
(2014) 01 RAJ CK 0217

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 710/2013

Anurag Enterprises

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 03-01-2014

Acts Referred:

Rajasthan Value Added Tax Act, 2003 — Section 20, 49, 8

Citation : (2014) 1 WLN 554

Hon'ble Judges : Amitava Roy, C.J.;Pratap Krishna Lohra, J

Bench : Division Bench

Advocate : Dinesh Mehta, Advocate for the Appellant; Falgun Buck for Mr. V.K. Mathur, Advocates for the Respondents Nos. 1 to 4, Advocate for the Respondent

Judgement

Pratap Krishna Lohra, J.—Feeling aggrieved from the impugned judgment and order dt. 24.07.2013, passed by the learned Single Judge, the appellant/petitioner has preferred this intra-Court appeal. The learned Single Judge, by the impugned judgment and order has declined to upset the order/communication dt. 09.07.2012 and has further turned down the prayer of the appellant for charging exemption fee @ 1.5% instead of 3% from the date of issuance of Notification dt. 26.03.2012. The facts necessary and germane for appreciating and thrashing out the lis involved in the matter are that appellant-petitioner is a registered partnership firm duly registered under the provisions of Partnership Act 1956. The appellant firm is engaged in execution of various contracts awarded by the State Government Central Government and its other instrumentalities and is enjoying status of Class "AA" Contractor. The appellant is undertaking various contracts in the entire State for constructing building structures and other allied works including renovation works. It so happened that the State Government published a Notification No. F.12(63)FD/Tax/2005-80 dt. 11.08.2006 in exercise of powers conferred upon it under Sub-section (3) of Section 8 of the Rajasthan Value Added Tax Act 2003 (for short, "Act of 2003") exempting the registered dealers engaged in execution of works contract from payment of tax leviable on transfer of property and goods on payment of

exemption fee. Clause (2) of Notification No. F.12(63)FD/Tax/2005-81 dt. 11.08.2006 envisaged a condition that a contractor is exempted from payment of tax if he moves an application within 60 days from the date of award of contract offering to pay the requisite exemption fee provided in the Notification. Laying emphasis on the said clause of the Notification dt. 11.08.2006, the appellant-petitioner has pleaded in the writ petition that stipulation aforesaid is clear that option to shift for payment of exemption fee and payment in accordance with the Notification is one time option available to the contractor and as such the rights, entitlement and/or liabilities arising in accordance with law shall remain confined as on the date of the application.

2. The appellant-petitioner has also referred to Notification of even date issued by the State Government in exercise of powers under Sub-section (2) of Section 20 of the Act of 2003 read with Rules of 2006 providing for deduction of tax @3% in lieu of tax at the time of making payment by any mode. While laying emphasis on the proviso to the said Notification, the appellant has pleaded that in terms of the proviso if the contractor is having exemption certificate under the earlier Notification, the awarder shall deduct in lieu of tax an amount equivalent to a rate of exemption fee as mentioned in the exemption certificate. According to the version of the appellant-petitioner, he submitted an application in the prescribed form before the Commercial Taxes Officer, Circle Jhunjhunu, seeking exemption certificate as per Notification No. F.12(63)FD/Tax/2005-80 dt. 11.08.2006, wherein he has specifically mentioned the description of work, date of award of contract, total value of contract, and rate of exemption fee @ 1.5%. The appellant has also asserted that in the application for issuance of exemption certificate the total exemption fee was also incorporated as per the prevailing exemption fee under the aforesaid Notification. The appellant has further made endeavour to plead in the writ petition that similar applications were submitted pursuant to other contracts, which were carried out by the firm in the State of Rajasthan, and has asserted that exemption certificates were also issued by the competent authority for the same.

3. The genesis of the litigation, as projected in the writ petition, was Notification issued by the State Government dt. 26.03.2012 bearing No. F.12(15) Finance/Tax/12/114, whereby the State Government has revised the rate of exemption fee and the schedule provided under the earlier Notification dt. 11.08.2006 was substituted. As a matter of fact, the Notification dt. 26.03.2012 has enhanced the exemption fee from 1.5% to 3%, however, there was no corresponding increase in the rate of tax. In the Notification, there is a clear stipulation that it shall be applicable prospectively from 01.04.2012. Construing the language employed under the Notification dt. 26.03.2012 to its advantage, the appellant made an endeavour to plead in the writ petition that the said Notification is intended to cover the contracts awarded after 01.04.2012, or in the alternative, it is applicable vis-?-vis exemption certificates granted after 01.04.2012.

