(2011) 09 RAJ CK 0113

In the Rajasthan High Court

Case No : Civil Writ Petition No. 5167 of 2008

Binani Cement Limited APPELLANT

Vs

State of Rajasthan and Others RESPONDENT

Date of Decision : 05-09-2011

Acts Referred:

Citation : (2013) 57 VST 129

Hon'ble Judges : Dalip Singh, J

Bench : Single Bench

Advocate : Sudhir Gupta, assisted by Dinesh Bishnoi, for the Appellant; G.S. Bafna, Advocate-General assisted by Sarvesh Jain, for the Respondent

Judgement

Dalip Singh, J.—Matter has come up for orders on the application submitted by the learned Advocate-General on behalf of the respondent-State and the application submitted by the petitioner on April 7, 2011 seeking amendment to the writ petition. The writ petition has not been admitted so far. Heard learned counsel for the parties.

2. The writ petition has been filed by the petitioner seeking following prayers:

It is, therefore, most humbly prayed that this honourable court may kindly be pleased to accept and allow the writ petition of the petitioner and by an appropriate writ, order or direction in the nature thereof--

(i) the order dated October 21, 2000/November 20, 2000 (annexure 11 (Colly.) passed by the SLSC, the letter of SLSC dated February 8, 2007 (annexure 13) and demand notice dated May 19, 2008/May 14, 2008 (annexure 15A Colly) be declared to be wrong, arbitrary, illegal and unconstitutional and be quashed and set aside;

(ii) the application dated December 13, 2000 (annexure 12) submitted by the petitioner-company to the SLSC for review/ reconsideration of its decision and enhancement of EFCI of petitioner-company to the extent of Rs. 396-72 crores, be declared to have been deemed to have been accepted by SLSC from the expiry of stipulated period of 90 days from the date of filing thereof on December 13, 2000;

(iii) the petitioner-company be held to be entitled to EFCI to the extent of Rs. 396.72 crores under the Incentive Scheme;

(iv) alternatively, the matter be remanded to the SLSC for consideration/ reconsideration of petitioner-company''s application dated December 13, 2000 for enhancement of EFCI to the extent of Rs. 396.72 crores and meanwhile the petitioner-company be allowed to continue to avail of incentive of 75 per cent under the deferment scheme and the respondent'' be restrained from taking any coercive steps against the petitioner-company for recovery of disputed amount of tax of Rs. 116.25 crores;

(v) if any notice is issued or order is passed or any demand is raised in the matter against the petitioner-company after filing of the present writ petition, the same be taken on record and be quashed and set aside;

(vi) any other order or direction which this honourable court may deem just and proper in the facts and circumstances of this case may also be passed in favour of the petitioner and against the respondents; and

(vii) award cost of this writ petition to the petitioner.

3. On behalf of the respondents, an application has been filed for vacation of interim order dated July 1, 2008 and for disposing of the writ petition as having become infructuous in view of the subsequent order passed by the respondents on April 29, 2011, by which the petitioner has been communicated that the decision with reference to his alleged review petition dated December 13, 2000. The order dated April 29, 2011 reads as follows:

4. When the matter came up for admission on May 23, 2008, the respondents appeared through Additional Advocate-General who was directed to accept notices on behalf of the respondents. Thereafter, the matter was adjourned on several occasions with the court recording that "the earlier understanding between the parties shall continue." This apparently was with regard to the consequential action in pursuance of the orders dated October 21, 2000 and November 20, 2000. The matter came up before the court on July 1, 2008. On the said date the court recorded following order:

The writ petition came up for admission in pursuance of the order dated June 3, 2008 passed by the learned vacation judge. The learned counsel for the petitioner submitted that the matter requires to be finally decided at this stage. The roster at present does not permit the court to decide this writ petition at this stage keeping in view heavy pendency of other matters.

The writ petition has not been admitted so far. The learned counsel for the parties may become prepared with their submission on the matter for admission.

Put up on August 4, 2008 for admission.

The learned Additional Advocate-General submits that there was no understanding on the part of the respondent that they would not recover the amount under the demands.

The learned counsel for the petitioner submits that the interest of the petitioner may be protected by the court as the respondents want to recover the amount from the petitioner by coercive means.

Having considered the matter it is directed that in the meanwhile, the respondents are restrained from recovery of the amount from the petitioner on the condition that the petitioner deposits 50 per cent of the demand as it exists today by July 31, 2008 and further submits a solvent security to the satisfaction of the recovery/assessing officer for the balance 50 per cent amount by July 31, 2008. In case the petitioner fails to comply the respondents are free to proceed against the petitioner. The writ petition shall be heard subject to the compliance of the above two conditions.

Put up on 4th August 2008.

