The Full Bench attached importance to the rules and instructions referred to above and relied considerably on his history of the sales-tax levy in the State as furnishing proper and necessary background in which the terms of the notification of 23.10.1981 had to be read and interpreted.

The Full Bench, after considering the scheme and instructions of the Government, came to the conclusion that the scope of the exemption notification of 1981 was not intended to be wider than that of the concessions granted earlier, and that the 1981 notification was intended to bring about only a change in the mode of relief to the same categories of industries as were covered by the earlier schemes.

The contention that "instructions" could not override the effect of the statutory notification was repelled by the Full Bench on the ground that the validity and effectiveness of the instructions could be supported by reference to

Article 162 of the Constitution as filling up a lack of guidelines in the notification.

The Full Bench considered the 1983 instructions to be conclusive on two grounds on the doctrine of contemporanea exposition and on the principle that executive instructions could always be issued to supplement statutory instruments so as to fill up areas on which the latter were silent.

The State, aggrieved by the judgment of the Division Bench in the two cases, and the assessee by the judgment of the Full Bench in the other case, have filed the appeals and Special Leave Petitions.

Before this Court the parties reiterated their submissions in support of either of the two judgments. The main submission on behalf of the State was that, since the 1981 notification did not set out the conditions on which, and the procedure in accordance with which the Director of Industries was to issue the eligibility certificate, the earlier scheme of subsidy/loan and its procedure should be read into the notification for this purpose. This contention was contested by the assesses inter alia on the ground that the earlier scheme and the exemption now
592
proposed were totally different in their object and scope.

Dismissing the appeals of the State, and allowing the appeals preferred by the assesses, this Court while observing that the Division Bench laid down the correct law and not the Full Bench,

HELD: (1) The 1981 notification does not expressly, or even by necessary implication, exclude "traditional" industries from its scope.

(2) Prima facie, the Director of Industries cannot refuse the exemption on a consideration not specified in the notification. All the conditions for exemption have to be, and are, set out in the notification itself and all that the Director of Industries has to do is to satisfy himself that those conditions are fulfilled; he cannot travel beyond the terms of the notification.

(3) Even granting that the 1981 policy was to replace the earlier subsidy/loan by an exemption, it does not necessarily follow that the units intended to be covered by the new scheme were only those that were covered by the earlier scheme and that no wider exemption was contemplated.

(4) No factual foundation has been laid to establish the hypothesis that the exemption conferred in 1981 was to be a mere extension or substitution of the benefits conferred earlier.

(5) The notification does not authorise the Director of Industries to say that, though the applicant fulfill the terms of the notification. he will not grant the eligibility certificate because,Under the previously prevalent schemes, he could not issue an eligibility certificate to "traditional industries". For granting a certificate that the applicant is eligible for exemption under the notification, the

director has to look to the conditions set out in the notification and nowhere else.

Changing definition of eligibility for exemption also shows that there was no common or identical group of beneficiaries intended under the various instructions or notifications and that each set of instructions or notification issued from time to time defined only the categories exempted from its purview and nothing else. The exemption list under one was not meant to be carried over into another.
Hans Gordon Dan v .H.H. Dave, [1969] 2 NCR 253. referred to.

593

(7) The 1983 document is not a statutory instrument--neither a notification nor a rule framed under the statute.

(8) It is true that the principle of contemporanea exposition is invoked where a statute is ambiguous but is shown to have been clearly and consistently understood and explained by the administrators of the law in a particular manner. But. to apply the doctrine to widen the ambit of the statutory language would, however, virtually mean that the State can determine the interpretation of a statute by its ipsi dixit. That, certainly, is not, and cannot be the scope of the doctrine. The doctrine can be applied to limit the State to its own narrower interpretation to favour of the subject but not to claim its interpretation in its own favour as conclusive.

Varghese v. 1. T.O., [1982] 1 SCR 629 and Doypack Systems P. Ltd. v. Union of India, [1988] 2 SCC 299, referred to.

(9) Executive instructions can supplement a statute or cover areas to which the statute does not extend. But they cannot run contrary to statutory provisions or whittle down their effect.

(10) There is nothing in the language of the notification to suggest that anything further is needed to enable the Director of Industries to grant the exemption. Without the guidelines, the requirement for an exemption certificate would not become an "empty formality".

(11) If the statutory notification is construed as permitting the State by rules or executive instructions to prescribe other conditions for exemption, whether new or based on past practice. it is liable to be struck down on the ground of impermissible delegation of legislative power to the executive. This, certainly, they cannot do.

(12) The 3/7/87 notification cannot be treated as one merely clarifying an ambiguity in the earlier one and hence capable of being retrospectively; 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.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2211 (NT) of 1988 etc. etc. From the Judgment and Order dated 7.10.1986 of the Madhya Pradesh High Court in M.P. No. 1861 of 1983.

Prithvi Raj, R.B. Mishra, Uma Nath Singh, S.K. Gambhir, Vivek Gambhir, Satish K. Agnihotri, Ashok Singh and Mrs. V.D. Khanna for the Appellants.

Harish N. Salve, Ms. Lira Goswami and D.N. Misra for the Respondent.

The Judgment of the Court was delivered by RANGANATHAN, J. The Civil Appeal and S.L.P. 12054/87 are by the State of Madhya Pradesh (M.P.). The respondents in these two matters and the petitioners in the other five Special Leave Petitions are certain concerns in M.P. assess- able to sales tax (hereinafter compendiously referred to as the assesses'). All these matters can be conveniently dis- posed of by a common judgment as they raise a common issue. The assesses' claim for exemption from sales tax for certain periods in question was accepted by the High Court in the case of G.S. Dhall & Flour Mills and, following it, in the case of Mohd. Ismail (a case where the exemption sought for was originally granted but subsequently revoked). However, subsequently, a Full Bench of the High Court, in the case of Jagadamba Industries, disapproved the view taken by the Division Bench in the G.S. Dhall & Flour Mills case and, following the Full Bench, the writ petitions filed by certain other assesses were dismissed by the High Court. The State is aggrieved by the judgment in the first two cases and the assesses by the High Court's decision in the other cases. Hence these appeals and special leave petitions. Before dealing with the appeals on merits, an important circumstance needs to be referred to, which is this: The judgment of the Full Bench in the case of Jagadamba Indus- tries was itself the subject matter of Special Leave Peti- tions in this Court but those petitions (S.L.P. Nos. 15688- 90/87) were dismissed, at the stage of admission, on 9.2. 1988, with the observations: "We are in agreement with the views expressed by the High Court. The Special Leave Peti- tions are dismissed". In view of this, the State submits that C.A. 22 11/87 should be allowed and that the assesses' S.L.Ps. should be dismissed in limine. On the other hand, counsel for the assesses seek to distinguish the Jagadamba case by contending that this Court had refused leave against the Full Bench judgment on account of certain special facts which were considered sufficient to disentwine the assesses in those cases from claiming the exemption. They contend that, in view of this and the fact that the G.S. Dhall & Flour Mills case is in appeal before we may grant leave in the S.L.Ps. and dispose of all the appeals on merits. We accept this plea and grant leave in the S.L.Ps. condoning a delay in the filing of S.L.P. 12054/87. We shall, however, touch upon the above aspect of the matter in the course of our judgment. The issue raised is, at first blush, a simple one. S. 12 of the M.P. Sales Tax Act (hereinafter referred to as `the Act') enables the State Government to grant exemption from the levy of sales tax in certain circumstances. It says:

> 12. Saving: (1) The State Government may, by notification, and subject to such restrictions and condi-

tions as may be specified therein, exempt, whether prospec- tively or retrospectively, in whole or in part--

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

(ii) any dealer or class of dealers from any provision of the Act for such period as may be specified in the notifica- tion.

