
(2008) 04 RAJ CK 0082
In the Rajasthan High Court

Alora Arc Steels Pvt. Ltd.

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 04-04-2008

Acts Referred:

Rajasthan Sales Tax Act, 1994 — Section 37

Citation : (2008) 4 RLW 3080

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vineet Kothari, J.—This writ petition has been filed by the petitioner inter alia challenging the decision of the District Level Screening Committee (DLSC for short) dated 24.8.2000 Annex. 19 whereby the said DLSC under the provisions of Sales Tax Incentive Scheme, 1987 (Incentive Scheme, for short) reduced the quantum of benefit granted to the petitioner industrial unit from Rs. 40.59 lacs to Rs. 28.80 lacs. The petitioner has also challenged the consequential orders passed by the Assessing Authority raising the demand of tax in pursuance of said decision of the DLSC curtailing the extent of exemption available to the petitioner on the basis of investment made by it in terms of the said Incentive Scheme, 1987.

2. The petitioner was initially granted Eligibility Certificate under the provisions of the said scheme for the aforesaid sum of Rs. 40.59 lacs by the decision of DLSC dated 19.9.1994. Annex. 3 in pursuance of which the necessary eligibility certificate was issued by the concerned Commercial Taxes Officer on 10.10.1994 for a period of 7 years vide Annex. 4. According to the application for grant of benefit under the said scheme, (sic) petitioner commenced the production of MS Angle, MS Bar, MS Sheets and MS (sic) on 20.1.1994 and made an eligible investment in terms of Incentive Scheme to the extent of Rs. 43.1 lacs, however, DLSC upon scrutiny on its application found the petitioner unit eligible to avail such benefits only to the extent of Rs. 40.59 lacs.

3. It appears that thereafter upon certain audit objection, the petitioner was served with a notice dated 30.5.1997, Annex. 5 of the writ petition that certain excess eligible investment was computed while sanctioning certificate to the petitioner under the said scheme and/therefore, under the heading of "building" as well as "plant and machinery" the quantum of benefit available to the petitioner was required to be reduced. The petitioner filed a detailed reply to the said notice to the General Manager, District Industries Center, Bikaner, who is the Member Secretary of the DLSC vide Annex. 6 dated 24.9.1997 and the petitioner explained therein that the petitioner had not claimed any benefit in respect of investment made by it in the plant and machinery relating to manufacture of hollow bricks and also machinery of Rs. 0.54 lacs for the said purpose as the petitioner found the said product line unviable and he invested Rs. 43 lacs as aforesaid for setting up of new industrial unit to manufacture MS sheets, bars etc. (steel products) and, therefore, the petitioner was rightly granted the benefit as a new industrial undertaking under the said scheme. Some more correspondence ensued between the parties with regard to the aforesaid audit objection. However, in the meeting held on 24.8.2000, the DLSC referring to the previous minutes dated 22.6.2000 held that the report of Dy. Commissioner (Administration) of Commercial Taxes Department, Bikaner and General Manager, District Industries Center, Bikaner was called which was considered by DLSC in its meeting. However, on 24.8.2000 relying upon the said report, the DLSC decided to reduce the quantum of benefit available to the petitioner from Rs. 40.59 lacs to Rs. 32 lacs and further held that the petitioner was entitled to said benefit only to the extent of 90% of the said eligible investment of Rs. 32 lacs under the category of "diversification" i.e. Rs. 28.80 lacs. In pursuance of this decision of DLSC, the Assistant Commissioner, Commercial Taxes passed an order on 17.7.2003 Annex. 11 by which the petitioner for the first time was informed that quantum of benefit available to the petitioner has been reduced from 40.59 lacs to Rs. 28.80 lacs by the DLSC. However, it appears that before this order was passed on 17.7.2003, the petitioner has already availed the exemption fully given to the extent Rs. 40.59 lacs under the eligibility certificate which was already granted to it w.e.f. 25.3.1994 vide Annex. 4. Later on the Assessing Authority passed consequential orders u/s 37 of the Rajasthan Sales Tax Act relating to rectification powers and raised a demand of tax for the difference amount taking into account the reduced quantum of exemption available to the petitioner.

