
(2006) 03 KAR CK 0107
In the Karnataka High Court
Case No : Writ Petition No. 10766 of 2005

Dhanvantari Botanicals Pvt. Ltd.

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 21-03-2006

Acts Referred:

Karnataka Tax on Entry of Goods Act, 1979 — Section 11 A

Citation : (2007) 10 VST 33

Hon'ble Judges : Mohan Shantanagoudar, J

Bench : Single Bench

Advocate : T. Suryanarayana and King and Partridge, for the Appellant;

Final Decision : Allowed

Judgement

Mohan Shantanagoudar, J.—Petitioner being the 100% Export Oriented Unit, has sought for quashing the Notification dated 30.11.2001 bearing No.FD 161 CSL 2001 (II) vide Annexure-B" to the writ petition in so far as it relates to omission of the words "excluding petroleum products like petrol, diesel, furnace oil, naptha and LSHS used as consumables or captive power generation units". He has also sought for quashing the endorsement dated 2.2.2005 issued by the 4th respondent-Commercial Tax Officer (Inteligence)-VHI, South Zone, Bangalore, vide Annexure-C

2. It is submitted by Sri T. Suryanarayana, Learned Counsel appearing on behalf of the petitioner that the Notification vide Annexure-B granting certain exemptions, incentives and concessions runs contrary to the New Industrial Policy 2001 of the State Government and consequently, that portion of the Notification by which the words "excluding petroleum products like petrol, diesel, furnace oil, naptha and LSHS used as consumables or captive power generation units" are mentioned, is bad in the, eye of law. In support of his contentions, he relies upon the judgment of the Apex Court in the case of State of Bihar and Others Vs. M/s. Suprabhat Steel Limited and Others, wherein it is observed thus.

Para 7:- Coming to the second question, namely, the issuance of notification by the State Government in exercise of power u/s 7 of the Bihar Finance Act, it is true that issuance of such notifications entitles the industrial units to avail of the incentives and benefits declared by the State Government in its own industrial incentive policy. But in exercise of such power it would not be permissible for the State Government to deny any benefit which is otherwise available to an industrial unit under the incentive policy itself. The Industrial Incentive Policy is issued by the State Government after such policy is approved by the Cabinet itself. The issuance of the notification u/s 7 of the Bihar Finance Act is by the State Government in the Finance Department which notification is issued to carry out the objective and the policy decisions taken in the industrial policy itself. In this view of the matter, any notification issued by the Government order in exercise of power u/s 7 of the Bihar Finance Act, if is found to be repugnant to the Industrial Policy declared in a Government resolution, then the said notification must be held to be bad to that extent. In the case in hand, the notification issued by the State Government on April 4, 1994, has been examined by the High Court and has been found, rightly, to be contrary to the industrial incentive policy, more particularly the policy engrafted in Clause 10.4(I)(b). Consequently the High Court was fully justified in striking down that part of the notification which is repugnant to Sub-clause (b) of Clause 10.4 (I) and we do not find any error committed by the High Court in striking down the said notification. We are not persuaded to accept the contention of Mr. Dwivedi that it would be open for the Government to issue a notification in exercise of power u/s 7 of the Bihar Finance Act, which may override the incentive policy itself. In our considered opinion the expression "such conditions and restrictions as it may impose" in Sub-section (3) of Section 7 of the Bihar Finance Act will not authorise the State Government to negate the incentives and benefits which any industrial unit would be otherwise entitled to under the general Policy Resolution itself. In this view of the matter, we see no illegality with the impugned judgment of the High Court in striking down a part of the notification dated April 4, 1994.

