(2001) 09 GAU CK 0015

In the Gauhati High Court

Case No : Civil Rule No. 5389 of 1996

Hari Ram Sharma	APPELLANT
Vs	
State of Assam and Others	RESPONDENT

Date of Decision : 18-09-2001

Acts Referred:

Assam Industries (Sales Tax Concessions) Rules, 1988 — Rule 2, 2(1), 4
Assam Sales Tax Act, 1947 — Section 3A
Constitution of India, 1950 — Article 226

Citation : (2001) 3 GLT 431

Hon'ble Judges : A.K. Patnaik, J

Bench : Single Bench

Advocate : O.P. Bhati, M.K. Jain and A. Biswas, for the Appellant; N.C. Phukan, Addl. Sr. G.A., for the Respondent

Judgement

A.K. Patnaik, J.—In this writ petition under Article 226 of the Constitution the Petitioner has made a grievance that sales tax on sale of tea processed in its Tea Industrial Unit has been levied and demanded contrary to the Industrial Policy Resolution of the Government of Assam dated 12th October, 1982.

2. The facts briefly are that by Industrial Policy Resolution dated 12th October, 1982 of the Government of Assam, Department of Industries some incentives were announced to encourage local entrepreneurs to set up industries in the State of Assam. One of such incentives announced in the said Industrial Policy Resolution was that a new industrial unit will not be required to pay sales tax payable under Local Sales Tax Laws on purchase of raw materials and on sale of finished products for. 5 years from the date of commencement of production. The Policy Resolution further provided that the Implementing Agencies will issue Eligibility Certificate under the 1982 scheme with effect from the date of commencement of production and such Eligibility Certificates would be a pre-conditions for granting sales tax exemption. After the aforesaid Industrial Policy Resolution, the Petitioner set up a smaller scale industrial unit for tea grading and blending and as per the Permanent Registration Certificate issued by the

Directorate of Industries, the date of production of the aforesaid smaller scale industrial unit of the Petitioner was 15.4.1984. The Udyog Vikash, District Industries Centre, Ka Mr. up, Guwahati, thereafter issued an Eligibility Certificate which inter alia stated that the Industrial Unit of the Petitioner, namely, M/s Bajrang Udyog was eligible for exemption of sales tax from 15.4.84 to 14.4.89. Accordingly, the Petitioner claimed exemption of sales tax on the sales of its finished produces in its returns for the periods ending 31.3.86,30.9.86,31.3.87,30.9.87, 31.3.88, 30.9.88, 31.3.89 and 30.9.93. But the Superintendent of Taxes, Guwahati Unit B, held that the guidelines regarding grant of tax exemption by the Government had excluded Tea'' industries from the purview of tax exemption and as such the Petitioner was liable to pay tax under the Assam Sales Tax Act for the sales made and accordingly assessed the sale of finished products by the Petitioner during the aforesaid periods to sales tax under the Assam Sales Tax Act by separate orders of assessment annexed to this writ petition as Annexure D to J. Aggrieved by the said orders of assessment, the Petitioner filed revisions but by order dated 23rd April, 1996, the Joint Commissioner of Taxes, Assam, Guwahati refused to interfere with the assessment orders made by the Superintendent of Taxes on the ground that Tea was excluded from the raw materials to be used in manufacture of finished products. The Petitioner has challenged the said orders of assessment as well as the order of the Joint Commissioner of Taxes, Assam rejecting the 8 revision petitions of the Petitioner against the orders of assessment. The Petitioner has also prayed for declaring the notification dated 1.8.88 of the Govt. of Assam u/s 3A of the Assam Sales Tax Act, 1947 as ultra vires.

3. Mr. O. P. Bhati, learned Counsel for the Petitioner submitted that the Petitioner set up its Industrial Unit investing a huge amount on the assurances and promises made by the State Government in the Industrial Policy Resolution dated 12th October, 1982 that finished products of the Petitioner will be exempted from sales tax for a period of 5 years from the date of commencement of production arid an Eligibility Certificate was also granted by the Udyog Vikash, District Industries Centre, Ka Mr. up, Guwahati declaring that the Petitioner was entitled to exemption from sales tax from 15.4.84 to 14.4.89 i.e. for the period of 5 years from the date of commercial production by the Petitioner. Mr. Bhati further submitted that in the Industrial Policy Resolution dated 12th October, 1982 there is no mention at all that processing and blending tea will not be exempted from sales tax on the finished products. He pointed out that in the appendix to the Industrial Policy Resolution dated 12th October, 1982 food processing industries were also included as industries eligible for incentives in the Industrial Policy Resolution, 1982. The State Government is bound by the principles of promissory estoppel to grant the said exemption from sales tax on finished products of the Petitioner. In support of his said submission, Mr. Bhati cited the decisions of the Supreme Court in the case of Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, and in the case of Pournami Oil Mills and Others Vs. State of Kerala and Another, Mr. Bhati further submitted that by the notification

