
(1983) 11 RAJ CK 0024
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1064 of 1982

Ganpat Lal

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 10-11-1983

Acts Referred:

Constitution of India, 1950 — Article 301, 302, 303

Citation : (1985) 59 STC 138

Hon'ble Judges : N.M. Kasliwal, J

Bench : Single Bench

Advocate : J.S. Rastogi, for the Appellant; G.S. Bapna, for the Respondent

Final Decision : Dismissed

Judgement

N.M. Kasliwal, J.—The petitioner is running a textile industry consisting of power-looms at Madanganj, Kishangarh. He is registered under both the Rajasthan Sales Tax Act, 1954 as well as the Central Sales Tax Act, 1956.

2. The case of the petitioner is that he was entitled to remission of purchase tax in respect of raw material which he purchased for the purpose of manufacturing of cloth u/s 5CC of the Rajasthan Sales Tax Act, 1954 (hereinafter referred to as "the Act"). According to the petitioner, he installed the textile industry on 19th February, 1979. The Government of Rajasthan had invited the entrepreneurs to install their industries with a concession to grant remission of purchase tax u/s 5CC inserted by amendment Act No. 5 of 1970 in the Rajasthan Sales Tax Act, 1954. Initially remission was allowed from the date of the amending Act of 1970 till 31st March, 1974 but subsequently the period was further extended up to 31st March, 1979 by amending Act No. 6 of 1975. This Section 5CC was further amended so as to continue the remission available to the new industrialists for a further period of B years, i. e., to last up to 31st March, 1984. The case of the petitioner is that acting on assurance given under the Act, the petitioner installed textile industry at Madanganj, Kishangarh and commissioned manufacturing of cloth on 19th February, 1979. He was thus entitled to remission of purchase tax

up to 31st March, 1984. The Rajasthan Legislative Assembly amended Section 5CC by amending Act No. 8 of 1982 which has been published in Rajasthan Gazette, Extraordinary, dated March 30, 1982.

3. The petitioner in his individual capacity and also as a member of the Powerloom Association filed an application u/s 12(a) of the Act raising certain questions of law for determination by the Additional Commissioner, Commercial Taxes Department, Rajasthan. The Additional Commissioner by his order, annexure 2 dated 18th June, 1982 decided all those questions against the petitioner. The petitioner has now filed this writ petition challenging the amendment of Section 5CC made by Act No. 8 of 1982.

4. Mr. Rastogi, learned Counsel for the petitioner, challenged the amendment of Section 5CC made by Act No. 8 of 1982 on the following two grounds:

(1) That no amendment could have been made in Section 5CC taking away the right of remission granted to the new entrepreneurs on the principle of promissory and equitable estoppel. Reliance in this regard is placed on *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*,

(2) The impugned amendment was violative of Article 301 of the Constitution of India which guarantees freedom of trade, commerce and intercourse throughout the territory of India.

5. It is further submitted that by the impugned amendment remission has been withdrawn and this puts an unreasonable restriction on freedom of trade and commerce of the petitioner. There is no force at all in any of the submissions made above by the learned Counsel for the petitioner.

6. So far as the first ground is concerned it is well-settled that no question of promissory estoppel or equitable estoppel arises where an Act is passed by the appropriate Legislature. Act No. 8 of 1982 by which an amendment has been made in Section 5CC has been passed by the Rajasthan State Legislature and it was fully within the competence of such Legislature to make any amendment and to withdraw the remission granted under earlier provisions of the Act. The case of *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, was not a case of any amendment made by the Legislature and the same is clearly distinguishable.

7. There is no force in the second contention of Mr. Rastogi as no question of violation of freedom of trade and intercourse arises if any remission in the tax is taken away by the appropriate Legislature. It has been observed in *State of Madras v. N. K. Nataraja Mudaliar*, AIR 1969 SC 147:

Normally a law imposing a tax on intra-State sales does not offend Article 301. The Central Sales Tax Act, 1956 is no exception to this rule. None of its provisions directly impede the movement of goods or the free flow of trade. Even assuming that the Act is within the mischief of Article 301, it is certainly a law made by Parliament in the public interest and is saved by Article 302. There is

nothing in the Act which offends Article 303(1).

8. I am thus clearly of the view that in the present case there is no question of putting any restriction on the freedom of trade and commerce by the amendment made u/s 5CC by amending Act No. 8 of 1982. It may be further mentioned that by this amendment the industries are now required to pay 1 per cent tax on raw materials required for manufacture of goods and this 1 per cent is itself a concessional rate which has been made available to the industries which are commissioned before 31st March, 1984 for a period of 5 years from the date of their commission. The above provision suffers from no illegality.

9. The writ petition is thus totally devoid of force and is accordingly dismissed. No order as to costs.