4. The appellant, in the writ petition, has also raised its voice against the

communication dt. 09.07.2012, which was addressed by the Commercial Taxes Officer, Works Contract & Leasing Tax, Jodhpur to the awarder of the contract i.e. 5th respondent, whereby the awarder of the contract was called upon to read/ substitute the rates of exemption fee as provided vide Notification dt. 26.03.2012 pursuant to all exemption certificates granted by the department. Although the communication dt. 09.07.2012 was not addressed to the appellant, but in order to show its locus to question the same, the appellant has averred in the writ petition that in adherence of the said communication the awarder of contract has insisted for deduction of exemption fee at the enhanced rate of 3% instead of 1.5%. The appellant has also stated in the writ petition that it has ventilated grievances on the subject matter before the awarder of contract with the request not to deduct the tax at higher rate than what is shown in the exemption certificate. However, according to the appellant-petitioner when nothing turned out favourably, a petition was laid before the Jaipur Bench of this Court, but the same was withdrawn due to the objection of territorial jurisdiction. With these averments, the appellant has prayed for the aforementioned relief's.

5. The respondents contested the writ petition and defended the impugned action. The respondents have specifically pleaded in the return that the Notification dt. 26.03.2012, whereby the rate of exemption fee has been revised and the schedule incorporated in the Notification dt. 11.08.2006 has been substituted, cannot furnish any cause of grievance to the appellant so as to insist for payment of exemption fee at the rate which was prescribed in the earlier Notification dt. 11.08.2006. The sum and substance of the defence of the respondents was that on issuance of the Notification dt. 26.03.2012, the assessee is obliged to pay exemption fee at the rate prescribed in the said Notification for issuance of a valid exemption certificate and an assessee cannot claim exemption at the rates prevailing prior to the issuance of the notification. While clarifying that the notification is prospective, it is submitted in the reply that after 01.04.2012 the assessee is liable to deposit tax in the form of exemption fee for issuance of a valid exemption certificate @3% towards the State Treasury. Joining the issue with the appellant vis-?-vis communication dt. 09.07.2012, which was addressed to the awarder of contract, the respondents have pleaded in the reply that the said communication was issued by the Commercial Taxes Officer, Jodhpur in consonance and conformity with Notification dt. 26.03.2012, and therefore, the so called hue and cry raised by the appellant is uncalled for and unwarranted.

6. The learned Single Judge, after hearing the rival submissions, has non-suited the appellant to the extent it has assailed the communication dt. 09.07.2012 by observing that the said communication has been addressed to the awarder of the contract and as such the appellant cannot have any valid grievance against the same. However, while refraining from making a comment about locus of the appellant against the said communication, the learned Single Judge has observed that the Notification dt. 26.03.2012 is in the form of enhancing exemption fee prospectively in respect of rate of tax/exemption fee in lieu of tax prescribing

such higher rate of exemption fees. With the said observation, the learned Single Judge has held that assessing authority is expected to modify the exemption certificate in terms of statutory Notification vis-?-vis the appellant before directing the awarder of contract to deduct exemption fee at source at the higher rate as prescribed under the Notification dt. 26.03.2012. With these findings, the learned Single Judge has disposed of the writ petition granting liberty to the appellant to make a representation before the respondent assessing authority C.T.O., Works Contract & Leasing Tax, Jodhpur, so as to enable the said authority to initiate action and issue modified exemption certificate for the higher rate of deduction of tax/exemption fee to the appellant. The learned Single Judge has further observed that ultimately the deduction of exemption fees at source is towards the satisfaction of total exemption fee which stands enhanced w.e.f. 26.03.2012. The contention of the appellant questioning the jurisdiction of the third respondent was turned down by the learned Single Judge on the anvil that the contract work is being carried out by the appellant at Jodhpur within the territorial jurisdiction of third respondent.

7. The learned counsel for the petitioner, Mr. Dinesh Mehta, has urged that the appellant at the threshold of its contract has applied for issuance of exemption certificate in terms of the notification dt. 11.08.2006 and has been granted exemption certificate as per the prescribed rates, is not obliged to pay higher rate of tax/exemption fee as per the subsequent notification dt. 26.03.2012 during subsistence of the contract. Mr. Mehta, learned counsel would contend that the notification dt. 26.03.2012 has been issued for its application prospectively and as such the same cannot be applied retrospectively so as to enhance the rate of exemption fee vis-?-vis the appellant in whose favour exemption certificate has already been issued pursuant to notification dt. 11.08.2006. Mr. Mehta submits that when the notification is not intended to be retrospective, how it can be applied vis-?-vis the appellant during subsistence of the contract so as to compel the appellant to pay higher rate of exemption fee. In support of his contentions, the learned counsel for the appellant has placed reliance on a decision of Hon"ble Apex Court in case of Sri Vijayalakshmi Rice Mills, New Contractors Co. and Others Vs. State of Andhra Pradesh, . In the said verdict, the Hon"ble Apex Court, while examining Clause 2 of the Rice (Andhra Pradesh) Price Control Order, 1963 has held that a notification, which is intended to be prospective, cannot be applied retrospectively. The Hon"ble Apex Court made following observations in Para 5:

