(2008) 07 RAJ CK 0063

In the Rajasthan High Court

Alfa Cymex Technologies Ltd. APPELLANT

Vs

State of Rajasthan and Others RESPONDENT

Date of Decision : 01-07-2008

Acts Referred:

Citation : (2009) 11 Vat Reporter 139 : (2009) 26 VST 689

Hon'ble Judges : Dinesh Maheshwari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Dinesh Maheshwari, J.—The petitioner, said to be engaged in the business of manufacturing of digital and electronic clocks, applied for and was granted benefits under the Sales Tax Exemption Scheme 1987 (''the Scheme''). The case of the petitioner in this writ petition is that due to recession in the market, it was unable to make optimum utilisation of the capacity and, therefore, could not avail full benefit under the Scheme and possession of the Unit has also been taken over by Bank of Baroda in enforcement of their security.

2. According to the petitioner, the respondent No. 3 issued a wholly without jurisdiction notice on 15.11.2003 for withdrawal of benefits under the Scheme for not maintaining the average production as per Clause 4(e)(i) of the Scheme that was represented against; but then, the respondent No. 2 without any notice and without opportunity of hearing suddenly passed the impugned order dated 08.03.2004 (Annex.6) under Clause 9(b) of the Scheme for withdrawal of the benefit of the exemption granted to the petitioner with retrospective effect. The petitioner has further pointed out that the matter was pending before the District Level Screening Committee but the respondent No. 2 proceeded to pass the order and directed the Assessing Authority to recover the entire amount of sales tax; and the respondent No. 3 in pursuance of the order dated 08.03.2004 issued the impugned notice dated 15.03.2004 to the petitioner for payment of the entire amount of alleged sales tax; and thereafter though the petitioner made representation, the respondent No. 2 by the impugned order dated

21.07.2004 rejected the representation and Department has adopted coercive recovery proceedings. While challenging such withdrawal of benefits under the said Scheme, the petitioner has prayed for quashing of the demand raised and for striking down the proviso inserted below Clause 9(b) of the Scheme.

3. This petition was entertained on 05.05.2005 and while issuing notice, the matter was ordered to be listed alongwith CWP No. 1018/2005; and in the meantime, operation and effect of the impugned order dated 08.03.2004 (Annex.6) was ordered to remain stayed. The matter was to be listed before the Court on 18.11.2005 but has thereafter been listed only today. However, the office has made a report that the other CWP No. 1018/2005 had been decided on 08.11.2006.

4. On the matter being taken up today, Learned Counsel for the parties submit that the issue involved in this writ petition essentially stands concluded in view of the notification dated 11.04.2007 whereby the State Government decided to delete the said condition under Clause 4(e) (i) of the Incentive Scheme with retrospective effect from 21.03.1987 i.e, the date of commencement of the Scheme; and, therefore, maintenance of average production no longer remained a condition necessary to be fulfilled. It has also been pointed out that in respect of the corresponding demand under CST Act also, the Department has issued circular on 01.10.2007 writing off such demands which were raised because of the alleged violation of the said Clause 4(e) (i) of the Scheme. Learned Counsel further pointed out that noticing the said notification and circular, This Court has aloowed a cognate matter in SB CWP No. 3995/2005: Tripura Cement Limited v. The State of Rajasthan and Ors., decided on 05.02.2008; and has set aside a similar nature demand.

5. It is observed from the decision as rendered by This Court in Tripura Cement Ltd. (supra) that the relevant notifications have been quoted in extenso; and for the counsel for the Revenue not disputing the position that case of the said petitioner was covered by the said notification, the assessment orders were set aside. By the notification dated 11.04.2007, the said condition (i) of Sub-clause (e) in the Scheme has been deleted with effect from 23.05.1987 and then, in terms of the letter dated 19.09.2007 issued by the Secretary to the Government in its Finance Department, whereby the Commissioner was authorised to write off CST demand created on account of non-compliance of the condition under Clause 4(e) (i) of the Scheme, by the order dated 01.10.2007, the Commissioner, Commercial Taxes has proceeded to lay down the procedure for writing off such demands whereby the Assessing Authority is required to certify the demand created on account of such Clause 4(e)(i) and the same being outstanding and that the case is fit for writing off as per the letter dated 19.09.2007; and then, the Dy. Commissioner (Administration) is to verify the facts and to certify that the case is fit to be written off.

6. It is not in dispute that the case of the present petitioner is also squarely covered by the aforesaid notification and the circular.

7. In view of the said notification and circular; and for the decision of This Court in Tripura Cement Ltd. (supra), the indisputable position is that the impugned order dated 08.03.2004 and any proceedings taken in pursuance thereof and thereafter particularly in creating demand against the petitioner for violation of Clause 4(e) (i) of the Scheme have become redundant. However, for clarification, such impugned orders and notices deserve to be quashed and set aside following the decision in Tripura Cement Limited''s case (supra).

8. Accordingly, this writ petition is allowed, the impugned order dated 08.03.2004 (Annex.6) and the subsequent order dated 21.07.2004 (Annex.16) and the assessment order dated 20.04.2005 (Annex.18) and the related demand notices insofar they relate to recovery of the amount of sales tax with reference to Clause 4 (e)(i) of the Scheme are quashed and set aside. In the circumstances of the case, there shall be no order as to costs.