(2012) 02 MP CK 0144

In the Madhya Pradesh High Court

Case No : Writ Petition No''s. 11427, 11428 of 2008 and 18567 of 2010

Jaiprakash Associates Limited APPELLANT

Vs

State of Madhya Pradesh RESPONDENT

Date of Decision : 07-02-2012

Acts Referred:
Central Sales Tax Act, 1956 — Section 8(4), 8(5)
Finance Act, 2002 — Section 152

Citation : (2013) 57 VST 470

Hon'ble Judges : Sushil Harkauli, Acting C.J.;T.K. Kaushal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. u/s 8(5) of the Central Sales Tax Act, 1956, an exemption in respect of inter-State sales was granted by the Government by a notification dated February 19, 1991. The exemption was in respect of certain industries and was available subject to certain conditions, e.g. holding of eligibility certificate.

2. The production of form C was not one of the conditions for availing of that exemption.

3. The petitioner before us was granted that exemption and the eligibility certificate requisite for the same and started availing of the exemption.

4. In the year 2002 by section 152 of the Finance Act No. 20 of 2002, section 8(5) of the Central Sales Tax Act was amended and the exemption was made subject to compliance of the conditions given in section 8(4). Production of form C for certain type of inter-State sales was one of the conditions of section 8(4).

5. The petitioner continued to avail of the exemption after 2002, apparently without production of the form C.

6. By the impugned order dated June 10, 2008, it has been directed that the cases where exemption has been claimed without furnishing form C after the

amendment of 2002 should be scrutinized and if necessary, reopened u/s 28(1). Being aggrieved by that order of scrutiny and reopening if necessary the petitioner has filed this writ petition.

7. The contention of the petitioner is that once exemption was granted to the petitioner, it became a vested right and could not have been taken away; and therefore the petitioner was entitled to continue to avail of the exemption even after the amendment of 2002 without furnishing form C.

8. Reliance has been placed upon paragraph No. 100 in SCC (para 110 in 10 RC 426) of the decision of the Supreme Court in the case of Southern Petrochemical Industries Co. Ltd. Vs. Electricity Inspector and E.T.I.O. and Others, and also upon paragraph 18 in SCC (para 19 in MRF Ltd., Kottayam Vs. Assistant Commissioner (Assessment) Sales Tax and Others, of the decision of the Supreme Court in the case of MRF Ltd., Kottayam Vs. Assistant Commissioner (Assessment) Sales Tax and Others, . These two paragraphs of the two law reports are being quoted below for ready reference:

100. We are also unable to agree with Mr. Andhyarujina that exemption from tax is a mere concession defeasible by the Government and does not confer any accrued right to the recipient. Right of exemption with a valid notification issued gives rise to an accrued right. It is a vested right. Such right had been granted to them permanently. ?Permanence? would mean unless altered by statute.

Thus, when a right is accrued or vested, the same can be taken away only by reason of a statute and not otherwise. Thus, a notification which was duly issued would continue to govern unless the same is repealed.

18. According to him, so far as SRO No. 1092 of 1999 is concerned, it did not confer any new right. It only preserved the existing right. By the said order what the Government did was to change the industrial policy and to do away with exemptions which were otherwise being given to new/existing industrial units, which was taken away with effect from January 1, 2000. At the same time, the units which had been set up pursuant to the incentives granted by the earlier notification had to be protected and accordingly it was provided that such units will continue to enjoy the incentives for their full term.

(emphasis Here italicized ours)

9. The principle of promissory estoppel to the effect that exemption once granted cannot be revoked if the person availing of the exemption has altered his legal position relying upon promise to that exemption is confined to revocation by executive action.

10. The principle being merely of promissory estoppel will be subject to the law that no estoppel can operate against the Legislature or against statute.

11. In fact in paragraph No. 100 in SCC (110 in RC) of the decision in Southern Petrochemical Industries Co. Ltd. Vs. Electricity Inspector and E.T.I.O. and

Others, it has been expressly stated by the Supreme Court that "... when a right is accrued or vested, the same can be taken away only by reason of a statute and not otherwise."

12. In the case of MRF Ltd., Kottayam Vs. Assistant Commissioner (Assessment) Sales Tax and Others, it was a case of revocation by change of industrial policy and not by a statute, therefore, both the decisions do not apply.

13. There is no good ground for questioning the legislative competence to prescribe conditions subject to which the exemption can be availed for future transactions.

14. The contention of the learned counsel for the petitioner that the amendment by section 152 of the Finance Act, 2002 has been applied with retrospective effective is not correct. The said Finance Act 2002 casts an obligation of production of form C in respect of transactions which take place subsequent to that amendment.

15. If a person availed of that exemption without production of form C in respect of transactions after the 2002 Amendment, he is liable for such action as may be permissible by law which includes section 28(1) of the Act.

16. The petitioner then relied upon clause 6 of the General Clauses Act 1897. That section enumerates effect of repeal of a legislation, in respect of actions taken under the repealed enactment. Obviously it has no application to this case in view of what has already been discussed above. The amendment of 2002 has not repealed anything, it has merely prescribed additional requirement in respect of transactions done after that amendment. It is not altering the situation in respect of the transactions done under the unamended section. The reliance placed upon paragraph 23 of the decision of the Supreme Court in the case of Parle Biscuits (P) Ltd. Vs. The State of Bihar and Others, for the proposition that generally there is no real distinction between repeal and an amendment, is therefore of no relevance.

17. It was then pointed out by the learned counsel for the petitioners that in the case of Yamaha Motor Escorts Limited Vs. State of U.P. and Others, a Division Bench of the Allahabad High Court has held contrary to what we have held above. After examining the said decision we are unable to agree with the learned counsel?s understanding of the said decision of the Allahabad High Court. In fact on the question of applicability of the new condition to the post-2002 amendment transactions was conceded in favour of the State. The only question which survived and was decided by the Allahabad High Court was about whether the monetary limit given under the original exemption survived, and if so whether the tax liability under the enhanced rate occasioned due to non-production of form C was liable to be set off against that limit. That question does not arise at this stage before us. No other contention has been pressed. In view of what has been stated above, we do not find any merit in these writ petitions. All the three writ petitions are accordingly dismissed. No costs.