5. Mr. Nariman appearing on behalf of the appellants has laid great emphasis on the word "substituted" occurring in Clause 2 of the Rice (Andhra Pradesh) Price Control (Third Amendment) Order, 1964, and has urged that the claim of the appellants cannot be validly ignored. Elaborating his submission, counsel has contended that as the prices fixed by the Government are meant for the entire season, the appellants have to be paid at the controlled price as fixed vide the Rice (Andhra Pradesh) Price Control (Third Amendment) Order, 1964, regardless of the dates on which the supplies were made. We cannot accede to this

contention. It is no doubt true that the literal meaning of the word "substitute" is "to replace" but the question before us is from which date the substitution or replacement of the new Schedule took effect. There is no deeming clause or some such provision in the Rice (Andhra Pradesh) Price Control (Third Amendment) Order, 1964, to indicate that it was intended to have a retrospective effect. It is a well recognized rule of interpretation that in the absence of express words or appropriate language from which retrospectivity may be inferred, a notification takes effect from the date it is issued and not from any prior date. The principle is also well settled that statutes should not be construed so as to create new disabilities or obligations or impose new duties in respect of transactions which were complete at the time the Amending Act came into force. (See Nani Gopal Mitra Vs. The State of Bihar,).

8. Mr. Mehta, learned counsel for the appellant, has also placed reliance on a decision of Apex Court in case of Indian Aluminium Company Vs. Kerala State Electricity Board, . In the said verdict, the Hon"ble Apex Court, while examining the terms of an agreement, has held that an agreement made containing stipulations between the State Electricity Board and a contractor, is binding, as having been made validly in exercise of statutory power, cannot be altered to the detriment of the contractor by the Board by enhancing the charges of power unilaterally. The Hon"ble Apex Court made following observations in this behalf in Para 17 & 20 of the verdict:

17. Now, in the present case, as we have already pointed out above, the stipulations as to charges contained in the agreements entered into with the appellant were made in exercise of the statutory power to fix special tariffs conferred under Sub-section (3) of Section 49 and, therefore, there could be no question of such stipulations being void as fettering or hindering the exercise of the statutory power under that provision. These stipulations did not divest the Board of this statutory power or fetter or hinder its exercise; in fact; they represented the exercise of this statutory power. Once the agreements were made containing these stipulations, it was not competent to the Board to override these stipulations which were binding as having been validly made in exercise of statutory power. The Board could not enhance the charges in breach of these stipulations. To hold that the Board could unilaterally revise the charges notwithstanding these stipulations would mean that the stipulations had no binding effect, or in other word, the Board had no power to enter into such stipulations. That would negate the existence of statutory power in the Board under Sub-section (3) of Section 49 to fix the charges for a specific period of time, which would be contrary to the plain meaning and intendment of the Section. The Board was also not competent to enhance the charges under the guise of fixing uniform tariffs for all high tension consumers including the appellant under Sub-section (1) of Section 49 because Sub-section (1) is on its plain language, subject to Sub-section (3) of Section 49 and once special tariffs were fixed for the appellant under Sub-section (3) of Section 49, there could be no question of fixing uniform tariffs applicable to the appellant under Sub-section

(1) of Section 49. The power to fix uniform tariffs under Sub-section (1) of Section 49 could not be exercised in derogation of the stipulations fixing special tariffs made under Sub-section (3) of Section 49. Moreover, if the stipulations as to charges were not binding and the Board could enhance the charges unilaterally in disregard of them, it is difficult to see how the agreements, of which the stipulations formed a term as well as consideration, could be sustained. We can understand an argument that the whole of the agreements were void. But strangely the claim of the Board was that the appellant should be held to the agreements though at the same time the Board should be free to repudiate the stipulations which formed the consideration or part of the consideration. That is a claim which is highly illogical and we find it difficult to appreciate it. The stipulations as to charges are inseverable from the rest of the agreements and if these stipulations are disturbed and the charges are revised unilaterally by the Board, how could the agreements continue to bind the appellant? On the view contended on behalf of the Board, it would be impossible for a consumer to enter into an agreement with the Board for supply of electricity at a certain specified tariff. That surely could not have been intended by the "Legislature. Far from promoting the object of electrical development and industrial growth in the State, it would act as a regressive factor. It may be pointed out that the Board also did not contend that the agreements entered into with the appellant were wholly void. The attack was only against the validity of the stipulations as to charges and that attack must for reasons which we have given, fail in so far as it is based on Section 49.

