(1994) 01 AP CK 0018

In the Andhra Pradesh High Court

Case No : Writ Petition No. 5974 of 1993

Agarwal Industries Ltd. APPELLANT

Vs

Government of Andhra Pradesh and Another RESPONDENT

Date of Decision : 27-01-1994

Acts Referred:

Citation : (1997) 104 STC 316

Hon'ble Judges : V. Sivaraman Nair, J;D. Reddeppa Reddi, J

Bench : Division Bench

Judgement

D. Reddeppa Reddi, J.—The petitioner, an industry manufacturing vanaspathi, an edible oil, has filed this writ petition for a direction to the respondents to provide concession in its favour to pay sales tax arrears with 18 per cent interest thereon, due under the A.P. General Sales Tax Act, 1957, as on February 28, 1991 in 24 monthly equal instalments commencing from November 1, 1992, and the tax due for the period from March 1, 1991 to February 28, 1992, with 18 per cent interest thereon in 36 monthly equal instalments commencing from March 1, 1994 as was given to Tungabhadra Industries Limited, which is also an industry manufacturing vanaspathi, under G.O. Rt. No. 1337, Industries and Commerce (BIFR) Department, dated December 21, 1992. It may be mentioned here that its earlier petition - W.P. No. 17009 of 1992 for the same relief has been disposed of by judgment dated March 1, 1993, with the following direction :

"...........In view of the statements by both the counsel, it is open for the petitioner to approach the Industries Department by filing a representation. If such a representation as stated above is filed, the department shall dispose of the same within a period of four weeks from the date of such representation, considering whether on the facts and circumstances of the case, the petitioner is entitled to such relief or not, in accordance with law......"

2. Accordingly, the petitioner made a detailed representation to the respondents on March 5, 1993. However, the same was rejected under Memo No. 154/IFR/91, dated April 6, 1993. Hence, the present writ petition.

3. Sri K. Srinivasa Murthy, learned counsel for the petitioner, submits that the petitioner and Tungabhadra Industries Limited stand on the same footing and by virtue of the preferential treatment given to Tungabhadra Industries Limited, the business of the petitioner is adversely affected. According to him, the action of the respondents under Memo dated April 6, 1993, rejecting the petitioner''s request to treat it in the same manner as Tungabhadra Industries Limited offends articles 14 and 301 of the Constitution.

4. In opposition, it is contended by the learned Government Pleader for Commercial Taxes, that Tungabhadra Industries Limited has been declared a "sick industrial company" under the Sick Industrial Companies (Special Provisions) Act, 1985. In this regard, he draws our attention to the following particulars stated in the counter-affidavit filed on behalf of the respondents :

".........The Board of Directors of TIL had informed the BIFR. The Board had by its letter dated 9th December, 1990 assigned Regd. No. 140/90 to the case of M/s. TIL. The case of M/s. TIL was taken up by BIFR on February 12, 1992. The BIFR after enquiring into the matter held that M/s. TIL had accumulated losses of Rs. 639.69 lakhs as on March 31, 1990 as against its net worth of Rs. 85.80 lakhs and free reserves of Rs. 52.08 lakhs. Further it had also referred cash losses of Rs. 143.14 lakhs for the financial year ended March 31, 1989 and a further cash loss of Rs. 398.17 lakhs in the financial year ended March 31, 1990."

5. It is also pointed out by him that the Government of Andhra Pradesh has considered the case of Tungabhadra Industries Limited as per the provisions of G.O. Ms. No. 319, Industries Department, dated July 4, 1989, the relevant portion of which reads as follows :

"Government of Andhra Pradesh had constituted a four member committee in September, 1988 to inter alia, look into industrial sickness and protection of workers'' interests in sick industries. The Committee has since submitted its report to Government recommending a package of concessions to be extended by the State Government and other State agencies for rehabilitation of sick industries.

After careful examination of the report of the Committee, the State Government have decided to extend the concessions as detailed in the annexures I and II to this order to the sick industries in Andhra Pradesh. These concessions will be admissible to the industries which have been declared by the Board for Industrial and Financial Reconstruction.

Once an industry has been declared as sick by the Board for Industrial and Financial Reconstruction (BIFR), coercive steps to collect arrears (covered by the package of concessions) will be stopped. However, if the industry is running, the current dues will continue to be collected. The deferment of past dues will not be for more than 12 months from the date the industry is declared sick by Board for Industrial and Financial Reconstruction within which period the revival package must be implemented. The concessions will become applicable from the date of implementation of revival package."