(2) Any notification issued under this section may be re- scinded before the expiry of the period for which it was to have remained in force and on such rescission such notifica- tion shall cease to be in force. A notification rescinding an earlier notification shall have prospective effect." In exercise of this power, the State Government issued the following notification on 23/26.10.1981 which it is neces- sary to extract in full here along with its Annexure. It reads:

> "In exercise of the powers conferred by section 12 of the Madhya Pradesh General Sales Tax Act, 1958 (No. 2 of 1959) the State Government hereby exempts the class of dealers specified in column (1) of the Schedule below who have set up industry in any of the districts of Madhya Pradesh specified in the annexure to this notification and have commenced production after 1st April, 1981, from pay-

ment of tax under the said Act for the period specified in column (2), subject to the restrictions and conditions specified in column (3) of the said schedule:

Class of dealers	Period	Restrictions and conditions subject to which exemption has been granted
1	2	3
1. dealers who-- (a) hold a certifi- cate of regis- tration under The commence- ment of M.P. General Sales Tax Act, 1958:	Two years The dealer specified in from the column (1) shall continue date of to furnish the pres- cribed returns under the M.P. General Sales Tax Act, 1958 and shall pro- duce before the assessing authority at the time of his assessment a certifi- cate issued by the Direc- tor of Industries, Madhya Pradesh or any officer au- thorised by him for the	
(b) are registered with the Industries Dep- artment of Govt. of M.P., and		
trial units with small scale indus- trial units		

		purpose, certifying that such dealer is eligible to claim the exemption and that he has not opted for the scheme of deferring the payment of tax under the rules framed for this purposes.
(c) have set up industry in any of the districts specified in part I of the Annexure		
2. Dealer who--		--do--
(a) hold certificate of registration under the M.P. General Sales Tax Act, 1958 (No.2 of 1959);	(a) 3 years in case of an industry located in a district specified in `A' of part II of the Annexure.	
(b) are registered as Small scale Industrial units with the Industries Department of Govt. of M.P. or are registered with the Director General of Technical Development as an industrial unit or are registered as industrial units by any authority duly empowered to do so by the State Govt. or Central Govt. or hold a licence under the Industries (Development & Regulation) Act 1951 (No.65 of 1951); and	(b) 4 years, in the case of an industry located in category `B' of Part II of the Annexure; and	
(c) have set up industry in any of the districts specified in part II of the Annexure.	(c) 5 years, in the case of an industry located in a district specified in category `C' of part II of the Annexure; from the date of commencement of production.	--do--
3. Dealers who---		
(a) hold certificate of registration under the M.P.General Sales Tax 1958 (No.2 of	(a) 3 years in The dealer specified in column (1) shall produce before the assessing	

1959);	the tehsils of a district specified in part I of the Annexure;	authority at the time of his assessment a certificate issued by the Director of Industries, Madhya Pradesh or any
(b) are registered as industrial units in the case of an industry located in any of the tehsils of a district specified in category `A' of Part II of the Annexure;	(b) 5 years in the case of an him for the purpose of certifying that the dealer is eligible to claim such exemption under the scheme of the Industries.	officer authorised by the Director of Industries, Madhya Pradesh or any General of Technical Development or by any authority duly empowered to do so by the State or Central Government or hold licence under the Industries (Development and Regulation) Act, 1951 (No.65 of 1951) have fixed a capital investment between Rs.1 crore and Rs.10 crores and;
(c) are the first to set up the industry in any tehsil of the district of Madhya Pradesh specified in the Annexure.	(c) 7 years in the case of an industry located in any of the tehsils of a district specified in category `B' of Part II of the Annexure; (d) 3 years in the case of an industry located in any of the tehsils to a district specified in category `C' of Part II of the Annexure;	from the date of being a first dealer to have commenced production in the industry set up by him in the tehsils referred to in column (2) and that such dealer has not opted for the scheme of deferring the payment of tax under the rules framed for this purpose.

commencement of
production.
ANNEXURE
Part I

1. Indore 2. Ujjain 3. Bhopal 4. Jabalpur 5. Gwalior 6. Durg Part II Category `A'

1. Bilaspur 2. Raipur 3. Dewas

4. Handsaur 5. Morena 6. Vidisha

7. Hoshangabad 8. Ratlam 9. Khandwa

10. Satna 11. Shahdol Category `B'

1. Geoni 2. Balaghat 3. Betul

4. Raigharh 5. Guna 6. Chindwara

7. Damoh 8. Sagar 9. Narsimhpur

10. Senor 11. Rajmandgoo Category `C'

1. Panna 2. Sidhi 3. Rewa

4. Chhatarpur 5. Tikamgarh 6. Khargone

7. Surguja 8.Mandla 9. Bhind

10. Shivpuri 11. Datia 12. Raisen

13. Shajapur 14. Dhar 15. Rajgarh

16. Jhooua 17. Bastar It is not in dispute that the assessees before us fulfil the qualifications mentioned in the notification. However, when they approached the Director of Industries for the certificate of exemption envisaged under column (3) of the notification, it was denied to them on the ground that the industries run by them are "traditional industries" which were not eligible for exemption. The assessees went to Court contending that this was totally unjustified. They said, the concept of "traditional industries" was one unspecified in the notification. The authorities had no jurisdiction to travel outside the terms of the notification and import extraneous considerations to deny the assessees an exemption they were entitled to under the notification. It is this contention that was accepted in the G.S. Dhall and Flour Mills case. The State had relied on the provisions of the M.P. (Deferment of Payment of Tax) Rules, 1983, notified on 1.9.83 (in particular, rule 13 thereof) and on certain instructions that had been issued by the Government on 12.1.1983 pertaining to the "grant of certificate of eligi- bility to new industrial units claiming exemption from/deferment

of payment of sales tax". The High Court took the view that these rules and instructions had no relevance to the claim for exemption put forward under the notifica- tion of 23.10.1981 and that, in any event, the executive instructions could not override the provisions of the statu- tory notification. This judgment was delivered on 7.10.1986 by Sohani, C.J. and Faizanuddin, J.

The Full Bench, in its judgment of 2.11.1987 took a different view. It has, in effect, attached importance to the rules and instructions referred to above and relied considerably on the history of the sales-tax levy in the State as furnishing a proper and necessary background in which the terms of the notification of 23.10.1981 have to be read and interpreted. This history has, therefore, to be set out now in order to appreciate the validity of the conclusions of the Full Bench. Before doing this, it may be mentioned that the Full Bench comprised of Ojha C.J., Faizanuddin, J. and Adhikari, J. In fact, the judgment was written by Faizanuddin, J. who has explained in detail the reasons for his change in view. It may also be mentioned, as a matter of record, that, subsequent to the decision of the Division Bench in G.S. Dhall and Flour Mills, the State Government appears to have issued a notifi- cation on 3.7. 1987, intended obviously to overcome the effect of the said decision. We shall refer to this later in this judgment.