5. The matter came up before the court on August 4, 2008 as directed on July 1, 2008 and the case was adjourned after deciding the application submitted by the petitioner being Application No. 25612 dated July 28, 2008 which was not pressed by the petitioner and the said application was disposed of by this court. Thereafter, the respondents sought time to file reply and the case was last listed before the court on November 9, 2009 and then it was not listed before the court till the application was filed by the learned Advocate-General on behalf of the respondent-State and the matter has been listed in the court today in this background.

6. The controversy, as would be seen from the prayers made in the writ petition, revolves around the question--whether in fact any review application dated December 13, 2000 was filed by the petitioner and whether pending such review application, it is open for the respondents to proceed against the petitioner in pursuance of the orders dated October 21, 2000 and November 20, 2000.

7. The petitioner has placed on record annexure 12, alleged copy of the review application sought to have been filed on December 13, 2000 against the orders dated October 21, 2000 and November 20, 2000. This is contested by the respondents and they denied that any such review application was filed by the petitioner. The respondents sent a communication (annexure 13) on February 8, 2007 wherein in response to the letter of the petitioner dated December 1, 2006, the respondent stated as follows:

8. On behalf of the petitioner, it is contended by learned counsel for the petitioner Mr. Gupta that a reading of the letter (annexure 13) clearly goes to show that the respondents do not dispute that they had not received the copy of the review application and all that they were saying is that since the review

application has not been filed within the limitation of 60 days it is not possible for them to consider the same whereas in fact the review application was filed on December 13, 2000 against the orders dated October 21, 2000 and November 20, 2000 which was within limitation.

9. On behalf of the respondent-State learned Advocate-General has drawn the attention of the court to the specific replies filed by the respondent-State and more particularly para 8 of the reply which is available at page No. 216 of the paper book. Para 8 of the reply reads as follows:

8. That it seems that the petitioner-unit was not satisfied with the communication dated November 20, 2000 and resultantly they preferred to file an application, which was filed under a wrong premise. The so-called application filed by the petitioner suffered from a number of irregularities and defects. A perusal of the application (filed as annexure 12 along with the writ petition) indicates that it has been addressed to. Secretary, Industries Department, whereas if the aforementioned application was at all a review application then it ought to have been sent/addressed to the Commissioner, Industries, who is the Member Secretary of SLSC. Not only this, a perusal of the application clearly indicates that it nowhere states that it is a review application under clause 5A of the Scheme. In the entire body of the writ petition the petitioner-unit has been harping about its application remaining pending since the year 2000 and because of the fact that no decision has been taken on the application, therefore, it is to be deemed that the application stands allowed. It is most respectfully submitted that the application not only suffers from glaring defects, the same is hopelessly misconceived as well, for the reason that the petitioner-unit ought to have challenged the decision dated November 20, 2000 by way of filing an application before the Tax Board. Since the application was misplaced, filed under a wrong pretext and addressed to the wrong authority, therefore no decision could be taken on the aforementioned application. The petitioner-unit is now attempting to benefit out of a wrong committed by them more than seven years ago. In the entire body of the writ petition the petitioner-unit has not indicated any reasons whatsoever, which prevented them from approaching the appropriate authority in view of the fact that no decision had been taken on the so-called review application.

Since the SLSC had already reviewed the matter of EFCI not once but twice and that too after giving a reasoned order well supported by the conclusions and basis thereof, the petitioner if aggrieved, was left with only option to approach the appellate authority, i.e., the Rajasthan Tax Board.

10. From the above reply it has been pointed out that the application dated December 13, 2000 (annexure 12) had been addressed to the Secretary Industry and in case it was purported to be a review application, it ought to have been addressed to Commissioner/Member Secretary, State Level Screening Committee. It was also pointed out that so far as the order dated November 20, 2000 is concerned, the petitioner has an alternative remedy under the Scheme

under para 6 thereof of preferring an appeal. Similarly, objections were also raised in the preliminary reply filed on June 3, 2008 which is available at page 265 of the paper book more particularly paras 2 and 3 of the preliminary reply wherein even the receipt of the application dated December 13, 2000 was specifically disputed and it was stated in para 3 of the said reply as follows:

Hence, the application dated December 13, 2000 though not received by SLSC cannot be treated to be an application under clause 5A of the Scheme of 1989 nor the petitioner can be permitted to take undue advantage of the provisions of clause 5A by misconstruing the provisions of the Scheme.

11. It is submitted by learned Advocate-General that what has been communicated to the petitioner by way of the impugned order dated February 8, 2007 is only that the review, if at all, was to be filed within 60 days and since no review was filed within the said period, the same cannot be accepted. It has also been pointed out that the aforesaid letter (annexure 13) dated February 8, 2007 is in reference to the letter of the petitioner dated December 1, 2006 (annexure 14 to the writ petition) and a perusal of the said letter dated December 1, 2006 (annexure 14) goes to show that even after nearly six years of having allegedly filed review application dated December 13, 2000, there is no mention in the said letter dated December 1, 2006 of any review application having been filed on December 13, 2000 and the learned Advocate-General on the basis of the above submitted that, had there been any review application dated December 13, 2000, reference of the same would have found place in the letter dated December 1, 2006 which is missing. Therefore, in the communication dated February 8, 2007 reference to the review being filed beyond 60 days is in respect of the letter/representation dated December 1, 2006.

