(2009) 07 P&H CK 0086

In the Punjab And Haryana At Chandigarh

Durable Plastic Industries — APPELLANT

Vs

State of Punjab and Others — RESPONDENT

Date of Decision : 22-07-2009

Acts Referred:
Punjab Urban Estates (Development and Regulation) Act, 1964 — Section 3(1)

Citation : (2010) 157 PLR 118 : (2009) 4 RCR(Civil) 204

Hon'ble Judges : M.M. Kumar, J;Jaswant Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M.M. Kumar, J.—This order shall dispose of C.W.P. Nos. 4643 of 1987 and 9691 of 1988 as common questions of law and facts are involved. The petitioners in these petitions, who have established their industrial units in the Sahibzada Ajit Singh Nagar, Mohali (for brevity, ''SAS Nagar''), have challenged notifications dated 20.12.1983 and 22.5.1984, whereby Octroi tax was imposed on the entry of goods into the notified area of SAS Nagar. The facts are referred from CWP No. 4643 of 1987.

2. Brief facts of the case are that on 7.7.1969 (P-3/A), the SAS Nagar was declared as Urban Estate under the provisions of Section 3(1) of the Punjab Urban Estates (Development and Regulations) Act, 1965 (for brevity, ''the Act''). Section 8 of the Act empowers the Chief Administrator to apply to the Urban Estate or a part thereof, with the prior approval of the State Government, any of the provisions of the Punjab Municipal Act, 1911 (for brevity, ''the Municipal Act'') specified in the Schedule of the Act. On 12.10.1978, the Chief Administrator made applicable certain provisions of the Municipal Act applicable to the SAS Nagar (P-4). On 20.12.1983, the State Government in exercise of powers u/s 241 of the Municipal Act declared the SAS Nagar as Notified Area Committee, which is deemed to be Municipal Committee for the purposes of carrying out its functions under the Municipal Act (P-5). For generating funds and carrying out its functions as a local authority, the State Government issued a notification dated

22.5.1984 u/s 242 of the Municipal Act, imposing tax in the nature of octroi (without refunds) and without any surcharge on the entry of goods into the notified area of SAS Nagar for consumption, use or sale therein as shown in the annexure attached therewith (P-6). It was further stipulated that the exemption granted by the Government from time to time would remain in force. The petitioners have challenged the aforementioned notifications in these proceedings claiming that they are entitled to claim exemption from the payment of octroi duty for a period of six years commencing from the date of availing the incentive for the first time.

3. Without delving any further on the issue, it is apposite to mention that the issue involved in these petition is no longer res integra. The impugned notifications came up for consideration before a Division Bench of this Court in the case of M/s Molins of India Ltd. v. State of Punjab 1985 R.L.R. 439. After considering various provisions of the Act as well as Municipal Act, the Division Bench has observed thus:

6. Much stress was laid on the last limb of the argument that even if it may be accepted that the petitioners are entitled to the concessions claimed, even then the octroi duty has to be paid to the Notified Area Committee and thereafter its refund claimed by them in accordance with the procedure contained in the rules notified in the years 1973 and 1978. No doubt, in the Appendix to both the set of rules form has been prescribed for refund of the octroi/terminal tax but that fact is not sufficient to uphold the contention of the learned Counsel. In the booklet referred to above as well as in 1978 rules, in case of concession regarding octroi/ terminal tax the words used are, "exemption from the levy of octroi/terminal tax or alternatively refund of the amount paid by the unit" whereas in the case of concessions regarding the sale tax, the right given is only of the refund of the tax deposited. It is, therefore, evident that the Government has intentionally used both the words exemption as well as refund so far as octroi/terminal tax is concerned. A provision for the refund has to be made because many industrial units who were allowed this concession had already paid the octroi/duty before the relevant rules were enforced from a back date. Otherwise also, the use of both the words, "exemption" as well as the "refund" in case of octroi duty clearly shows that the Government intended to exempt the industrial units from the payment of the octroi duty covered under the policy in force at the relevant time. None of the defences raised, therefore, has any substance.

7. This petition is accordingly accepted with costs and it is declared that petitioners No. 1 to 4 are entitled to claim exemption from the payment of octroi duty for a period of five years from the date of the registration of their units and the remaining ones for a period of six years from the date of issue of the registration certificate or from the date of availing of this incentive for the first time or from the date of going into production as the case may be, on the goods brought by them within the area of the said Committee for use in the setting up or running of their industrial units.

4. Having heard learned State counsel and perusing the paper book with her able assistance, we are of the considered view that the Division Bench judgment in the case of M/s Molins of India Ltd. (supra) is fully applicable to the instant petitions. Accordingly, following the same principles and precedent, these petitions are allowed in terms of the Division Bench judgment rendered by this Court in the case of M/s Molins of India Ltd.