Now, to turn to the history relied on by the Full Bench, we start with a "scheme for the grant of subsidy/interest free loan to new industries set up in Madhya Pradesh". The scheme was to be effective from 15.9.69 and till the end of the Fourth Five Year Plan period (1970) "or such further period as may be extended by the State Government from time to time". It would appear that the scheme was being adminis- tered informally under executive instructions even beyond 1970. Though certain "rules" appear to have been framed for the first time on 30.8.73, these rules, it would seem, were not statutory but were only in the nature of executive instructions. We shall, however, refer to them as "rules". Rule 3 was clear as to the persons eligible to avail of it. It read:

> "Rule 3--"It shall be applicable to all new industrial units except traditional industries like oil mill, flour mill, dall mill, rice mill, ginning and printing factories, who set up in Madhya Pradesh, provided further that such appli- cants register themselves with the department after 15.9.69 but before 31.3.74 and in case of SSI units go into produc- tion within a period of one year and in case of Large and Medium Industries go into production within 3 years of their date of registration provided further that in case of delay in going into production the period of availability of subsidy or concession will be reduced by the period of delay in going into production. This will come into force from 1.4.74.
>
> Note:--Small Scale Industries who are already registered with the department need not register separately for this concession."

It would also appear that the districts of the State were divided into two categories--advanced and backward--and the latter into three categories `A', `B', `C'. The amount and period of the subsidy/loan depended upon this classification and was elaborately set out in para 8 which need not be extracted here. A note added to para 8 had this to say:

Note:--(1) Unit who is otherwise entitled to subsidy may on his request be considered for grant of interest free loan to the extent of entitlement of the subsidy.

(2) No unit available concession under the scheme will be allowed to change the location of the whole or any part of the industrial unit or effect any substantial part of its total fixed capital investment within a period of five year after its going in to production.

(3) In case the ownership of a new unit changed during the period of availability of this concession, the new owner would be entitled to this concession for the balance period.

(4) A closed unit, which is re-started by an entrepre-

neur will not be considered to be a new unit for the purpose of this concession."

Another set of "rules" came into force with effect from 1.4.1977 and superseded the earlier rules. These were on more or less the same lines as the earlier ones and were to apply to "new industrial units", and "existing industrial units", as defined in rules 2(a) and (b), on fulfillment of certain terms and conditions but industries enumerated in rule 3 were specifically excluded from the purview of the definition. Rule 3 made it clear that the rules shall not be applicable to "the following traditional industries". The list of such industries, in addition to those mentioned in the earlier set of rules (excluding roller flour mills and solvent extraction plants in oil mills), took in also saw mills, ice factories and "such other industries as may be notified by the Government from time to time". The period and extent of the subsidy/ loan here again depended upon the district--advanced or backward, and in the latter category `A' or `B' or `C'--in which the industry was set up Rule 7 is of some relevance and may be set out:

"7. An industrial unit eligible for this concession will apply to the Asst. Director of Industries of the district con- cerned for verification of the date of going into commercial production and other particulars of new industrial unit or substantial expansion in respect of which the concession is sought. The Asst. Director of Industries will make verifica- tion in accordance with rules 5(1) and send within 15 days of the receipt of the application his report to the sanc- tioning authorities, Dy. Director of Industries or Director of Industries indicating the date of going into commercial production of the unit. A copy will be furnished to the applicant."

The form of the certificate to be issued by the office of the Director of Industries read thus:

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"No.                        -Date
       The         particulars         furnished         by
M/s  .........  ........
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..... have been checked and verified from records including those of consumption of power and raw materials and output of finished products. The date of commencement of commercial

production by the industrial unit is The date from which the unit has exceeded, on a sustained basis production over the licensed or installed capacity of the unit is .....

Asst. Director of Industries"

> It appears that the Government had announced "conces- sions" regarding the payment of sales tax by new industrial units including pioneer units going into production after 1-4-1981 not only under the notification dated 23/10/81 but also under other notifications dated 1-5-82 and 29-6-82. Two of these notifications are on record before us. It is, however, unnecessary to extract them here. It is sufficient to set out their purport, quoting from the "instructions" of 12-1-83, referred to a little later:
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> "According to the first notification, the new industrial units are exempted from the payment of sales tax. This notification covered sales tax payable by them on the products manufactured by them. It entitled them to exemption from payment of purchase tax on purchase made by them from unregistered dealers. According to the second notification an industrial unit making purchases of its raw material from a registered dealer is exempted from payment of sales tax on the raw materials so purchased by him from the registered dealer. In other words, registered dealers selling raw materials to a new industrial unit are not required to charge any sales tax from the new industrial unit on sales made by them to such unit. The third notification exempts the goods manufactured by the new industrial units from the levy of sales tax even when these goods are sold by the dealers who have purchased these goods from the new indus- trial units. In other words, by issue of this notification, the goods manufactured by the new industrial units are fully exempted from the payment of sales tax right upto the stage they reach the consumer. These three notifications only deal with the grant of exemption from payment of sales tax under the M.P. General Sales Tax Act. that is to say from the payment of the State Sales Tax.
>
> The fourth notification exempts the new industrial units from payment of the Central Sales Tax on the sale of goods manufactured by them in the course of interstate trade or commerce. This notification has exempted the new units from payment of sales tax w.e.f. 1-7-82."

In view of these notifications, the Government considered it necessary to issue certain instructions "for the grant of certificate of eligibility to new industrial units claiming exemption from/deferment of payment of sales tax" on 12-1- 1983. These instructions also proceed on the same lines as the earlier ones. "Traditional" industries, as listed in para 5. are said to be outside the purview of the scheme. Para 5 enumerated the following as "traditional industries":

> flour mills (excluding roller flour mills), oil mills (excluding solvent extraction plants, dall mills. saw mills, rice mills, printing presses of all types, cotton ginning and

pressing factories, in factories and such other indus- tries as may be notified from time to time. It also stated

(a) that "industrial units undertaking expansion/modifica-

tion or diversification will not be eligible for these concessions, (b) that a closed unit revived by the entrepre- neur will not be considered as a new unit for the purpose of availing of these concession and (c) that units claiming interest free loans as an existing unit will not be eligible for these concessions. A certificate of eligibility had to be obtained in the prescribed manner and this procedure was made more elaborate. District Level Committees and a State Level Committee were constituted for this purpose and they took a decision on the application of the unit read with the comments thereon by the Director of Industries, though the certificate was actually issued by the Director of Industries or the General Manager of the District Industries Centre in a prescribed form. The Full Bench, after considering the scheme and in- structions of the Government discussed above, came to the conclusion that the scope of the exemption notification of 1981 was not intended to be wider than that of the conces- sions granted earlier. The 1981 notification was intended to bring about only a change in the mode of relief to the same categories of industries as were covered by the earlier schemes. The Court observed:

> "It appears that the mode of concessions granted by the aforesaid instructions involved some inconvenience to the industrial units and duplication of procedure inasmuch as the industrial unit had to first collect the sales tax and the tax so collected and paid along with the returns were later on refunded to the industrial unit in the shape of subsidy. To avoid the duplication of procedure the State Government thought it fit to altogether exempt the industri- al units from payment of sales tax or defer the payment of sales tax."

