(1988) 03 CAL CK 0021

In the Calcutta High Court

Case No : Matter No. 1330 of 1987

Dhaulagiree Polyolefins Pvt. Ltd. and Another — APPELLANT

Vs

Assistant Commissioner, Commercial Taxes and Others — RESPONDENT

Date of Decision : 08-03-1988

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1989) 74 STC 183

Hon'ble Judges : Baboo Lall Jain, J

Bench : Single Bench

Judgement

Baboo Lall Jain, J.—This is an application made by Dhaulagiree Polyolefins Pvt. Ltd. and its Director, under Article 226 of the Constitution of India, inter alia, praying, that the order dated 5th August, 1986, passed by the Assistant Commissioner, Commercial Taxes, Chowringhee Circle, on the 5th August, 1986, rejecting the application of the petitioner No. 1 dated 19th October, 1985, filed on 30th October, 1985, for renewal of "eligibility certificate" under Rule 3(66) of the Bengal Sales Tax Rules, 1941, be quashed and/or set aside. The application of the petitioner No. 1 was for renewal of the eligibility certificate (hereinafter also referred to as "E.C."). The grounds on which the application for renewal of E.C. can be rejected are specified in Sub-rule (ii) of Rule 3(66) of the said Rules. From the perusal of the impugned order it appears, that the Assistant Commissioner, has rejected the said application of the petitioner on grounds, totally extraneous, to the grounds mentioned in the said Sub-rule (ii) of Rule 3(66) of the Bengal Sales Tax Rules, 1941.

2. Mr. Bose, appearing on behalf of the respondents, could not point out to me that the said grounds as mentioned in the said impugned order dated 5th August, 1986 could be valid grounds for rejection of the application of the petitioner No. 1 for renewal of the eligibility certificate. It is to be noted that the petitioner No. 1 had already been granted E.C. for the preceding periods, by the predecessors-in-office of the said Assistant Commissioner.

3. The petitioner has also prayed for quashing the order dated 18th November, 1986 a copy whereof is also annexed to the petition where-from it appears that on the basis of the said impugned order dated 5th August, 1986 the Commercial Tax Officer held that the petitioner should have submitted the returns along with challans paying taxes as per returns. The Commercial Tax Officer further held that the petitioner-dealer was a defaulter in paying taxes. The said order dated 18th November, 1986 is a consequential order which was passed on the basis of the said impugned order dated 5th August, 1986.

4. As, in my opinion, the said order of the Assistant Commissioner was passed on the basis of matters and questions which were totally extraneous to the grounds on which the application of the petitioner for renewal of the eligibility certificate could be rejected, the said order of the Assistant Commissioner, Commercial Taxes, Chowringhee Circle, dated 5th August, 1986, a copy whereof is annexed to the petition, is liable to be quashed. I am making it quite clear that I have not gone into the truth or otherwise of the grounds on which the said application of the petitioner for renewal of eligibility certificate was rejected. Furthermore, it is also made clear that if the sales tax authorities are entitled to take any further or other steps against the petitioner on the basis of the grounds mentioned in the said order dated 5th August, 1986 they will not be debarred from doing so.

5. In the circumstances as aforesaid the said order dated 6th August, 1986 passed by the Assistant Commissioner is quashed and/or is set aside. Furthermore, the said order of the Commercial Tax Officer dated 18th November, 1986 rejecting the petitioner''s application for issue of declaration forms is also quashed and is set aside. Both the said applications of the petitioner for renewal of eligibility certificate as also the said application of the petitioner for issue of declaration forms will be reconsidered by the appropriate authority in accordance with law and in the light of the observations made hereinabove. The Assistant Commissioner of Commercial Taxes, Chowringhee Circle, will fix a date for hearing of the petitioner''s application for renewal of eligibility certificate and notify the petitioner with regard to the date so fixed. Similarly, the Commercial Tax Officer will also fix a date for hearing of the petitioner''s application for issue of declaration forms and such dates for hearing should be fixed within eight weeks from the date of service of a signed copy of this dictated order. The respective applications or any other pending application of the petitioner should be disposed of as expeditiously as possible in the light of the observations made above. The petitioner is directed to serve a copy of the dictated order on the respective respondents.

6. All parties to act on a signed copy of this dictated order on the usual undertaking.