(2018) 08 RAJ CK 0234

In the Rajasthan High Court

Case No : Civil Writs No.839 of 2006

Indus Hotel Corporation Limited @APPELLANT@Hash State of Rajasthan & Ors

Date of Decision : 18-08-2018

Acts Referred:

Citation : (2018) 08 RAJ CK 0234

Hon'ble Judges : Pradeep Nandrajog, CJ;G R Moolchandani, J

Bench : Division Bench

Advocate : A.Kasliwal, Naina Saraf

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, CJ

1. Vide order dated 30/07/2012 passed in S.B. Civil Writ Petition No.839/2006 i.e. the present writ petition, reference made to the Division Bench is

as under:-

â??In view of the submissions made by the counsel for the petitioner-Company, I would therefore direct the Deputy Registrar (Judicial) to place this

matter before the Honâ??ble Chief Justice for placing the writ petition before the Division Bench for determination of the question as to whether the

notification dated 27.05.1998 mandates that the new industrial unit claiming exemption thereunder should have necessarily commenced its commercial

operation after 01.04.1998 and whether when a new industrial unit had commenced commercial operation prior to 01.04.1998 it would stand disentitled

from the exemption in issue.â??

2. Arguing the reference on 13/08/2018 learned counsel for the parties stated that the writ petition itself could be disposed of in view of the facts not

being dispute i.e. the writ petitioner having commenced commercial operation of the hotel on 15/10/1997.

3. A perusal of the order making the reference shows that the writ petitioner was relying upon a decision of a learned Single Judge reported as

2001(3) WLN 107 : Indus Hotel Corporation Vs. State of Rajasthan & Ors. The said decision interpreted the notification dated 27/05/1998 granting

exemption for a period of 4 years from levy of land & building tax. In paragraph 17 of the decision it was held that the notification in question grants

exemption for 4 years if the commercial operation commenced after 01/04/1998. The learned Single while making reference has taken the view that

there is no apparent discussion in the decision of the learned Single Judge cited before him as to why exemption was being granted only for such

hotels where commercial operations commenced after 01/04/1998,Â but being bound by the view taken, reference was made to a Larger Bench.

4. The earlier decision pertains to the writ petitioner but relates to a different site. Commercial operation of said hotel commenced on 01/08/1998 i.e.

after the notification dated 27/05/1998 was issued. As noted above, at the site in question in the instant writ petition the commercial operations of the

hotel had commenced on 15/10/1997.

5. The State of Rajasthan accorded status of tourism related activities of industrial units to such hotels. On 27/05/1998 a notification was issued which

reads as under:-

**foRr foHkkx Â¼dj vuqHkkxÂ½ vf/klwpuk] t;iqj ebZ 27] 1998 ,l-vks- 60& jktLFkku Hkwfe ,oa Hkou dj vf/kfu;e 1964 Â¼1964 dk jkt vf/kfu;e la[;k

18Â½ dh /kkjk 2 o 21 ds }kjk iznRr 'kfDr;ksa dk iz;ksx djrs gq, jkT; ljdkj 1-4-98 ls dj ns; vkS|ksfxd Hkwfe o Hkouksa ds cktkj ewY; ij dj dh njsa

fuEukuqlkj r; djrh gS & vkS|ksfxd Hkwfe o Hkouksa ij %

Â 1-Hkfwe ,oa Hkou cktkj ewY; ds izFke 20 yk[k ijÂ Â Â Â Â Â 'kUw;

Â 2-Hkfwe o Hkou cktkj ewY; ds vxys 6 yk[k ij 1Â izfr'kr

3-Hkfwe o Hkou cktkj ewY; ds vxys 26 yk[k ls vf/kd ij 1-5 izfr'kr

ijUrq ;g fd fnuakd 1-4-98 ls ns; dj ubZ vkS|ksfxd bZdkbZ;ksa ds lEcU/k esa muds okf.kfT;d mRiknu izkjEHk gksus dh frfFk ls vkxkeh pkj o""kZ ckn

ns; gksxk] c'krsZ fd bu bdkbZ;ksa ds }kjk okf.kfT;d mRiknu 31 ekpZ 2003 ls iwoZ vkjEHk dj fy;k tkos] ijUrq ;g vkSj Hkh fd fjDr vkS| ksfxd

