(2012) 11 MP CK 0143

In the Madhya Pradesh High Court

Case No : Writ Petition No. 16730 of 2012

Lafarge India (P) Ltd. APPELLANT

Vs

State of Madhya Pradesh RESPONDENT

Date of Decision : 05-11-2012

Acts Referred:
Madhya Pradesh Re-organisation Act, 2000 — Section 84

Citation : (2012) 56 VST 507

Hon'ble Judges : Vimla Jain, J;Krishn Kumar Lahoti, J

Bench : Division Bench

Advocate : Sandesh Jain, for the Appellant; Kumaresh Pathak, Deputy Advocate-General, for the Respondent

Judgement

1. Sandesh Jain, advocate for the petitioner. Kumaresh Pathak, Deputy Advocate General for the State.

2. The petitioner has sought following relief:

(i) To call for the case record.

(ii) To hold that the petitioner is entitled to exemption from commercial tax on sale of cement in residuary State of Madhya Pradesh manufactured in its cement manufacturing plant at Sonadih, following in bifurcated State of Chhattisgarh.

(iii) To issue a writ of certiorari quashing the order of assessment (annexure P/5) and the order in revision (annexure P/6).

(iv) To issue a writ of mandamus directing the respondents to grant exemption from payment of tax during the period of assessment under the eligibility certificate granted to it.

(v) Any other suitable relief deemed fit in the facts and circumstances of the case may also kindly be granted together with the cost of this petition.

3. The case of the petitioner is that the petitioner is entitled for tax exemption as

per the Notification No. A-3-27-ST-V(15) dated February 19, 1991, It was submitted that the petitioner has established its cement manufacturing plant in Sonadih (Bhatapara), District Raipur and was entitled for the aforesaid exemption. But because of re-organization of the erstwhile State of Madhya Pradesh Sonadih (Bhatapara) District Raipur, is now falls with in the State of Chhattisgarh since November 1, 2000, therefore the aforesaid exemption has not been extended to the petitioner. It is prayed that the respondent may be directed to extend the benefit of notification dated February 19, 1991 to the petitioner for which he was entitled for a period of 11 years from the date of commencement of commercial production.

4. The benefit has been claimed for the assessment year 2001-02. Reliance is placed to a judgment of this court in Lafarge Dealers Association v. State of Madhya Pradesh (the petitioner itself), who has been granted the same benefit for the assessment year 2002-03.

5. The aforesaid contention is not disputed by Shri Kumaresh Pathak, Deputy Advocate-General.

6. In Writ Petition No. 5308 of 2004 (Fairdeal Traders v. Assistant Commissioner Commercial Tax [2012] 56 VST 503 (MP)), the Division Bench, considering the similar controversy in respect of the petitioner, held thus:

As the controversy involved in all these cases are identical, all these petitions are being decided by this common order. For the convenience, the facts are taken from W.P. No. 19140 of 2011(O).

The petitioner has sought the following relief:

7.1 to quash the assessment order dated January 30, 2006 (P/3);

7.2 to quash the appellate order dated April 12, 2007 (P/5);

7.3 to quash the revision order dated June 23, 2011 (P/7);

7.4 to hold that notification dated February 19, 1991 (P/1) is still applicable;

7.5 to hold that no tax is payable by the petitioner in respect of purchases made between 2002-03 from L & T Ltd.;

7.6 to issue such other writ or direction or order which this honourable court deems proper in the circumstances of the case to give relief to the petitioner.

The facts of the case, in brief, are that the petitioner is a trader of cement, cement colors, etc., and was working in the erstwhile State of Madhya Pradesh which was prior to November 1, 2000, before reorganization of the State. The petitioner was also registered dealer as per the provisions of the M.P. Commercial Tax Act, 1994. The petitioner made certain purchases from M/s. L & T Limited, Raipur, now known as M/s, Lafarge India Pvt. Ltd., which was a new industrial undertaking exempted from the tax by Notification No. A-3-27/89-ST-V(15) dated February 19, 1991. The aforesaid exemption was granted before reorganization of the erstwhile State of Madhya Pradesh. After corning into force of Madhya Pradesh Reorganization Act with effect from November 1, 2000, a new State of Chhattisgarh was formed. Respondent No. 5 which is situated in the new State of Chhattisgarh had continued with the supply. The period in question in this petition is between April 1, 2002 and March 31, 2003. The question involved in the present petition is whether the purchases made by the petitioner after November 1, 2000 from an industry which was exempted after creation of the State of Chhattisgarh, the petitioner was entitled for the same exemption or not which was available to the petitioner prior to November, 1, 2000. The authorities have turned down the contention of the petitioner. The petitioner had challenged the order passed by the various authorities before this court and made prayer for quashment of the aforesaid order.

It was submitted by Shri Mukesh Agrawal, learned counsel appearing for the petitioner in W.P. No. 19140 of 2011(O) that the controversy has been settled by the apex court in The Commissioner of Commercial Tax, Ranchi and Another Vs. Swarn Rekha Cokes and Coals Pvt. Ltd. and Others, and it was submitted that in view of the verdict of the apex court, these petitions may be allowed.