Thus, the Apex Court has clearly laid down that the notification if runs contrary to the industrial incentive policy of the State Government, is bad and that therefore, the same is liable to be quashed. The issuance of the Notification vide Annexure-B by the State Government is in exercise of the powers conferred u/s 11-A of the Karnataka Tax on Entry of Goods Act 1979. The same entitles the industrial units to avail of the incentives and benefits declared by the State Government in its own industrial incentive policy. But, in exercise of such power, it is not permissible for the State Government to deny any benefit which is otherwise available to an industrial unit like petitioner under the new industrial Policy, 2001 which is issued by the State Government, after such policy is approved by the cabinet itself. The issuance of notification u/s 11-A of the Karnataka Tax on Entry of Goods Act will be issued by the State Government to carry out the objectives and policy decisions taken in the industrial policy itself. Any notification issued by the Government in exercise of the powers of Section

11-A of the Karnataka Tax on Entry of Goods Act, if it is found to be repugnant to the industrial policy declared in a government resolution, then the notification must be held to be bad to that extent.

Clause 4 of the New Industrial Policy, 2001 reads thus:

4. Special concessions for export- The following benefits will be extended to Export Oriented Units (EOU)

1. 100% Export Oriented Units (EOUs).-

2. Investment Subsidy as indicated in Para 1 (a) above.

B. Exemption from power cut.

C. Exemption from payment of Entry Tax and Sales Tax payable on purchase of raw materials, components, packing materials, consumable, capital goods, spares, material handling equipment, intermediates, semi-finished goods and sub-assemblies from a registered dealer. While the Entry Tax exemption will be available for the items procured from within the State or outside, the Sales Tax exemption on purchase of various items will be available provided the procurement is from a dealer located within the State.

Under Clause 4(1)(c), the petitioner was exempted from payment of entry tax and sales tax payable on consumables apart from other materials. It is not in dispute that the consumables include, petroleum products like petrol, diesel, furnace oil, naphtha and LSHS. Thus, under the New Industrial Policy 2001, petitioner being 100% export oriented unit, was promised exemption of payment of entry tax and sales tax payable on purchase of petroleum products like petrol, diesel, furnace oil, naphtha and LSHS used as consumables. In spite of the same, the Notification vide Annexure-B issued on 30.11.2001 withholds such exemption on petroleum products like petrol, diesel, furnace oil, naphtha and LSHS used as consumables. The relevant portion of the Notification dated 30.11.2001 reads thus:

In exercise of the powers conferred by Section 11-A of the Karnataka Tax on Entry of Goods Act, 1979 (Karnataka Act 27 of 1979), the Government of Karnataka being of the opinion that it is necessary in public interest so to do, hereby reduces the tax payable by one hundred percent Export Oriented Units under the said Act to Nil" on raw materials, components, packing materials, consumables (excluding petroleum products like petrol, diesel, furnace oil, naphtha and LSHS used as consumables or for captive power generation units), machinery and equipments, spares, material handling equipment, intermediates, semi-finished goods and sub-assemblies brought into a local area for use in the manufacture of goods, subject to following restrictions and conditions:

xxx xxx xxx (underlining by me)

The combined reading of New Industrial Policy 2001 and the Notification dated 30.11.2001 would make it clear that the Notification dated 30.11.2001 is

repugnant to the industrial policy to the extent of withholding of exemption of petroleum products like petrol, diesel, furnace oil, naphtha and LSHS used as consumables. Thus, the Notification dated 30.11.2001 vide Annexure-B" shall have to be held bad to the extent of withholding exemption of petroleum products like petrol, diesel, furnace oil, naphtha and LSHS used as consumables. Hence, the following order is made:

The Notification dated 30.11.2001 vide Annexure-B" in so far as it relates to excluding petroleum products like petrol, diesel, furnace oil, naphtha and LSHS used as consumables or captive power generation units appearing in the first paragraph of the said notification is held to be bad to that extent. Thus, the Notification Annexure-B has to be read by omitting the words "excluding petroleum products like petrol, diesel, furnace oil, naphtha and LSHS used as consumables or captive power generation units". Consequently, the endorsement dated 2.2.2005 vide Annexure-C issued by the Commercial Tax Officer (Int)-VIII, South Zone, Bangalore, is quashed.

Writ petition is allowed accordingly.

MSGJ: 21.03.2006 W.P. No. 10766/2005 ORDER ON BEING SPOKEN TO

Consequent to the aforesaid order, the petitioner is entitled for refund of an amount of Rs. 5,11,148/- paid by him.