4. Mr. Dinesh Mehta, learned Counsel appearing for the petitioner urged that in the first instance after the DLSC decided on 22.6.2000 to call for a report jointly of Dy. Commissioner (Administration) and GM, DIC, Bikaner, the petitioner was neither given any notice nor copy of such joint report was made available to the petitioner nor the petitioner was given an opportunity of hearing by DLSC before finally reducing the amount of quantum of benefit from Rs. 40.59 lacs to Rs. 28.80 lacs under a different category of "diversification" as against "new industrial undertaking" claimed by the petitioner. He further urged that since the

petitioner had given sufficient explanation before the DLSC that the investment in question was made by the petitioner for setting up of new industrial unit for production of MS bars and sheets and patties etc., there was no question of treating the petitioner's case under the category of "diversification" and reducing the benefit of petitioner under such category. He submitted that not only the petitioner was initially granted benefit at reduced amount of Rs. 40.59 lacs as against the investment to the extent of Rs. 43.14 lacs as per certificate of Chartered Accountant Annex. 2 dated 1st March, 1994 but since the petitioner had already availed the said benefit under a validly granted eligibility certificate commencing from 25.3.1994 and had fully availed such benefits up to year 1998, there was no question of retrospectively reducing the quantum of benefit available to the petitioner in the year 2000. He contended that the petitioner was made aware of such reduced quantum for the first time by the order of Assistant Commissioner Annex. 11 dated 17.7.2003 because the petitioner was not heard by the DLSC on 24.8.2000 when the decision after the joint inspection report of Dy. Commissioner (Administration) and GM. DIC was obtained by the DLSC in pursuance of its previous decision dated 22.6.2000. He further contended that in pursuance of the previous audit objection, the petitioner had given all the requisite explanations before the Member Secretary of DLSC and had requested that the quantum was not required to be reduced and these explanations have not at all been met or controverted by the DLSC in the impugned decision dated 24.8.2000 which though was passed ex parte by the DLSC. He, therefore, submitted that not only the said decision of the DLSC dated 24.8.2000 but the consequential orders passed by the Assessing Authority raising demand of difference of tax deserves to be quashed.

5. These submissions are countered by Mr. V.K. Mathur, learned Counsel appearing for the respondent Commercial Department. No counsel appeared on behalf of the DLSC respondent No. 2.

6. Having considered the rival submissions made at the bar, this Court is of the clear opinion that the DLSC erred in taking a decision on 24.8.2000 reducing the quantum of benefit available to the petitioner in a ex-parte decision. In order to comply with the principles of natural justice, the DLSC was required to make available the joint inspection report to the petitioner and give an opportunity of hearing to the petitioner in this regard. None of the explanations given by the petitioner on earlier occasions have been dealt with or controverted by the DLSC in its impugned decision dated 24.8.2000. Therefore, the said decision cannot be said to be an speaking order in the eye of law. Prima facie the petitioner was eligible to be given exemption under the category of new industrial undertaking as defined in said Incentive Scheme 1987 and since the petitioner did not undertake the production of hollow bricks but claimed the exemption only with respect to investment made by it for manufacture of steel products and was thus found eligible and was given necessary eligibility certificate in this regard, the petitioner cannot be said to have committed any fault or wrong in availing the exemption to the extent of Rs. 40.59 lacs in terms of such eligibility certificate up

to year 1998. The delay on the part of the respondents in initiating the action against the petitioner on the alleged ground of petitioner being entitled to avail only lesser quantum is rather curious. Though, first notice in this regard was given to the petitioner in pursuance of audit objections on 30th May, 1997 but it took more than 3 years to the DLSC to finally decide the matter on 24.8.2000 and that too before taking a final decision in the matter neither the petitioner was heard in the matter as to why the quantum should not be reduced or category be changed to "diversification" nor the explanations earlier furnished by the petitioner were controverted or rebutted by the DLSC. The impugned order of the DLSC passed on 24.8.2000 is therefore, naturally amounts to withdrawal of the benefit with retrospective effect which has already been availed by the petitioner during the contemporary period under the eligibility certificate granted in its favour which held field during that period. In these circumstances, the petitioner cannot be deprived of such benefit with retrospective effect and cannot be asked to pay back such amount of tax which it never collected from its customers and availed the same as exemption from the sale tax under the eligibility certificate granted in its favour. No sufficient reason has been given by the DLSC in the impugned order dated 24.8.2000 as to why the case of the petitioner was required to fall under the category of "diversification" when admittedly the petitioner commenced the production of stainless steel products only and claimed exemption in respect of investment made for such project.

7. This Court finds itself unable to agree with the DLSC in this regard. What was stated in the joint inspection report of Dy. Commissioner (Administration) and General Manager, DIC is also not placed before the Court. Therefore, the impugned decision of DLSC not only deserves to be quashed on the ground of non-compliance with the principles of natural justice but also being a non-speaking and laconic order. The consequential orders passed by the Assessing Authority raising demand of tax deserves to fall on this ground as they are merely consequential and if the original order of DLSC cannot be sustained, the levy of tax denying such exemption is required to fall on the ground.

8. Consequently, this writ petition is allowed and the impugned order Annex. 19 dated 24.8.2000 of DLSC and consequential orders of Assessing Authority Annex. 11 dated 17.7.2003 and orders passed by the Assistant Commissioner u/s 37 of the Act on 27.9.2003 Annex. 20 for the period 1.4.1997 to 31.3.1998 and order Annex. 21 dated 25.9.2003 for the period 1.4.1998 to 31.3.1999 are hereby quashed. No order as to costs.