The Court observed. vis-a-vis the various instructions referred to above:

> "12 ..... These instructions also contain a complete procedure for application and grant of eligibility certifi- cate by the Industries Department. Thus it is clear from these instructions that the question of grant of eligibility certificate by the Industries Department is not an empty formality but before granting the certificate the Industries Department has to see whether all the requirements as con- tained in the instructions are fulfilled and complied with or not.
>
> 13. All the Government Instructions discussed above, issued from time to time right from 1973 onwards till 1983 (Annex- ure R-I, II and III) clearly indicate not only the consist- ent Government policy in the matter of grant of Sales Tax concessions to the New Industrial Units but also the consistent practice that has been followed throughout whereby these concessions were not at any time made avail- able to the Traditional Industries like Flour Mills and Dall Mills etc. Not a single instance is available to show that any of these concessions were ever made available to any Traditional Industries. It may be pointed out that all these facts and the Government

> policy as also all the aforesaid Government Instructions on the subject were not placed before the Division Bench which heard and decided Misc. Petition No. 1861 of 1983 (G. S. Dall Mills v. State of M.P.). However, after the decision of M.P. No. 1861/83 the State Government while issuing a Notification No. 351 dated 21st October, 1986 under section 12 of the Act, a photostat copy of which has been filed on record of M.P. No. 2710/87 (See at page 94 of the paper book) exempting the Industrial Units specified therein from payment of tax under section 6 and 7-AA of the Act again specifically provided in clause
>
> (xiii) of the said Notification that the said exemption shall not be available to the Industrial Units enumerated therein including Flour Mills and Dall Mills etc."

It was true, the Court agreed, that a notification has generally to be construed on its plain language. But, here:

> "as pointed out earlier, column 3 of the 1981 Notification (Annexure B) does not contain any guidelines or a procedure in the matter of grant of eligibility certificate or refusal thereof by the Industries Department and as the grant or refusal of such certificate cannot be an empty formality and, therefore, in order to avoid the possibility of arbi- trariness and injustice to any one the State Government was justified in issuing executive instructions laying down the guidelines and procedure for the same."

The Full Bench, therefore, observed:

> "16. From what has been stated and discussed above it is clear that at no point of time any concession or exemption from. payment of sales tax was ever given to the Traditional Industries and not a single example to that effect is avail- able. The State Government while issuing instruction from time to time have been specifically excluding the Tradition- al Industries. Thus the executive authorities and the high- est agency and its officers charged with the duty for the administration and enforcement of the said Notification are not only conversant with the underlying policy of the Gov- ernment but they are also intimately acquainted with the economic significance of the tax in question and exemption thereof. The interpretation of the Government regarding the construction of 1981 Notification read with the instructions (Annexure R. I, II and III) excluding the Traditional Indus- tries, which has been consistently followed and acted upon accordingly for a period over a decade cannot be given a go-by but has to be accepted.
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> 17. In view of the above discussion the impugned Notifica- tion dated 4-7-1987 (Annexure G) is hardly of any conse- quence. More or less it is a clarification of 1981 Notifica- tion and not rescission of any grant."

The contention that "instructions" could not override the effect of the statutory notification was repelled by the Court on the ground that the validity and effectiveness of the instructions can be supported by reference to Article 162 of the Constitution as filling up a lack of guidelines in the notification. An argument based on the doctrine of promissory estoppel was also rejected as "the petitioners were well aware of the fact that the exemption was not available to their new units and they had not established their units because of the exemption". The Court explained the position thus:

> "20. In this behalf firstly it may be pointed out that all the petitioners had established their Industrial Units after the Government issued the executive instructions (Annexure R. III) dated 12-1-1983, of which clause 5(b) specifically speaks that the concessions will not be available to Tradi- tional Industries like Flour Mills and Dall Mills etc. To say that the petitioners were not aware of these executive instructions would be incorrect because clause 6 of these instructions contemplates that New Industrial Units desirous of availing the said concessions shall have to apply in Form I accompanied with a declaration in Form II appended to the said Instructions and the petitioners applied in Form I with declaration in Form II (See Annexure D, D/I and D/2 in M.P. No. 2710/87). Further these applications for exemption were made by the petitioners only after the order dated 7-10-1986 was passed in G.S. Flour Mills v. State (M.P.) No. 1861 of 1983) which shows that the petitioners were aware of the fact that they were not entitled to exemption and it was only after the aforesaid decisions that they considered to apply for exemption. This fact is further fortified from the conduct of the petition- ers themselves as they continued to submit returns right from 1983 onwards and continued to pay the tax as assessed against them without taking any steps to claim exemption. In this behalf paragraphs 8 and 9 of the petitions are self explanatory. Thus having regard to all these facts, the. question of application of principle of promissory estoppel in the present case does not arise and the petitions deserve to be dismissed."

Sri Harish Salve, appearing for the G.S. Dhall & Flour Mills, apart from pleading that the view taken in this case is the correct one and not that enunciated by the Full Bench, also raised an alternative contention on the footing that, at best, the notification of 1981 was ambiguous and lent itself to two plausible interpretations. Assuming that there was initially some ambiguity regarding the applicabil- ity of the Notification of 23.10.81 to traditional indus- tries, it had been dispelled by the instructions of 12, 1.83. Once these instructions were published, any assessee setting up a traditional industry took a calculated risk on the issue as to whether the Notification should be confined, on proper interpretation, only to non-traditional industries and could not rely on the doctrine of equitable estoppel. Pointing out that the assesses in the Full Bench case were persons who had set up their industry after 12.1.83, Sri Salve argued that the dismissal of the Special Leave Peti- tion against the Full Bench judgment will not affect his case as this assessee had set up its industry, admittedly, before 12.1. 1983. The position is similar in the case of Mohan. Ismail. Learned counsel, therefore, submitted that, even if the 1983 instructions were rightly held by the High Court to have validly supplemented the terms of the 1981 Notification, they can have no application to the two earli- er cases which had to be decided solely on the terms of the 1981 Notification.

To answer these contentions, one has to look first at the statutory instruments in this case viz. S. 12 of the Act and the notification thereunder. S. 12(1)(i), with which we are concerned, lays down four requirements for the grant of exemption from the provisions of the Act:

(i) that any exemption to be granted under the section has to be by a notification;

(ii) that the notification may exempt any class of dealers or any goods or class of goods from the payment of tax under the Act in whole or in part but only for a definite period to be specified in the notification;

(iii) that the exemption will be subject to such restric-

tions and conditions as may be specified in the notifica- tion;

(iv) that such exemption could be prospective or retrospec- tive.

We are concerned here with the scope of the second and third requirements mentioned above. So far as the class of dealers entitled to the exemption are concerned, the notifi- cation spells out the following requisites:

(i) they must belong to one of the classes Of dealers speci- fied in column No. (1) of the schedule;

(ii) they must have set up industry in any of the districts of Madhya Pradesh specified in the annexure;

(iii) they must have commenced production after 1.4. 1981.

The period of exemption is also specified in the notifica- tion. So far as the "restrictions and conditions" subject to which the exemption has been granted, they are, as per column No. (3) of the Schedule:

(a) that the dealer should continue to furnish the pre-

scribed returns under the Sales Tax Act; and (b) that they should produce, at the time of their assessment, a certifi- cate from the Director of Industries certifying that such dealer is eligible to claim exemption and has not opted for the "scheme of deferring the payment of tax under the rules framed for the purpose".