dated 1.8.88 of the State Government u/s 3A of the Assam Sales Tax Act, 1947, fax under the said Act in respect of sales of goods produced by dealer in any new Industrial Unit in Assam for the period of 5 years from the date of commencement of production in such Industrial Unit has been exempted subject to some conditions and one of the conditions prescribed in the said notification is that the notification shall not apply to sales made during the period from 15.10.82 to 31.7.88 unless the dealer produces certificate of eligibility from the authority specified under Sub-rule (a) of Rule 4 of Assam Industries (Sales Tax Concessions) Rules, 1988 (for short "the Rules, 1988") to the effect that the Industrial Unit is eligible for sales tax under the State Government Policy Resolution dated 12th October, 1982. Mr. Bhati submitted that although the Petitioner has been furnished with an Eligibility Certificate by the Udydg Vikash that the Petitioner is entitled to exemption from sales tax with effect from 15.4.84 to 14.4.89 i.e. 5 years from the date of commercial production by the Petitioner, the said Eligibility Certificate is not in the form prescribed under the Rules, 1988. He further pointed out that although the Form in which the certificate was to be issued under Sub-rule (a) of Rule 4 of the said Rules 1988 is different from the Form in which the Petitioner has been issued Eligibility Certificate as annexed to this petition as Annexure-B, ''the authority who" is competent to issue the certificate under Sub-rule (a) of Rule 4 of the Rules, 1988 is the same as the authority who has issued Eligibility Certificate in favour of the Petitioner in Annexure-B to the writ petition, namely, Udyog Vikash. According to Mr. Bhati there is, therefore, a substantial compliance with the provisions of the notification dated 1.8.88 issued u/s 3A of the Assam Sales. Tax Act, 1947 and the Petitioner should be allowed the exemption of sales tax on the sale of finished products from 15.10.84 to 31.7.88 in terms of the said notification of exemption. Alternatively, Mr. Bhati submitted that the aforesaid conditions in the notification dated 1.8.88 that exemption of sales made during the period from 15.10.82 to 31.7.88 will not be allowed unless the dealer produces a certificate of eligibility from the authority specified in Sub-rule (a) of Rule 4 of the said Rules, 1988 in so far as it is inconsistent with the provision of Industrial Policy Resolution, dated 12th October, 1982 is ultra vires.

4. Mr. N.C. Phukan, learned Additional Senior Government Advocate, on the other hand, sought to sustain the impugned orders of assessment as well as the impugned order passed by the Joint Commissioner of Taxes, Assam in revisions. He submitted that the Joint Commissioner of Taxes, Assam has held that under Rule 2 (f) of the said Rules, 1988, Tea is excluded from the raw materials to be used in the manufacture of finished products and, therefore, the Petitioner was not entitled to exemption from sales tax on its finished products. Mr. Phukan further submitted that it will be clear from the impugned orders of assessment that the Superintendent of Taxes has rejected the claim of exemption of the Petitioner on finished products on the ground that the guidelines of the State Government regarding grant of tax exemption has excluded ''Tea'' industries from the purview of tax exemption. According to Mr. Phukan, there is no infirmity

in the impugned orders of assessment and the impugned order passed by the Joint Commissioner of Taxes, Assam in revision and this is not a fit case in which this Court should quash the orders- of assessment and the order passed in revision. Mr. Phukan further submitted that the notification dated 1.8.88 u/s 3A of the Assam Sales Tax Act, 1947 is consistent with industrial Policy Resolution dated 12th October, 1982 and cannot be held to be bad by this Court.

5. Condition (b)(i) of the notification dated 1.8.88 u/s 3A of the Assam Sales Tax Act, 1947 which has been challenged in this writ petition is extracted herein below:

b) This notification shall not apply to sales made during the period:

i) from the 15th October, 1982 to 31st July, 1988 unless the dealer produces a certificate of eligibility from the authority specified in sub-rule(a) of Rule 4 of the Assam Industries (Sales Tax Concessions) Rules, 1988 to the effect that the industrial unit is eligible for sales tax exemption under the State Government''s Resolution No. MI. 132/82, dated 12th October, 1982 as the case may be, not non-eligible for assistance within the meaning of paragraph 1, 3, of Part-II of the 1986 Incentives Scheme published under Resolution No. CL 386/86, dated 24th December, 1986 of the Department of Industries of the Govt. of Assam.