6. The case of the petitioner as set out in its affidavit and the contention of its learned counsel rests on the assumptions that the concession given to Tungabhadra Industries Limited under G.O. Rt. No. 1337, dated December 21, 1992 is due to stoppage of reimbursement of sales tax consequent on the stoppage of import of oil and exemption given to vanaspathi factories situated in the States of Madhya Pradesh, Uttar Pradesh, Bihar and Orissa from payment of sales tax. For this reason, the learned counsel places strong reliance on the proposition declared by the Supreme Court in Indian Cement Ltd. v. State of Andhra Pradesh [1988] 69 STC 305 that the levy of different rates of local and inter-State sales tax that would affect free trade and commerce is contrary to the scheme of Part XIII of the Constitution. He tries to sustain this assumption on the basis of what is stated in paragraph 2(1) and (2) of G.O. Rt. No. 1337. In this context, it is necessary to mention that what is mentioned in the said paragraph are the grounds on which Tungabhadra Industries Limited sought exemption of sales tax, through its letters dated September 26, 1991 and August 21, 1992. It is significant to note that the request of Tungabhadra Industries Limited for exemption did not find favour with the committee constituted under G.O. Ms. No. 319, dated July 4, 1989. Further, it is stated in paragraph 4 of G.O. Rt. No. 1337 that Tungabhadra Industries Limited was granted the concessions in question on its revised proposals. It looks obvious that the said concession was given to avoid closure of Tungabhadra Industries Limited, which had become sick. In the circumstances, we have no hesitation to hold that the assumption on which the petitioner rests its case is totally baseless. It, therefore, follows that the decision in Indian Cement and Others Vs. State of Andhra Pradesh and Others, is of no assistance to the petitioner.

7. The Government of Andhra Pradesh has spelt out the reasons for rejecting the request of the petitioner in the following terms :

"The deferment of sales tax granted to TIL is neither reduction of rate of sales tax nor exemption of sales tax. Therefore TIL cannot reduce prices of its products proportionate to sales tax deferred. The Industrial Reconstruction Bank of India which has been appointed as an operating agency by BIFR in connection with rehabilitation of TIL, in the hearing of Bench I of BIFR held on January 8, 1993 reported that deferment of sales tax by the Government of Andhra Pradesh would improve the liquidity position of TIL to an extent of Rs. 427 lakhs to enable it to make payments to the sundry creditors of Rs. 1,046.10 lakhs. From this it is clear that in the direction of its rehabilitation, TIL necessarily has to collect sales tax from dealers and utilise it for making payments of sundry creditors. The petitioner-company has not submitted any evidence of reduction of prices of vanaspathi by TIL in relation to price of vanaspathi of the petitioner''s-company. But assuming that TIL has reduced prices, such reduction could be for reasons other than deferment of sales tax which it is obligated to collect from dealers. The Government are not concerned with such reasons nor are Government concerned with the alleged purchases of raw material by TIL in other States where there is no levy of sales tax on that commodity."

8. It is clear from the above that no exemption or reduction of sales tax has been granted in favour of Tungabhadra Industries Limited. Therefore, the allegation of the petitioner that Tungabhadra Industries Limited need not pay sales tax and it is selling its product without charging sales tax is incorrect. Further, from the invoices filed by the petitioner itself, as material papers, it is borne out that the petitioner as well as the Tungabhadra Industries Limited are collecting sales tax at the rate of 9 per cent.

9. True, Tungabhadra Industries Limited, which has been declared a sick industrial company under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985, has been given certain concessions. It is not even the case of the petitioner that it is also a "sick industrial company". Therefore, it has no case to equate itself with Tungabhadra Industries Limited and claim similar or equal treatment.

10. In International Cotton Corpn. (P) Ltd. Ors. Vs. Commercial Tax Officer, Hubli, and Others, , it has been held by the Supreme Court that :

".........A concession is not a matter of right. Where the Legislature taking into consideration the hardships caused to a certain set of taxpayers gives them a certain concession it does not mean that that action is bad as another set of taxpayers similarly situated may not have been given a similar concession. It would not be proper to strike down the provision of law giving concession to the former on the ground that the latter are not given such concession. Nor is it possible for this Court to direct that the latter set should be given a similar concession. That would mean legislation by this Court and this Court has no legislative powers." (para 5) (page Nos. 9 and 10 of STC).

11. For the aforesaid reasons, we hold that neither article 14 nor article 301 of the Constitution comes to the rescue of the petitioner. Also, no case is made out by the petitioner for grant of any relief on any other ground. The result is that this writ petition must fail. It is accordingly dismissed. However, there will be no order as to costs.

12. Writ petition dismissed.