20. We are, therefore, of the view that the Board was not entitled to enhance the charges in derogation of the stipulations as to charges contained in the agreements with the appellant and the notifications dt. 28.11.1969 fixing tariffs for extra high tension consumers was not enforceable against the appellant. We accordingly issue a writ quashing and setting aside the notification 28.11.1969 in so far as it seeks to make the tariffs specified in it applicable to the appellant and declare that the Board is not entitled to claim from the appellant anything more than the charges specified in the agreements. We also issue a writ restraining the Board from enforcing the notification dt. 28.11.1969 against the appellant or claiming from the appellant anything more than the charges specified in the agreements. The appeal is accordingly allowed. The 1st respondent will pay the costs of the appeal to the appellant.

9. Per contra, Mr. Falgun Buch, learned counsel for the respondent Revenue, has argued that the notification dt. 26.03.2012 has been applied prospectively, and therefore, there is apparently no valid cause of grievance available to the appellant against the said notification. Mr. Buch has argued that the State Government is authorized to issue notification granting exemption from tax and prescribing rates for such exemptions under Sub-section (3) of Section 8 of the Act of 2005, and therefore, after issuance of the notification the entitlement of the appellant for exemption certificate at the rate prescribed in the earlier notification cannot be sustained and the appellant is under an obligation to get

exemption certificate by paying tax @3% instead of 1.5%. Defending the impugned judgment and order passed by learned Single Judge, Mr. Buch would contend that the learned Single Judge has examined the matter threadbare and has rightly declined to interfere in the matter, and therefore, no interference with the impugned judgment is warranted.

10. We have heard the learned counsel for the parties, perused the impugned judgment and order and other materials on record.

11. Adjudication of the issue involved in the matter lies in a very narrow compass because the appellant has not made any endeavour to question the validity of the Notification dt. 26.03.2012 "(Annex. 11 to the writ petition). The only contention, which was canvassed by the appellant before the learned Single Judge was concerning the applicability of this notification vis-?-vis existing contract, for which an exemption certificate was issued to the appellant by the department pursuant to the earlier notification dt. 11.08.2006 (Annex. 1) prescribing exemption fee @ 1.5%. For assailing the impugned action of the respondents, the appellant's argument that the exemption certificate, which was issued in his favour, cannot be amended by the respondents by an administrative communication retrospectively, appears to be quite attractive but, we are afraid, this argument is of no avail to the appellant. In the first place, the Notification dt. 26.03.2012 envisages with clarity and precision that it is to be applied prospectively and the respondents are applying the same prospectively. Even the communication dt. 09.07.2012 addressed to the awarder of the contract by the third respondent, speaks volume about the fact that the awarder of the contract has been asked to adhere to the Notification dt. 26.03.2012 for issuance of exemption certificate in the Proforma WT-3. The learned Single Judge, while examining the applicability of Notification dt. 26.03.2012 has concluded that the State Government is always entitled to enhance exemption fee prospectively. On examining the impugned communication, which was addressed to the awarder of the contract dt. 09.07.2012, also the learned Single Judge has prima facie not found any fault with the said communication instead the learned Single Judge has granted liberty to the appellant to make a representation in this behalf to the assessing authority for initiating appropriate action for issuance of modified exemption certificate. It is to be emphasized here that in the field of taxation, Legislature must be allowed greater play in the joints as it is called. The fiscal legislation itself, as it is clear, is a compulsory extraction from the public for the welfare of the State. Thus, it is trite that laws relating to economic activities are to be viewed with greater latitude than laws touching civil rights, which are freedom of speech etc. and Court should feel more inclined to give judicial difference to legislative judgment in the field of economic regulations than in other areas where fundamental human rights are involved. The Court is quite conscious that such legislation is directed to practical problems dealing with highly sensitive and complex economic mechanism, and therefore, while dealing with such issues, the Court cannot adopt an idealistic and pedantic approach. For examining such issues, pragmatic approach is desirable which can facilitate

guidance and inspiration to the legislature in dealing with complex economic issues.

12. In above view of the matter, looking to the lis involved in the matter, the judgments on which the learned counsel for the appellant has placed reliance are of no assistance to the cause of the appellant. The Notification dt. 26.03.2012 is sought to be given prospective effect vis-?-vis the appellant, which cannot furnish any cause of grievance to the appellant in the given circumstances. Thus, in totality of circumstances, we are not inclined to interfere with the impugned judgment and order passed by the learned Single Judge in this intra-Court appeal with limited scope of judicial review. Resultantly, the appeal sans merit and the same is accordingly dismissed.