It is not anybody's case that the assesses before us did not fall within the class of dealers specified in column (1) or that they did not comply with (a) above or that they had opted for the scheme of deferment of tax. This being so, the assesses claim that they are eligible for the exemption under the notification and that the Director of Industries should have granted them a certificate to this effect. It is the denial of this certificate which has brought the assesses to Court. The question for

consideration is whether the Director of Industries can refuse the exemption certificate on a consideration not specified in the notification. Prima facie, no. All the conditions for exemption have to be. and are, set out in the notification itself and all that the Director of Industries has to do is to satisfy himself that those condi- tions are fulfilled; he cannot travel beyond the terms of the notification. He can see whether the dealer falls under the description in column (1), whether he has set up a new industry in M.P. State, whether he has commenced production after 1.4.1981 and whether has opted for the deferment scheme. The condition about the dealer filing returns regu- larly would seem to be one under the purview of the sales Tax Officer rather than one under that of the Director of industries. If these conditions are fulfilled, the exemption certificate will have to be granted. That seems the straight and simple interpretation of the notification. But, it is said for the State, this is not the intend- ment or effect of the notification. It is said that the argument overlooks the reference in column (3) to the grant of an eligibility certificate by the Director of Industries. This is one of the important conditions for the grant of this exemption. It is pointed out, in this context, that there had been in force in the State, for several years past, a scheme of subsidy/loan. That scheme was also depend- ant on a certificate of the Director of Industries but that certificate could be denied to "traditional industries". It is argued that, since the notification does not set out the conditions on which, and the procedure in accordance with which the Director of Industries is to issue the eligibility certificate, that earlier scheme and procedure should be read into the notification. Sri Salve objected to this reading of the notification, infer alia, on the ground that the earlier scheme and the exemption now proposed are total- ly different in their object and scope and that, while the former scheme was intended as an incentive to any one who set up a new industry in the State so that "traditional" industries did not get any benefit, the notification presently under consideration was issued with the object of industrialising the backward areas of the State and so it was immaterial what type of industry went in there and whether the industry proposed to be set up was a "traditional" one or not. This contention does not appear to be quite correct. It has been pointed earlier that even the earlier schemes provided for graded incentives for industrialisation effective for varying periods depending upon the backward- ness or otherwise of the district in which the industry was proposed to be set up. But, even granting that the 1981 policy was to replace the earlier subsidy/loan by an exemp- tion, it does not necessarily follows that the units intended to be covered by the new scheme were only those that were covered by the earlier scheme and that no wider exemption was contemplated. Indeed, there were four new concessions introduced in 1981-82 and there is no material which would justify these being tied down to the param- eters of the earlier schemes. No factual foundation has been laid to establish the hypothesis that the exemption con- ferred in 1981 was to be a mere extension or substitution of the benefits conferred earlier. There are other difficulties in reading the provisions of the earlier schemes into the notification. In the first place, the earlier schemes spe- cifically provided that "traditional industries" were out- side their purview. The language of the notification, which is a piece of subsequent legislation, is silent about this. This is itself indicative of a legislative intent to widen the scope of relief and grant exemption to traditional industries as well: vide, G.P. Singh: Interpretation of Statutes, 4th Edition, pp. 767-8. The omission to specifi- cally exclude "traditional industries" as was done in the earlier schemes the notification gains added significance in view of S. 12 which specifically requires that all condi- tions and restrictions governing an exemption should be specified in the notification. Secondly, the attempt of the State to read a further condition into the notification excluding "traditional industries" from the exemption is based on the words which require that the Director of Indus- tries should grant a

certificate (a) that the dealer is entitled to claim the exemption and (b) that he has not opted for the scheme of deferring the payment of tax under the rules framed for the purpose. But these words do not carry the State's case further, for what the Director of Industries has to do is to certify that the applicant is entitled to the exemption on the terms and conditions set out in the notification and not on the basis of any further requirements not so set out. The notification does not authorise him to say that, though the applicant fulfills the terms of the notification, he will not grant the eligibility certificate because, under the previously prevalent schemes, he could not issue an eligibility certificate to "tradition- al industries". He could not grant an eligibility certifi- cate under the earlier schemes because the instructions which outlined the scheme specifically excluded traditional industries. Actually, even under the earlier schemes, nei- ther the application form nor the form of certificate, which have been extracted earlier, make any reference to the assessee concerned not being a `traditional industry'. Be that as it may, for granting a certificate that the appli- cant is eligible for exemption under the notification, the director has to look to the conditions set out in the noti- fication and nowhere else. To say that, when the notifica- tion requires an eligibility certificate from the Director it means a certificate on the terms prescribed under the earlier scheme is to read into the notification something which is not there. Thirdly, the interpretation advocate by the State really narrows down the class of dealers entitled to the exemption as set down in column (1) of the notification. It amounts to substituting, for the word "dealers" in column 1 of the notification the words "dealers other than those carrying on traditional industries". Such an interpretation also virtually amounts to allowing certain executive instructions issued in a different context to cut down the scope of a statutory notification. This cannot clearly be done. Lastly, a perusal of the earlier schemes would show that the concept of "traditional industries" is a vague one. The nomenclature of these industries has varied from time to time. The note in the 1977, and the definition in the 1983, instructions show the eligibility under the earlier schemes was denied not only to "traditional industries" but also certain other industries such as revived or reconstructed industries. We may also mention in this context a notification of 21.10.1986 referred to by the High Court outlining exemp- tions under Ss. 6 and 7AA. It excludes, from exemption, in addition to saw mills, flour mills etc. (which the State calls traditional industries) various other industries (total numbering 26) specified in cl. (xiii) thereof. This changing definition of eligibility for exemption also shows that there was no common or identical group of beneficiaries intended under the various instructions or notifications and that each set of instructions or notification issued from time to time defined only the categories exempted from its purview and nothing else. The exemption list under one was not meant to be carried over into another. We are, there- fore, of opinion that it is not permissible to restrict the scope of the notification in the manner suggested. We may point out that, in construing the notification thus, we are only giving effect to a well settled rule that may be illustrated by a reference to the decision in Hansraj Gordhandas v. H.H. Dave, [1969] 2 SCR 253. In that case notifications had been issued under S. 8 of the Central Excises and Salt Act, 1944 granting exemption to (a) "cotton fabrics produced by any cooperative society formed of owners of cotton powerlooms ....." and (b) "cotton fabrics pro- duced on powerlooms owned by any cooperative society or owned by or allotted to the members of the society .....