The position on facts is not disputed by Shri H.S. Shrivastava, Counsel assisted by Shri Sandesh Jain, appearing for respondent No. 5 in W.P. No. 19140 of 2011(O) and for the petitioners in W.P. No. 5308 of 2004(O), W.P. No. 2654 of 2006(O), W.P. No. 1893 of 2007(O) and W.P. No. 2261 of 2007(O).

The apex court in The Commissioner of Commercial Tax, Ranchi and Another Vs. Swarn Rekha Cokes and Coals Pvt. Ltd. and Others, considering the controversy held thus:

The core question which arises in these appeals is--whether on bifurcation of the existing State of Bihar, and creation of the State of Jharkhand comprising territories which before the appointed day comprised the territories of the State of Bihar, the benefits flowing from the Industrial Policy of the then State of Bihar crystallised in the notification of the Government of Bihar issued u/s 7(3)(b) of the Bihar Finance Act, enures to the benefit of the beneficiaries under the policy and under the notification after the appointed day. The question is primarily concerned with the benefit of exemption from payment of sales tax on purchase of raw materials extended to new units undertaking expansion/diversification for their expanded/diversified capacity and incremental production.

The industrial unit, namely, M/s. Swarn Rekha Cokes and Coals, claimed that it was entitled to the incentive promised in the industrial policy and the notification issued pursuant thereto granting exemption from payment of sales tax on purchase of raw materials. Pursuant to the exemption certificate granted to it, it was entitled to purchase coal from BCCL with the benefit of exemption from payment of sales tax. Its claim being disputed it was compelled to file a writ petition before the High Court. The aforesaid writ petition was allowed. The LPA filed by the CCT was dismissed by the High Court upholding the contention of the assessee and finding them entitled to the said benefit.

On civil appeals before the Supreme Court:

Held, that the benefit of exemption from payment of sales tax on purchase of raw materials extended to new industrial units and similar benefits to units undertaking expansion/diversification for their expanded/diversified capacity and incremental production under the Industrial Policy, 1995 of the then State of Bihar (crystallised in Notification SO No. 478 dated December 22, 1995, u/s 7(3)(b) of the Bihar Finance Act, 1981) does not come to an end on the appointed day (November 2000) on which on reorganisation, the existing State of Bihar was bifurcated into two States, Bihar and Jharkhand, but enures to the beneficiaries under the Industrial Policy and notification even thereafter.

Section 84 of the Re-organisation Act creates a fiction that despite the division of the erstwhile State of Bihar into two States, any law in force immediately before the appointed day, notwithstanding territorial references in them, shall, until otherwise provided by the competent Legislature or other competent authority, be construed as meaning the territories within the existing State of Bihar before the appointed day. Though the law may refer to the State of Bihar and though the State of Bihar had been bifurcated into two by creating the State of Jharkhand the law in force before the appointed day must continue to operate in the territories which formed the erstwhile State of Bihar. The statutory Notification No. SO 478, dated December 22, 1995, therefore, continues to operate throughout the territories which earlier constituted the State of Bihar. u/s 85 they continue to operate until repealed or amended. Notification No. 478 had not been modified amended or altered by the State of Jharkhand and it must continue to operate in the State till such time as it is modified, repealed or altered. As envisaged in section 91, the notification must prevail and the benefits flowing therefrom must accrue to the beneficiaries. One must not permit one''s mind to boggle by imagining that what was one State earlier has now become two and consequently what were intra-State sale transactions earlier are now inter-State sale transactions. The benefit under the notification must flow notwithstanding the fact that in reality intra-State sale transactions of the erstwhile State of Bihar may have become inter-State transactions, after reorganisation.

Therefore, it is held that the benefit of exemption from payment of sales tax on purchase of raw materials in respect of new units or the benefit envisaged for units which have undertaken diversification or expansion are available to those units, if eligible under SO No. 478 dated December 22, 1995 notwithstanding the fact that the erstwhile State of Bihar has been divided into two States by creation of the new State of Jharkhand.''

As the controversy involved in this case is identical, the apex court has found that the benefit which was available to an exempted unit prior to reorganization to continue to the unit even after reorganization and have granted exemption for the period for which the exemption was granted.

In view of the aforesaid, all these petitions are allowed and it is held that the exemption which was granted to respondent No. 5 in W.P. No. 19140 of 2011 shall remain applicable to the petitioner even after reorganization of the State with effect from November 1, 2000. The authorities shall redecide the matter in accordance with the law laid down by the apex court in The Commissioner of Commercial Tax, Ranchi and Another Vs. Swarn Rekha Cokes and Coals Pvt. Ltd. and Others, 0 afresh within a period of 30 days from the date of communication of the order. No order as to costs.

7. As the controversy involved in the case of the petitioner is same, but for the different year, we disposed of this matter in the light of the directions issued in Writ Petition No. 5308 of 2004 (Fairdeal Traders v. Assistant Commissioner Commercial Tax [2012] 56 VST 503 (MP)). The aforesaid directions shall be applicable to the petitioner for the assessment year 2001-02. With the aforesaid directions, this petition is finally disposed of. No order as to costs.