(1991) 04 GUJ CK 0012

In the Gujarat High Court

Case No : Special Civil Application No. 7573 of 1988

Gujarat Metal Rolling Mills APPELLANT

Vs

State of Gujarat and Others RESPONDENT

Date of Decision : 22-04-1991

Acts Referred:
Gujarat Sales Tax Act, 1969 — Section 32, 49(2)

Citation : (1991) 04 GUJ CK 0012

Hon'ble Judges : S.D. Shah, J;G.T. Nanavati, J

Bench : Division Bench

Advocate : K.H. Kaji, for the Appellant; J.N. Thakore, Advocate-General, Kamal M. Mehta, Assistant Government Pleader and M.G. Doshit, for the Respondent

Judgement

G.T. Nanavati, J.—The petitioner is a manufacturer of aluminium sheets, circles, etc. It started manufacturing such items in 1970. It is a small-scale industry. It is a registered dealer under the Gujarat Sales Tax Act, 1969. It is the case of the petitioner that relying upon the sales tax incentives scheme declared by the Government by its resolutions dated 22nd December, 1977 and 27th August, 1980, it made substantial investment by way of expansion of its existing industrial unit prior to 1st August, 1982. As the petitioner was entitled to the benefits under those resolutions, it first applied for cash subsidy on 12th April, 1982 by making an application to the Deputy Commissioner of Industries-respondent No. 3. As the third respondent did not grant that application till 8th June, 1984, it applied for an eligibility certificate for sales tax exemption on that day. The eligibility certificate was issued by the third respondent on 18th July, 1987. By that certificate, it was declared that it was entitled to sales tax exemption to the extent of Rs. 2,36,987. The certificate also mentions that the benefit was available to the petitioner from 31st October, 1982 to 23rd March, 1988. It thereafter applied on 17th July, 1987 to the 2nd respondent to issue sales tax exemption certificate. The 2nd respondent by his letter dated 27th August, 1987, informed the petitioner that it was not entitled to the sales tax exemption because of the Government resolution dated 17th August, 1982, which excluded some more industries from the purview of the sales tax incentives scheme. The petitioner thereupon tried to persuade the respondents that it was entitled to the benefit of the said schemes as it had invested a large sum by way of expansion relying upon the said schemes declared by the Government and that it had also commenced production in or about June, 1982. The respondents, however, did not agree with the plea of the petitioner and, therefore, the petitioner has filed this petition challenging the resolution dated 17th August, 1982 and the order dated 27th August, 1987, passed by the 2nd respondent. The petitioner also wants this Court to direct respondent No. 2 to issue a sales tax exemption certificate mentioning Rs. 2,36,987 as upper limit for a period of seven years from the date of the said certificate. The petitioner also want this Court to direct the third respondent to grant the eligibility certificate stating that effective period would be the period of seven years from the date of exemption certificate issued by respondent No. 2. The petitioner also wants Rs. 2,36,987 refunded to it with interest as it was required to pay that much amount by way of sales tax on the finished goods sold by it during the period for which it was entitled to the exemption certificate.

2. What is contended by the learned advocate for the petitioner is that the petitioner had made investment relying upon the sales tax incentives schemes declared by the Government by its resolutions dated 22nd December 1977, and 27th August, 1980, and as the petitioner had commenced production on 31st October, 1982, the petitioner became entitled to the benefits of those schemes and the Government could not have deprived the petitioner of those benefits by issuing resolution dated 15th August, 1982.

3. If we turn to the letter dated 27th August, 1987, we find that the Assistant Commissioner has rejected the same on two grounds. The first ground is that the petitioner is engaged in an industry prohibited by notification dated 17th August, 1982, issued by the Government in exercise of its powers u/s 49(2) of then Act. Another reason given is that the petitioner is holding recognition u/s 32 of the Act and, therefore, is not entitled to the benefit of the sales tax incentives schemes.

4. Under the notification issued u/s 49(2) of the Act which was in force from 5th February, 1981, sales by a specified manufacturer of goods manufactured by him were exempted fully on fulfilment of certain condition. Admittedly, entry 118 of the said notification is applicable to the facts of this case and the said entry defines "specified manufacturer" to mean a person in the State of Gujarat who establishes the new industry after 1st June, 1980 but not after 31st March, 1986, in any of the designated areas and is a registered dealer not holding recognition u/s 32 of the Act or where he holds such recognition surrenders it for cancellation within 60 days from the date of coming into force of the said notification, or of commencing the production. It is not in dispute that the petitioner did hold recognition u/s 32 of the Act and that he did not surrender it for cancellation within 60 days from the date of coming into force of the said

notification or of commencing the production. As the petitioner was holding recognition and had not surrendered it for cancellation within the specified period obviously he was not entitled to the benefit of exemption. Therefore, without going into the question whether the Government was entitled to withdraw the exemption by issuing the impugned notification dated 17th August, 1982, it will have to be held that the petitioner was rightly denied the sales tax exemption certificate as it was holding recognition u/s 32 of the Act and had not surrendered the same for cancellation within the prescribed time.

5. This petition, therefore, fails and is dismissed. Rule is discharged with no order as to costs.

6. Petition dismissed.