> ". The appellant had sought exemption from excise duty under these notifications in respect of cotton fabrics which had been got manufactured by him on the powerlooms belonging to a cooperative society in pursuance of an agreement entered

into with it. The excise authorities rejected the claim on the ground that the exemption under the notifications could be claimed only when the cotton fabrics were manufactured by a cooperative so-

ciety for itself. Upholding the assessee's claim, this Court observed:

"It was contended on behalf of the respondent that the object of granting exemption was to encourage the forma- tion of co-operative societies which not only produced cotton fabrics but which also consisted of members. not only owning but having actually operated not more than four power-looms during the three years immediately preceding their having joined the society. The policy was that instead of each such member operating his looms on his own. he should combine with others by forming a society which. through the cooperative effort should produce cloth. The intention was that the goods produced for which exemption could be claimed must be goods produced on its own behalf by the society. We are unable to accept the contention put forward on behalf of the respondents as correct. On a true construction of the language of the notifications. dated July 31, 1959 and April 30. 1960 it is clear that all that is required for claiming exemption is that the cotton fabrics must be produced on power-looms owned by the coopera- tive society. There is no further requirement under the two notifications that the cotton fabrics must be produced by the Cooperative Society on the power-looms "for itself". It is well-established that in a taxing statute there is no room for any intendment but regard must be had to the clear meaning of the words. The entire matter is governed wholly by the language of the notification. If the tax-payer is within the plain terms of the exemption it cannot be denied its benefit by calling in aid any supposed intention of the exempting authority. If such intention can be gathered from the construction of the words of the notification or by necessary implication therefrom. the matter is different, but that is not the case here. In this connection we may refer to the observations of Lord Watson in Salomon v. Salomon & Co., [1897] A.C. 22, 38:

"Intention of the legislature is a common but very slippery phrase, which, popularly understood may signi- fy anything from intention embodied in positive enactment to speculative opinion as to what the legislature probably would have meant although there has been an omission to enact it. In a Court of Law or Equity, what the Legislature intended to be done or "not to be done can only be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication."

It is an application of this principle that a statutory notification may not be extended so as to meet a casus omissus. As appears in the judgment of the Privy Council in Crawford v. Spooner, 6 Moo. P.C.C. 8.

" ..... We cannot aid the legislature's defective phrasing of the Act, we cannot add, and mend, and, by construction, make up deficiencies which are left there."

Learned Counsel for the respondents is possibly right in his submission that the object behind the two notifications is to encourage the actual manufacturers of handloom cloth to switch over to power-looms by constituting themselves into Cooperative Societies. But the operation of the notifica- tions has to be judged not by the object which the rulemak- ing authority had in mind but by the words which it has employed to effectuate the legislative intent." In our view, this principle applies here squarely. Indeed, even granting that the notification may be inter- preted having regard to the past history and the possible intention of the Government while issuing the notification, the position of the assesses here is much stronger for, while in the reported case the State was trying only to effectuate the clear object of the notification, here it is not at all clear, for the reasons discussed above, that the State intended the exemption to be confined only to the cases covered by the subsidy/loan schemes prevalent earlier. The 1981 notification does not expressly, or (for the rea- sons discussed above) even by necessary implication, exclude "traditional" industries from its scope.

Sri Salve contends that, even if a lenient view is taken and a more liberal construction is sought to be placed on the notification, the best that could be said for the State would be that the notification was ambiguous. One could either say that the previous procedure and requirements prevalent for obtaining an exemption certificate were in- tended to be incorporated by the words requiring such a certificate (as suggested for the appellant or one could say, with equal plausibi-

lity, that the exemption certificate is to be based only on the conditions and requirements mentioned in the notifica- tion (as contended for by the assesses). In such a state of law, he contends, one can have regard to the conduct of the parties and how they understood the notification. His argu- ment is that the State, by its conduct, had held out to the assessee that it would also be eligible for the exemption. In this context, he drew our attention to the following circumstance:

(1) The M.P. Audhyogik Vikas Nigam, a State instrumen-

tality, which was administering the notification issued, in November 1981, a pamphlet setting out the various incentives the State was offering for new industries proposed to be set up in the State. As to "exemption from sales tax", the pamphlet stated that "new industrial units coming into production after 1.4.81" will be entitled to an exemption for a period depending upon the district where it is set up or could alternatively exercise an option to defer payment of sales tax by a period of 10 years. It did not mention anywhere that the industry should not be a traditional industry.

(2) The Nigam allotted a plot of land of the extent of 1 acre to enable the assessee to establish its unit in the Industrial Area. Mandideep, Dt. Raisen.

(3) Other incentives as to power, interest and capital subsidy were extended to the assessee. Thus, says counsel, the State "lured" the assessee to set up a unit in the record time of ten months and with a substantial capital outlay of over Rs. 10 lakhs in a backward area. These incen- tives were meant to be coextensive with the concession regarding sales tax. He contends that these representations and acts are sufficient to found a claim of "equitable estoppe" against the State. We are unable to accept this argument. The respondents have stated in their counter affidavit that the Nigam had acted in error and misconstrued the notification and was not acting under the authority of the Government

in issuing the pamphlet. The other conces- sions extended to the assessee pertained to the setting up of a small scale industry in the State and were unrelated to the exemption from sales tax. In our opinion, there is force in these submissions. The circumstances and material relied on by the assessee do not spell out any clear promise of exemption from sales tax even for traditional industries. The notifications or guidelines under which the other facil- ities were granted have not been placed before us and no material is available on record to correlate them to the sales tax exemption or to show that all these were inextricably connected so as to form part of a single "relief packet". We, therefore, reject this conten- tion of Sri Salve. However, on the interpretation of the notification. we accept the contention of the assesses that the notification does not warrant denial of exemption solely on the ground that the applicant is having a "traditional industry".

We have indicated earlier that the assesses whose writ petitions were disposed of by the Full Bench had set up their industries after 12.1. 1983 by which time elaborate instructions had been issued to explain the State's point of view, The question is whether this makes a difference. We think not. Even the 1983 document is not a statutory instru- ment-neither a notification nor a rule framed under the statute. The Full Bench has considered those instructions to be conclusive on two grounds--on the doctrine of contempora- nea exposition and on the principle that executive instruc- tions can always be issued to supplement statutory instru- ments so as to fill up areas on which the latter are silent. In our opinion, neither of these grounds is tenable. It is true that the principle of contemporanea exposition is in- voked where a statute is ambiguous but is shown to have been clearly and consistently understood and explained by the administrators of the law in a particular manner. This doctrine has been explained and applied in a numbers of cases of this Court (e.g. See Varghese v. L.T.O., [1982] 1 S.C.R. 629, in addition to the cases referred to by the Full Bench). As pointed out by Sri Salve, its applicability in the construction of recent statutes. and that too in the first few years of their enforcement, has been doubted. vide: Doypack Systems P. Ltd. v. Union of India. [1988] 2 S.C.C. 299, para 61. But, this apart, the principle will not be applicable here for two reasons. In the first place, the instructions of 1983 do not anywhere "expound" the terms of the notification. They do not give any indication that the state had applied its mind to the precise terms of the notification or their interpretation. They do not explain or clarify that, though the notification is silent, it has been intended that the limitations of the previous schemes should be read into it. Secondly, the cases referred to will show that the doctrine applies in cases where the plea is that, though the language of the statute may appear to be wide enough to seem applicable against the subject in particular situations, the State itself--which was the progenitor of the statute--had not understood it in that way. But, to apply the doctrine to widen the are bit of the statutory language would, however, virtually mean that the State can determine the interpretation of a statute by its ipsi dixit. That, certainly, is not, and cannot be, the scope of the doctrine. The doctrine can be applied to limit the State to its own narrower interpretation in favour of the subject but not to claim its interpretation in its own favour as conclusive.

