(2015) 01 RAJ CK 0028

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 416, 459, 3969, 3970, and 79587/2008, 118, 2969, 2970, 3952, 4951, 4986, 7998 and 7999/2009, 4986, 8979, 11564 and 11748/2010 and 6820/2011, 3983 and 8102/2012, 1458, 2667 and 14743/2013, 873 and 5904/2014

Bohra Industries Limited — APPELLANT

Vs

State and Others — RESPONDENT

Date of Decision : 19-01-2015

Acts Referred:
Constitution of India, 1950 — Article 301, 304(b)

Citation : (2015) 01 RAJ CK 0028

Hon'ble Judges : Sunil Ambwani, C.J.;Jaishree Thakur, J.

Bench : Division Bench

Advocate : Dinesh Mehta, Sanjeev Johari, C.S. Kotwani, Dinesh Kumar Joshi and Teena Arora, for the Appellant; Rajesh Panwar, AAG, Sunil Joshi, V.K. Mathur and Sunil Beniwal, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. We have heard learned counsel appearing for the petitioners and learned counsel appearing for the respondents.

2. In all these writ petitions, the constitutional validity of the Rajasthan Tax on Entry of Goods into Local Areas Act, 1999 (for short, the Act) has been challenged on the ground that it violates freedom of trade, commerce and intercourse under Article 301, not saved by Article 304(b) of the Constitution of India.

3. A batch of writ petitions challenging the constitutional validity of the Act were heard and dismissed by the Division Bench of this Court at Jaipur Bench, of which one of us (Hon''ble Sunil Ambwani, Acting Chief Justice) was a Member. Vide judgment dated 1.12.2014 in M/s. Harit Polytech Pvt. Ltd. v. State of Rajasthan and ors. (D.B. Civil Writ Petition No. 8745/2014) and other connected writ petitions, the Court concluded as follows:--

"26. After hearing learned counsels for the parties, we are of the considered opinion that the Division Bench in M/s. Dinesh Pouches Limited v. State of Rajasthan and Ors. (supra), having noticed the directions of Hon''ble Supreme Court issued in the order dated 14.7.2006, exceeded the mandate of the order issued by the Hon''ble Supreme Court, in declaring the Act to be ultra vires Article 301 of the Constitution of India, and to refund the entire amount of Entry Tax levied and collected by the State of Rajasthan. The Division Bench was not required to decide the issue as the Civil Appeals against the earlier judgment in the same writ petition upholding the Act were pending in the Supreme Court, alongwith other connected matters. The directions in the order of Supreme Court dated 14.7.2006, which had not set aside the Judgments of the High Court and had remitted an issue for recording the findings, were clear and did not admit any ambiguity or doubt. The Division Bench of this Court in M/s. Dinesh Pouches Ltd. v. State of Rajasthan and Ors., travelled beyond the authority given by the Hon''ble Supreme Court in the appeals arising out of the original orders, which are still pending. The Supreme Court had only remitted an issue to record the findings, within five months and remit it within next one month, to enable the Apex Court to decide the matter. The High Court pre-empted the final decision on its findings, which have not been considered so far by the Supreme Court.

27. We are distressed to observe that despite availability of the judgment in M/s. Dinesh Pouches Limited v. State of Rajasthan and Ors.(supra) decided on 21.8.2007 to both the parties, it was not brought to the notice of the Division Bench, hearing M/s. Godfrey Philips India Limited v. State of Rajasthan and Ors. (supra), five months after the judgment was rendered in M/s. Dinesh Pouches Limited v. State of Rajasthan and Ors.(supra). On the same material, the Division Bench in M/s. Godfrey Philips India Limited v. State of Rajasthan and Ors., and in pursuance to the same order of the Apex Court remitting the issue, recorded contradictory findings. It however did not choose, in view of the order of remittance of the Supreme Court dated 14.07.2006, to decide the writ petition. In our view, both the parties represented by same counsels should have drawn the attention of the Division Bench to the earlier decision of the High Court. The review petitions have however been filed by the petitioners to review the opinion in M/s. Godfrey Philips India Limited v. State of Rajasthan and Ors. (supra).

28. In view of the aforesaid discussion, we hold, without any hesitation, that the Division Bench, deciding D.B. Civil Writ Petition No. 21/2002 (M/s. Dinesh Pouches Limited v. State of Rajasthan and Ors.) in its judgment dated 21.8.2007, had after quoting the order of the Supreme Court on 14.7.2006, by which the issue was remitted to it, could not have finally decided the writ petition. We do not propose to pass any final orders in the matter, as in doing so, we will be committing the same error, which was made by the Division Bench in the judgment dated 21.8.2007 in M/s. Dinesh Pouches Limited v. State of Rajasthan and Ors.(supra).

29. We enquired from the learned counsels appearing for the petitioners and learned Advocate General, State of Rajasthan, as to whether this Court''s order dated 21.8.2007 and the order dated 18.1.2008 have been forwarded to the Hon''ble Supreme Court to be placed on the record of Civil Appeal No. 3453/2002. We are informed that since Special Leave to Petitions have been filed, and have been tagged with Civil Appeal No. 3453/2002, both the orders are available on the records of Supreme Court. Learned counsels appearing for the petitioners submit that since they have filed review petitions to review the judgment dated 18.1.2008 in M/s. Godfrey Philips India Limited v. State of Rajasthan and Ors.(supra), they have not considered it appropriate to place the orders on record of Civil Appeal No. 3453/2002, until the review petitions are decided.

30. In the special facts and circumstances of the case, we are of the view that since Civil Appeals arising out of the judgments passed by this Court in M/s. Godfrey Philips India Limited v. State of Rajasthan and Ors.(supra) and M/s. Dinesh Pouches Limited v. State of Rajasthan and Ors. (supra) are still pending in the Hon''ble Supreme Court, both the judgments dated 21.8.2007 and 18.1.2008, passed in pursuance to the directions issued by the Hon''ble Supreme Court, which had remitted the issues for findings to be recorded by the High Court, be forwarded by the Registry of the High Court to Hon''ble Supreme Court, to be placed on the record of Civil Appeal No. 3453/2002. Since we have refrained ourselves from deciding the issues, which are pending in the Hon''ble Supreme Court, we do not propose to extend the interim orders, and leave the parties to seek appropriate remedies, for protecting their interests.

31. All the Writ Petitions are accordingly dismissed, and the interim orders are discharged. The Review Petitions are also accordingly disposed of."

4. Since the issues raised in these writ petitions pending in the High Court at Jodhpur are the same and that no new issues or any new arguments have been made by learned counsel appearing for the petitioners, we are of the view that the matters are covered by the reasons given in the Division Bench Judgment in M/s. Harit Polytech Pvt. Ltd. v. State of Rajasthan and ors. (supra) and thus, all the writ petitions are liable to be dismissed.

5. All the writ petitions are accordingly dismissed and the interim orders are discharged. A copy of this order will be placed in all the connected files.