It will be clear from the aforesaid condition (b)(i) of the exemption notification that the dealer is required to produce a certificate of eligibility from the authority specified in sub-rule (a) of Rule 4 of the Rules, 1988 to the effect that the Industrial Unit is eligible for sales tax exemption under the State Government Resolution No. MI. 132/82 dated 12th October, 1982. It does not provide that the certificate has to be in the form prescribed under Sub-rule (a) of Rule 4 of the said Rules, 1988. This is because while the sales tax exemption was granted with effect from 15th October, 1982 under the Industrial Policy Resolution dated 12th October, 1982, the form under Sub-rule (a) of Rule 4 of the Rules, 1988 was prescribed only with effect from 1.8.88. In otherwords, so long as the authority specified in Sub-rule (a) of Rule 4 of the said Rules, 1988 issues a certificate of eligibility to the effect that the Industrial unit is eligible for sales tax exemption under the State Government Resolution No. MI. 132/82 dated 12th October, 1982, the dealer will be entitled to exemption on its sales made during the period from 15.10.82 to 31.7.88. In the present case the Petitioner has been issued with such an eligibility certificate for exemption of sales tax for the period from 15.4.84 to 14.4.89 by Udyog Vikash as would be clear Eligibility Certificate (Annexure-B) and Udyog Vikash is the authority specified in Sub-rule (a) of Rule 4 of the aforesaid Rules, 1988 to issue the certificate of eligibility. Hence the Petitioner cannot be denied exemption on sale of finished products from 15.10.82 to , 31.7.88 on the ground that the condition (b) in the notification dated 1.8.88 is not satisfied by the Petitioner. It is therefore not necessary for the Court to examine the further question as to whether condition (b)(i) in the notification dated 1.8.88 is inconsistent with the provision of Industrial Policy Resolution ''1982 and is ultra vires.

6. Coming now to the challenge to the assessment orders, I find that the only ground on which the Petitioner has not been allowed exemption on the sales of tea in the assessment orders is that the Government has excluded ''Tea'' industries from the purview of tax exemption. A copy of the Industrial Policy Resolution dated 12th October, 1982 has been provided and on perusal of the same I do not find therein that Tea Industries are put outside the purview of the benefits under the said Industrial Policy Resolution, 1982. Further the authority who is competent to issue eligibility certificate has certified that the Industrial Unit of the Petitioner was eligible for exemption of sales tax for the period from 15.4.84 to 14.4.89. In my considered opinion, so long as the Eligibility Certificate issued by Udyog Vikash in Annexure-B to the writ petition is not cancelled, the Petitioner cannot be denied exemption from sales tax on the finished products on the ground that the Tea Industry set up by the Petitioner was not entitled to exemption from sales tax in accordance with the Industrial Policy, Resolution, 1982.

7. In the impugned order of revision, the Joint Commissioner of Taxes, Assam has relied on Rule 2(1) of the aforesaid Rules, 1988 which defines the expression ''raw materials'' as not to include tea But the claim of the Petitioner for exemption is not in respect of purchase of raw materials for his Industrial Unit but is in respect of sales of finished products of his Industrial Unit. Hence, Rule 2(f) of the aforesaid Rules, 1988 has no relevance whatsoever to the question as to whether the Petitioner was entitled to exemption of tax on sales on the finished products for the period of 5 years from the date of commercial production. The exemption from sales tax on finished products was granted by the notification dated 1.8.88 u/s 3A of the Assam Sales Tax Act, 1947. As has been held above the Petitioner was entitled to such exemption on the sale of the finished products for the period from 15.4.84 to 31.7.88 on the strength of the Certificate of Eligibility granted to the Petitioner by Udyog Vikash in terms of the condition (b)(i) of the said notification.

8. For the aforesaid reasons, I quash the impugned orders of assessment (Annexure D to J) as well as the impugned order passed in revision (Annexure L) and hold that the Petitioner is entitled to exemption on sale of the finished products under the Assam Sales Tax Act, 1947 for the period from 15.4.84 to 31.7.88. It will be open for the Superintendent of Taxes, Assam to make fresh assessments for the periods from 1.8.88 onwards in accordance with law.