The second ground on which the Full Bench has sought to invoke the instructions is also not correct. Executive instructions can supplement a statute or cover areas to which the statute does not extend. But they cannot run contrary to statutory provisions or whittle down their effect. The Full Bench seems to think that, unless the instructions are brought in, the notifications would have been in danger of abuse for want of proper guidelines as to the grant of exemption certificates. It is

suggested that the notification contemplates rules to be issued for the purpose and that, since no rules had been issued, Directors of Industries were left with no parameters for the issue of exemption certificates and might act capriciously or arbi- trarily in granting or refusing certificates. The instruc- tions, it is said, have been issued to fill in this lacuna and are hence valid. There are two misconceptions in this line of reasoning. The first is that. though the last few words in column (3) of the notification are capable of a wider meaning, it would appear that these words govern only the immediately preceding words; rules envisaged are not in relation to the grant of exemption certificates and condi- tions therefore but in respect of the circumstances in which the assesses can exercise the option between exemption and deferment of sales tax. This view derives support from the instructions of 1983. As pointed out earlier, the instruc- tions first set out the scope of the various notifications as granting exemption from sales tax; the instructions thereafter proceed to say:

> "The grant of exemption from the payment of sales tax is contingent upon the issue of a certificate of eligi- bility to the new industrial units. This certificate of eligibility is required to be issued by the Director of Industries or an officer authorised by him for this purpose. In so Jar as the grant of concessions relating to the exemption from payment of sales tax is concerned, no further notifications are required to be issued. For ena- bling the new industrial units to avail of the second con- cession viz., that of deferment of payment of sales tax, a scheme is being issued separately. For availing of the benefit of the deferment of concession too, a certificate of eligibility is required to be obtained by the industrial unit. However.
>
> pending the issue of the scheme, the grant of certificate of eligibility should not be held up."

(underlining ours) Incidentally, we may point out, the first part of the para does not clarify that the eligibility certificate is not to be granted to "traditional industries". But, so far as the present point is concerned, it is categorically stated that no further notifications are required to be issued and that they are needed only to define the scheme for deferment of tax. Indeed, rules were framed in order to implement the deferment scheme which came into force with effect from 1-4-1983. We shall refer a little later to these rules. Secondly, there is no warrant for assuming that the notifi- cation envisages conditions for the issue of the eligibility certificate other than those specified by itself. There is nothing in the language of the notification to suggest that anything further is needed to enable the Director of Indus- tries to grant the exemption. Without the guidelines, the requirement for an exemption certificate would not become an "empty formality" as suggested by the Full Bench. The Direc- tor of Industries has to issue the same after satisfying himself that the applicant industry falls within the terms of the notification in the following respects--

(a) that the assessee is one of the class of dealers set out in column (1);

(b) that he has set up an industry in the State;

(c) that it has been set up in one of the districts set out in the annexure and the category to which it belongs;

(d) that the industry has commenced production after 1-4-81;

(e) that the assessee has not opted for the deferment scheme.

These conditions are many and detailed and do not leave anything to the discretion of the Director of Industries. We fail to understand what need there was to lay down any elaborate procedure therefore. Even if there was, and the earlier procedure by way of application form, declaration form and form of certificate were to be adapted, that proce- dure, by itself, did not, as pointed out earlier, contain any reference to the assessee being a traditional industry or otherwise. To assume first that the conditions specified in the notification are not exhaustive or suffi-

cient and may lead to abuse of power by executive authori- ties unless canalised by procedural guidelines and then to say that such a conclusion is borne out by the mere refer- ence to a certificate being granted by the Director of Industries because, under some earlier schemes, such certif- icate was being granted on a restricted basis, does not appear to be sound logic. We are, therefore, of opinion that the notification is quite clear and leaves no area of vacuum which needs to be supplemented by guidelines. Thirdly, if we read the last part of the entry in column (3) of the notifi- cation as envisaging rules to be framed for the grant of the eligibility certificate, no such rules were flamed. Only instructions were issued. These instructions say that even an assessee, who fulfills all the requirements of the noti- fication, will not be eligible for exemption unless he fulfills one more condition outside the notification. They travel beyond and counter to the notification. They restrict the scope of exemption under the notification. They deny exemption to a person who qualifies for it under the statu- tory notification. Indeed, there is force in the contention that if the statutory notification is construed as permit- ting the State by rules or executive instructions to pre- scribe other conditions for exemption, whether new or based on past practice, it is liable to be struck down on the ground of impermissible delegation of legislative power to the executive. This, certainly, they cannot do. A further development which has been relied on by the State but does not really seem to help its case may now be referred to. State Act 25 of 1982 inserted S. 22 D in the Act in the following terms:

> "22-D. Special provisions relating to deferred payment of tax by Industrial Units--Notwithstanding anything contained in any other provisions of this Act, a registered dealer, who is--
>
> (a) registered as a small scale industrial unit with Indus- trial Department of the Government of Madhya Pradesh;or
>
> (b) registered with the Director General of Technical Devel- opment as an industrial unit; or

(c) registered as an industrial unit by any authority duly empowered to do so by the Government of Madhya Pradesh or the Central Government; or

(d) holding a licence under the Industries (Development and Regulation) Act, 1951 (No. 65 of 1951).

and who in each case has or may set up a new industrial unit in any district of Madhya PradeSh if eligible for grant of the facility of deferred payment of tax under the scheme providing for grant of incentive to enterpreneurs for set- ting up new industrial units in the state as the State Government may make in this behalf may make deferred payment subject to such restrictions and conditions as may be speci- fied in such scheme."

Thereafter, the State Government framed the M.P. Deferment of Payment of Tax Rules, 1983 which were gazetted of 1.9.83 but with retrospective effect from 1.4. 1981 (that is, even anterior to the date of the notification). Rules 3, 4 and 14 are relevant and may be set out here.

"3. Eligibility for grant of Facility of Deferred payment of tax--(1) A new industrial unit other than a unit specified in rule 14 which is covered by any of the categories speci- fied in section 22D and of the Act and which is engaged in the manufacture and sale of any goods shall qualify for deferred payment of the tax payable by it provided it is eligible for grant of the concession of exemption from payment of tax in terms of notification No. A 3-41-81 (35)- ST-V, dated the 23rd October, 1981 and No. A-3-41-81(31) ST-V, dated the 29th June, 1982 as amended from time to time subject to the provisions of the act. The period pertaining to which the tax which the new industrial unit can defer will be the same for which it could have obtained the con- cession of the exemption from payment of tax, i.e., the period pertaining to which the tax can be deferred will be the period shown in column (2) of the said notification. (2) The new industrial unit shall be eligible to defer only the payment of tax which is due from it under the Act.

4. Application for Scheme of deferred payment and grant of certificate of eligibility--(1) A new industrial unit opting for the scheme of deferred payment of tax shall apply for and obtain a certificate of eligibility in accordance with the instructions issued by State Government in the Commerce and Industries Department for the said purpose. An applica- tion in writing shall be submitted within forty five days of the publication of these rules or of commencement of the production whichever is later. In the application form the new industrial unit shall indicate that it has opted for scheme of deferred payment of tax. The option once exercised shall be irrevocable. The form of the application as well as the certificate of eligibility shall be as specified in the said instructions. The application shall be made to the General Manager, District Industries Centre of the district where the new industrial unit is or is proposed to be locat- ed and shall be processed further in accordance with the said instructions. The certificate of eligibility in respect of large and medium scale units shall issued by the Director of Industries (Government of

Madhya Pradesh) and in respect of small scale units by the said General Manager, and shall carry a specific and district number given by the said officer.

