(1988) 11 AHC CK 0056

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 49 of 1988

Bajaj Packwell and Another — APPELLANT

Vs

State of Uttar Pradesh and Others — RESPONDENT

Date of Decision : 24-11-1988

Acts Referred:
Uttar Pradesh Sales Tax Act, 1948 — Section 4A

Citation : (1990) 76 STC 386

Hon'ble Judges : Om Prakash, J;B.N. Misra, J

Bench : Division Bench

Advocate : Bharatji Agrawal and R.K. Agarwal, for the Appellant; The Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

B.N. Misra, J

1. Petitioner No. 1 is a proprietorship concern and registered under the U.P. and Central Sales Tax Acts. Pursuant to Government Order No. 8244 dated 30th September, 1982, the petitioner established a new small-scale industrial unit in the district of Meerut for the manufacture and sale of blended tea. The initial investment of the petitioner was less than rupees three lacs. Annexure 1 dated 17th/21st April, 1984, is a copy of the registration certificate granted to the petitioner by the Directorate of Industries. The petitioner was also registered under the Factories Act. On the application of the petitioner, it was granted eligibility certificate on 9th November, 1984, for exemption from payment of sales tax for a period of five years with effect from 1st January, 1984, vide annexure 2. However, the petitioner was served with a notice dated 20th June, 1987 (annexure 3), to show cause why the period of exemption should not be reduced. Annexure 4 dated 1st July, 1987, is a copy of the petitioner''s reply to the show cause pleading against the proposed reduction of the period of exemption. By order dated 10th September, 1987, the Additional Director of Industries, respondent No. 2 reduced the period of exemption from five years to

three years on the ground that the petitioner''s investment in its industrial unit was less than rupees three lacs, vide annexure 5. The petitioner was further informed that the exemption would be effective from 20th March, 1984, the date of its registration under the Factories Act till 22nd December, 1986. This order dated 10th September, 1987, under annexure 5 is under challenge in this writ petition. The petitioner has asserted that it had established its unit on the specific and clear promise made by the State Government for grant of exemption for a period of five years by virtue of Government Order No. 8244 dated 30th September, 1982, and as such on principles of promissory estoppel it was not open to the State Government to reduce the period of exemption subsequently from five years to three years under Notification No. 6468 dated 27th August, 1984.

2. In the counter filed on behalf of respondent No. 2 and by respondent No. 3 the stand taken is that the petitioner''s unit was not entitled to exemption from payment of sales tax for a period of five years under Government Order No. 8244 dated 30th September, 1982, as its capital investment in land, building, plant and machinery was less than rupees three lacs. In the counter filed by respondent No. 3 it is further stated that the petitioner''s unit became entitled to exemption from payment of sales tax for a period of three years under Government Notification dated 27th August, 1984, and as such the period of exemption was rectified from five years to three years by order dated 10th September, 1987, under annexure 5.

3. On a reference to Government Order dated 30th September, 1982, and the set of "niyamawali" made under it, it is seen that in paragraph 1 under the heading "prastavna" it is stated that those units which have been established between 1st October, 1982 and 31st May, 1985, and are either registered under the Factories Act or whose investment in land, building, machinery and equipment is more than rupees three lacs, would be entitled to exemption from payment of sales tax from the date of starting production. However, in paragraph 4(1) of the said "niyamawali" under the heading "paribashaen" small-scale industries are defined to be such units whose investment in land, building, machinery and equipment is not less than rupees three lacs and not more than twenty lacs. Thus there was some confusion as to the small-scale units which would be entitled to exemption from payment of sales tax in view of what was stated in paragraph 1 and paragraph 4(1) of the "niyamawali". It appears this confusion was set at rest by letter dated 16th March, 1983 (annexure RA 1), issued by the Directorate of Industries. In paragraph 1 of this letter it was clarified that all those small-scale units which are registered as such with the Directorate of Industries and are also registered under the Factories Act would be entitled to exemption from payment of sales tax and that in addition to such units, those which were not registered under the Factories Act but whose investment in land, building, machinery and equipment was more than three lacs would also be entitled to the same exemption. It has been rightly urged on behalf of the assessee that it is by virtue of this clarification issued by the Director of Industries that it had been given the

eligibility certificate on 9th November, 1984, vide annexure 2.

4. The question which arises for consideration is whether by virtue of subsequent Government Notification dated 27th August, 1984, the period of exemption could be reduced from five years to three years to the detriment of the petitioner. In a similar situation in the case of Pournami Oil Mills and Others Vs. State of Kerala and Another, , it was held as follows :

"It is not disputed that the first order, namely, the one dated April 11, 1979, gave more of tax exemption than the second one. The second notification withdrew the exemption relating to purchase tax and confined the exemption from sales tax to the limit specified in the proviso of the notification. All parties before us who in response to the order of April 11, 1979, set up their industries prior to October 21, 1980, within the State of Kerala would thus be entitled to the exemption extended and/or promised tinder that order. Such exemption would continue for the full period of five years from the date they started production. New industries set up after October 21, 1980, obviously would not be entitled to that benefit as they had notice of the curtailment in the exemption before they came to set up their industries."

5. This decision of the Supreme Court has been affirmed by a larger Bench of the Supreme Court in the case of State of Bihar v. Usha Martin Industries Ltd. reported in [1987] 65 STC 430 (all), wherein reduction of the period of exemption from ten years to seven years was not permitted on the ground of estoppel.

6. In the present case also, in the first order dated 30th September, 1982, read with the "niyamawali" made under it, and the clarification dated 16th March, 1983, issued by the Directorate of Industries, the tax exemption was available to units as that of the petitioner for a longer period than the period provided under Government Notification dated 27th August, 1984. The petitioner has established that it set up the new unit acting upon the representation made by the State Government. Accordingly the doctrine of promissory estoppel is attracted to the facts of this case on the strength of the principles decided by the Honourable Supreme Court in the two cases referred to above.

7. For the reasons stated above, this writ petition is allowed. The order dated 10th September, 1987 (annexure 5), and the order dated 18th December, 1987 (annexure 8), are quashed and proceedings, if any, for imposition of any tax for a period of five years with effect from 1st January, 1984, are also quashed. The petitioner is entitled to exemption from payment of sales tax for a period of five years with effect from 1st January, 1984, as initially granted under eligibility certificate dated 9th November, 1984 (annexure 2). In the facts and circumstances of this case there shall be no order as to costs.