12. I have considered the aforesaid submissions. With a view to appreciate the submissions made at Bar, it would be appropriate to extract para 5A of the Scheme of the Rajasthan Sales Tax New Incentive Scheme, 1989 as the controversy can be easily decided in the light of the provision. For ready reference, Para 5A of the Scheme of 1989 is reproduced below:

5A. Review and reconsideration.--(i) The industrial unit, the Commissioner, or any office authorised by him in this behalf, or assessing authority may, before the expiry of the period prescribed for preferring appeal, apply to the Screening Committee, for reconsideration or review of the order passed by the Screening Committee.

(ii) When an application is made for reconsideration or review it shall be disposed of by the appropriate Screening Committee within a period of 90 days from the date of receipt thereof:

Provided that where the appropriate Screening Committee is not able to dispose of the application within the aforesaid period, the Chairman of the appropriate Screening Committee, may for sufficient cause, to be recorded into writing, extend the period or periods but not exceeding 90 days in aggregate.

(iii) The appropriate screening committee, may after making or causing to be made such enquiry as it considers necessary and after giving reasonable opportunity of being heard to the industrial unit, the assessing authority and Commissioner or any officer authorised by him in this behalf, pass such orders thereon as the circumstances of the case justify, including an order confirming, amending, suspending or cancelling the order or reopening the case and directing for fresh decision of the case.

(emphasis Here italicised supplied.)

13. The perusal of the above provisions and more particularly clause (ii) and the proviso to clause (ii) of para 5A of the Scheme of 1989 quoted hereinabove, go to show that whether or not any review application, as claimed by the petitioner, was filed on December 13, 2000 or assuming in favour of the petitioner that if any such application was filed as claimed by the petitioner on December 13, 2000 the reviewing authority was required to decide the same within the maximum period available to it under clause (ii) and the proviso within 180 days, i.e., the period of 90 days as provided under clause (ii) and the extended limit of 90 days in aggregate. If no decision is arrived on the review application in the aforesaid period of 90 days, as prescribed under para 5A, the reviewing authority, in my opinion, would cease to have jurisdiction over the review application and the only remedy available to the applicant, in the present case the petitioner, would be of preferring an appeal before the learned Tribunal under rule 6 of the Scheme of 1989. In this case, the petitioner claims that he had preferred a review application on December 13, 2000 but on record till June 1, 2006, the petitioner did not take any steps whatsoever to pursue the said review application. With reference to the letter dated December 1, 2006, and the admitted case of the petitioner is that the said review application filed on December 13, 2000 was not decided and the prayer made is also for seeking a mandamus that the said review dated December 13, 2000 is deemed to have been decided as allowed. A reading of clause (ii) and the proviso does not show that there is any mention of deemed acceptance or refusal. On the contrary, it is a mandate that the reviewing authority shall decide within 90 days, if not it can further extend this period on sufficient cause being shown by a further period of 90 days and no more. In case no decision is taken on the review within this period the reviewing authority shall cease to have jurisdiction over the matter and it cannot extend the time-limit beyond 90 + 90 days. In the light of what has been held above, even assuming that the petitioner had filed the review application on December 13, 2000, after the lapse of 180 days the reviewing authority would have no jurisdiction to decide the same.

14. In that view of the matter, the reliefs which have been claimed in the writ petition and more particularly relief No. 2 cannot be allowed as there is no specific provision for deemed acceptance and in absence of any such provision this prayer cannot be allowed. The alternate prayer of remand too cannot be accepted as the outer-limit of the 180 days period allowed too has long expired.

As far as the other reliefs claimed regarding challenge to the orders dated October 21, 2000 and November 20, 2000, the petitioner has remedy of preferring appeal under para 6 of the Scheme of 1989 before the learned Tribunal.

15. Accordingly, in the light of the above, I do not find any merit in the writ petition. The writ petition accordingly fails and is dismissed. The applications for amendment of the writ petition filed by the petitioner as well as the application seeking vacation of the interim order filed by the learned Advocate-General stand disposed of. With the dismissal of the writ petition the interim order dated July 1, 2008 stands vacated.

16. In the facts and circumstances of the case, it is directed that in case the petitioner files an appeal under para 6 of the Scheme of 1989 before the learned Tribunal, the petitioner would be entitled to seek condonation of delay on account of pendency of the proceedings before this court. Consequently, the writ petition, stay application and both the applications stand disposed of.