(2) A copy of the certificate of eligibility shall be for-

warded by the officer issuing the certificate to the appro- priate Sales Tax Officer, i.e. the Sales Tax Officer in whose circle the industrial unit is registered as a dealer. The Sales Tax Officer receiving the copy of the certificate of eligibility shall maintain a record of the same in such form as may be directed by the Commissioner and shall not enforce recovery of the tax payment whereof has been shown to have been deferred in the certificate of eligibility. (3) The new industrial unit shall be entitled to defer the payment of the tax for a period of ten years. This entitle- ment shall be available only on receipt of the certificate of eligibility to it under sub-rule (1). The certificate of eligibility shall show the duration for which the payment of the tax has been deferred. The year in which the tax per- taining to any accounting year of the industrial unit is required to be paid consequent upon deferment of tax shall also be shown in the certificate of eligibility. The entire tax assessed pertaining to any accounting year shall be payable by the industrial unit in lump sum on the expiration of duration of deferment and payment of such tax shall be made within thirty days of the date on which the period of ten years from the end of the relevant accounting year expires.

14. Non-availability of facility of deferred payments--The result of the scheme of deferred payment of tax shall not be available to the following new industrial units, namely:

(A) (1) flour mills (Excluding Roller Flour Mills); (2) Oil mills (excluding Solvent Extraction Plants); (3) dall mills;

(4) saw mills; rice mills;

(6) printing presses of all types;

(7) cotton ginning and pressing factories; (8) ice factories;

(9) such other industries as may be notified by Government from time to time.

(B) industrial units undertaking expansion, modernisation or diversification;

(C) a closed unit revived by an entrepreneur; (D) units claiming interest free loans as an existing unit establishing a new unit;

(E) an industrial unit set up by transferring or shifting or dismenting an existing industry.

A note was also published in the Gazette explaining the background of the rules. It reads thus:

"NOTE EXPLAINING THE BACKGROUND OF THE SCHEME OF DEFERRED PAYMENTS TAX The Government of Madhya Pradesh, with a view to accelerat- ing the pace of industrialisation have announced concessions regarding the payment of tax under the Madhya Pradesh Gener- al Sales Tax Act, 1958 and the Central Sales Tax Act, 1956 by new industrial units going into production after 1st April, 1981 which contemplate--

(a) total exemption from payment of tax whether State or Central by new industrial units going into production after 1st April, 1981 for varying periods depending upon the district in which the new industrial unit is set up;

(b) deferment of the payment of tax in lieu of the above said exemption for a period of ten years.

To give effect to the concession of exemption from payment of tax, the Government in the Separate Revenue Department have already issued the following notifications:

(i) F. No. A3-41-81(35)-ST-V, dated 23rd October, 1981.

(ii)F. No. A3-41-81 (25)-ST-V, dated 1st May, 1982.

(iii) F. No A3-41-81(24)-ST. V, 1st May, 1982.

(iv) F. No. A3-41-81 (31)-ST-V, dated 29th June, 1982.

With a view to enabling those new industrial units who opt for the alternative concession of deferment of payment of tax, a special provision in the shape of section 22-D has been inserted in the Madhya Pradesh General Sales Tax Act, 1958 with effect from 1st April, 1981, according to which the facility of deferring the payment of tax which become available subject to the provisions of the scheme providing for the grant of incentives for setting up the new industri- al Units;

The aforesaid rules have therefore been framed to formulate the scheme of deferred payment of tax."

It might appear, at first sight, that since the relief by way of deferment of tax is only in the nature of an alterna- tive to the provision for exemption and the former is not available to traditional industries because of rule 14 above, the same should be the position in regard to the exemption provision also. There are, however, several diffi- culties in accepting this suggestion. In the first place, the rules relate to tax deferment and not tax exemption. It is open to the State Government, particularly in view of S. 22D, to frame such scheme for the purpose as it may deem fit. The provision for exemption, however, needs to be spelt out, under S. 12, in a statutory notification. Secondly if, as is being urged on behalf of the State, it is explicit even on the terms of the notification that traditional industries are excluded, it is not necessary for the rules of deferment to specifically provide that they will not be available to the industries listed in rule 14 particularly when rule 4 has

incorporated the requirement of an eligibil- ity certificate in accordance with the previous instructions for the said purpose. Thirdly rule 14 excludes from the scheme not merely "traditional indus- tries" covered by para (A) but also industrial units (which may not be `traditional industries') falling under paras (B) to (E). Fourthly, the rules are not inconsistent with the interpretation that, while all industries fulfilling the terms of the notification can claim exemption under it, only some of those units, which do not fall under rule 14, can opt for the alternative of determent. We are, therefore, of opinion that even the retrospective promulgation of these rules provide no assistance in the interpretation of the notification.

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 defer- ment 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 exclu- sion of any industry which fulfills the terms of the notifi- cation 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 notifi- cation, 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 prospec- tively. It cannot take away the exemption conferred by the earlier notification.

We would like to add that we agree with the view of the Full Bench that, if the notification is interpreted as done by it or even hold it to be ambiguous, there is no scope for the assessee to invoke the doctrine of promissory estoppel. We have already dealt with this aspect in regard to the cases in which the State has appealed. In the other cases covered by the Full Bench decision, the mere fact that an exemption was initially granted and then revoked would be insufficient to found the claim of estoppel particularly when it has been found that the assesses started production after 12.1. 1983 and claimed exemption very much later. But since, in our view, the terms of the notification are clear and envisage no denial of exemption to traditional indus- tries, this question does not survive.

Before we conclude, we have to refer to one aspect which we have touched upon at the very beginning of the judgment and that is the dismissal, in limine, of the Special Leave Petition filed in this Court by the petitioners before the Full Bench. It has been pointed out that the above petition was dismissed notwithstanding that the Special Leave Peti- tion in the case of G.S. Dhall & Flour Mills was also then pending for admission. It would perhaps have been better if both the S.L.Ps. had been taken up and dealt with together. However, the S.L.P. against the Full Bench was dismissed and, two of us having been members of the Bench that dis- missed it, we may observe that Sri Salve is perhaps right in saying that it was the content of paras 20 and 21 of the Full Bench judgment that persuaded this Court to dismiss the S.L.P. there against. The Full Bench has there pointed out that even if it could be said that two interpretations of the notification were equally plausible. the assesses in those cases had set up the industries after the explicit instructions of 12.1. 1983 were

made public and thus took a deliberate risk and had only themselves to thank. Neverthe- less, the fact is that the view taken by us on the scope of the notification runs counter to the Full Bench decision which must be treated as overruled.

For the above reasons, we have come to the conclusion that the G.S. Dhall and Flour Mills case laid down the correct law and not the Full Bench. We would like to add that we are not quite happy to arrive at this decision. It does seem likely that the State Government had not intended the exemption to be availed of by certain categories of industries. But it has failed to achieve this purpose on account of the wide language in which it couched the exemp- tion notification. We find ourselves unable, for the reasons discussed above, to discover any valid legal basis on which the exemption clearly granted can be withheld from the assesses here. We, therefore, dismiss the appeals of the State and allow the appeals preferred by the assesses and hold them entitled to the exemption under the 1981 notifica- tion. We, however, make no order regarding costs.

R.S.S. Appeals filed by State dismissed and other appeals allowed.