(2001) 02 RAJ CK 0138

In the Rajasthan High Court

Case No : Civil Writ Petition No. 933 of 1986

J.K. Industries Ltd. APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 06-02-2001

Acts Referred:

Constitution of India, 1950 — Article 14
Industries (Development and Regulation) Act, 1951 — Section 11

Citation : (2007) 3 WLN 488

Hon'ble Judges : Sunil Kumar Garg, J;Rajesh Balia, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Rajesh Balia, J.—Heard learned Counsel for the parties.

2. The petitioner challenges the communication dt. 31st March, 1986 (Annexure-P) by which he was informed that earlier certificate issued to him regarding the investment of plant and machinery for manufacture of tyres for the purposes of Notification No. 88/84-CE dt. 4.8.1984 has been cancelled and the petitioner was required to furnish a fresh certificate by 15th Feb., 1986 either from Directorate General of Technical Development (for short "D.G.T.D.") or from I.D.B.I. as required in the aforesaid notification, failing which the petitioner was threatened with withdrawal of the relief granted under notification No. 88/84-CE by dint of the aforesaid certificate.

3. The contention of the petitioner is that he has never been communicated any order of cancellation of certificate issue to D.G.T.D. on 21st July, 1984 and if there is any order of cancellation, he has still not been served with it inasmuch as to his knowledge no proceedings for cancelling the certificate were taken against him.

4. On the other hand, learned Counsel for the respondents urged that Annexure-L dt. 11.2.1985 is the communication by which the petitioner was required to

furnish'' certain informations failing which the aforesaid certificate was to be treated as cancelled. Since the petitioner has not supplied with such information that order operates as cancellation of the certificate. It is not in dispute that apart from Annexure-L dt. 11.2.1985, no other order cancelling the certificate exists or communicated to the petitioner.

5. The other facts which are not in dispute are that the petitioner is a Company registered under the Companies Act and is engaged in the business of manufacture and sale of lyres and has its factory at Kankroli in District Udaipur (Rajasthan). The Central Government had in 1981 issued a scheme for Excise Duty relief to new tyre companies in order to partially set off large cost of investment to industry for setting up a tyre factory. That scheme was amended from time to time. The broad features of the scheme are that the extent of remission Excise Duty was based on a percentage of investment made by the manufacturer on plant and machinery. Initially the extent of relief was equal to 30% of the investment made on plant and machinery on which relief was increased to 50% of the investment in 1982. in 1984 the scheme was further modified to extent the benefit of 50% relief in the case of units set up u/s 11 of the Industries (Development & Regulation) Act, 1951 and 30% to all subsequent expansions. Thus, investment in expansion were also brought with the ambit of relief. The amount of investment made on plant and machinery was required to be certified under the Scheme by the D.G.T.D.

6. At the commencement of the Scheme in 1981 the petitioner made a request to D.G.T.D. for issuing certificate which was issued to it on 13.5; 1981. Subsequently on the amendment of the scheme extending the benefit of relief upto 50% the petitioner again made a request for issuing a fresh certificate of investment made on plant and machinery. While the application of the petitioner was pending with D.G.T.D. and the petitioner had furnished a revised certificate of its Chartered Accountants in the form prescribed by the D.G.T.D. as demanded by it, the scheme was further modified in 1984. The petitioner again made a request to D.G.T.D. vide its letter dt. 20.4.1984 requesting him to issue a certificate in accordance with the scheme. Letter was accompanied with certificate of Chartered Accountant in the same form as was prescribed by the D.G.T.D. prior to amendment of the scheme. Ultimately by communication dt. 14.7.1984 the certificates of investment made on plant and machinery by the petitioner company for the purposes of obtaining relief under the Scheme was issued.

7. Thereafter, vide communication dt. 11th February, 1985 (Annexure-L) the. petitioner was required by the Development Officer of D.G.T.D. to furnish further information in view of Explanation-5 of the Notification No. 88/84 Central Excise dt. 6th April, 1984. In this letter the penultimate paragraph reads as under:

Please furnish the face value of the investment on plant and machinery in your unit No. 3 as on 28th March, 1984 for the manufacture of tyres duly worked out on the above guidelines as per the enclosed the format by 28th Feb. 1985 failing which certificate issued to you vide this office letter No. RC/11 (4)/83 dt. 2 It July, 1984 would be treated as cancelled.

8. This communication the respondents treat as an order of cancellation.

9. This letter was duly replied by the petitioner vide Annexure-M dt. 25th Feb., 1985 before the date fixed for furnishing further information, after issuing of certificate dt. 21st July, 1984, contending that the new guidelines are not applicable to the petitioner and the petitioner cannot be required to furnish fresh certificate. Thereafter again while Annexure-M dt. 29th Jan. 1986 the Assistant Collector too required information regarding investment on plant and machinery for manufacture of tyres on the basis of notification dt. 6.4.1984 from the petitioner, which too was replied by the petitioner on 12th February, 1986 vide Annexure-O inviting his attention to the certificate and took the stand that new guidelines and Performa Included in the letter has no statutory force or does not form a part of the notification and therefore, the requirement is not justified. This also goes to show that atleast until issue of letter dated 12th Feb. 1986, the certificate dt. 21.7.1984 was not treated as cancelled even by the department notwithstanding the aforesaid peremptory language used in the letter.

10. In the aforesaid circumstances, the conclusion is irresistible that no order of cancelling certificate has ever been made. Notwithstanding holding out threaten to cancel the certificate for failure to furnish Information, by letter dt. 11.4.1985. It is normal process seeking information and raising objections to the action, if the persons from whom information is sought thinks the same to be not justified under the provisions of the law. The issuance of certificate entails certain benefits to the petitioner and withdrawal of certificate entails civil consequences for the holder of certificate. Such withdrawal could not have taken place without affording opportunity of hearing and holding enquiry into the grounds on which the cancellation was sought to be made, if objected to and recording findings on such objections. Mere communication of eliciting certain information with threaten to cancel to treat the same in case information is not supplied does not taken away the right of the person to whom such communication is directed to raise objections to soliciting of such informations alleging it to be without authority of law. Once such objections are raised, it as incumbent on the authority concerned if it wanted to take action thereon against the person, who raised objection, to deal with such objections objectively after giving an opportunity to person concerned to be heard and decide them as any authority is under obligation to deal with and decide issues affecting rights of the people adversely, unless rules of natural justice are expressly excluded by law.

11. Undoubtedly, In this case to countenance the stand that vide Annexure-P that the certificate stood cancelled vide letter dt. 11.2.1985 would result in closure of all right to raise objections to solicit such information whether warranted 6r not warranted in law. Duty to act I fairly in all State actions does not warrant countenance of such stand, "?'' which is clearly arbitrary and violatlve of Article 14, repository of fundamental rights of all citizens to be

treated fairly and not arbitrarily by statutory functionaries is discharge of their duties, which duty Includes adherence to basic principles of natural justice in affording opportunity of hearing before any order adverse to a person is made as a necessary concomitant of ''duty to act fairly.''

12. We are not determining whether the petitioner was governed by the guidelines dt. 6th April, 1984 or not inasmuch as the Issue itself has not been decided by the competent officer at any point of time. We are concerned here with the question whether petitioner is sought to be affected adversely in the matter of treating the certificate dated 21.7.1984 is cancelled under which the petitioner has claimed relief when it has never been cancelled in accordance with law. The answer is affirmative in favour of the petitioner.

13. As a result, this petition is allowed. The order Annexure-P is declared to have been issued without foundation inasmuch as no order of cancellation has come into existence.

14. There shall be no order as to costs.