Hkw[k.M ij vf/klwpuk la[;k i-8Â¼14Â½foRr@dj&vuq@97 fnuakd 1-4- 97 ds vuqlkj gh dj ns; gksxkA

uksV & os vkS|ksfxd Hkwfe tks jhdks }kjk vkS|ksfxd iz;kstukFkZ vFkok euksjatu ikdZ gsrq vkoafVr dh x;h gS] dk ewY;kadu jhdks }kjk rRle; izo`Rr

vkoVa u njksa ds vk/kkj ij fd;k tkosxkA

jkT;iky dh vkKk ls Â¼fouksn diwjÂ½ mi 'kklu lfpo**

6. Translated in English the notification would read as under:-

â??In exercise of the powers conferred by Sections 3 and 21 of the Rajasthan Land and Building Tax Act, 1964 (Act No.18 of 1964) the State

Government notifies land and building tax on industrial land and building w.e.f. 01/04/1998, as under:-

Industrial land and Building:

1.Upto Rs.20 lacs value of the land and building given â?" 0

Â 2.The value on the next upto Rs.6 lacsÂ Â Â Â Â Â â?" 1%

3.The value on the next upto Rs.26 lacsÂ Â Â Â Â Â Â Â Â Â â?" 1.5% But in respect of payment of tax by new industrial undertakings w.e.f.

01/04/1998 the same shall be payable after 4 years on the condition that commercial tax commenced on or before 31/03/2003. â??

7. The notification was preceded by a policy decision notified under the industrial policy of the State which as per para 28.7.1 granted exemption limit

for industries in respect of land and building tax upto Rs.20 lacs and as per para 28.7.3 accorded exemption from payment of land and building tax for

a period of 4 years from the date of production by new industrial units. In the aforesaid backdrop in the judgment pronounced in the year 2001 the

learned Single Judge, in paragraphs 16 and 17 of the decision, held as under:-

â??16. These two provisions made in the Industrial Policy, 1998 leave no room of doubt of that notification under Land & Buildings Tax Act on 27th

May, 1998 gives effect to declaration in Industrial Policy unequivocally which in terms is to extend the benefit of notification of such concession to the

tourism related project also. There is no contention that hotel in question is not a tourist related project.

17. Therefore, irresistible conclusion is that a hotel being a tourism related project for extending amenities to tourists and part of tourism activity, it

cannot but be treated as an Industrial building governed by notification dated 27th May, 1998 read with notification dt. 4.3.1989 both in the matter of rates applicable to such buildings and if fulfills the other conditions namely commencement of commercial operation after 1.4.1998 but before 31st

March, 2003 is eligible for the exemption from tax for a period of four years.â??

8. Contention of the counsel for the writ petitioner is that the word â??afterâ?? in paragraph 17 appears to be a typographical error which should be

read â??beforeâ??.

9. It is settled law that if language of an enactment is clear and admits of no two meanings, the intent of the enactment has to be given effect to by

ascribing the ordinary literal meaning to the words of the enactment.

10. The exemption from levy of land and building tax is to be found in the second limb of the notification commencing with the word â??parantuâ??

meaning â??Butâ??. The further language of the notification : â??in respect of payment of tax by industrial undertakings w.e.f. 01/04/1998 the same

shall be payable after 4 years with condition that on or before 31/03/2003 the commercial operation commenced.â? Thus, the first requirement is of

the industrial undertaking to a new undertaking. The second limb is that between 01/04/1998 and 31/03/2003 the commercial operations must

commence for being entitled to the benefit of the notification.

11. It is thus obvious that the benefit of the notification cannot be claimed by an industrial undertaking which had already commenced the commercial

operations prior to 01/04/1998, for the reason it would be an old industrial undertaking. The purpose of the notification obviously is to give incentive to

people to set up industrial undertakings in the State of Rajasthan. Thus, in the earlier decision in Indus Hotel Corporation case the learned Single Judge

rightly held in paragraph 17 that the condition is of commencement of commercial operations after 01/04/1998 but before 31/03/2003.

12. Answering the Reference as above, since facts are not in dispute the writ petition filed by the petitioner is dismissed.

