
(2003) 09 MP CK 0058
In the Madhya Pradesh High Court
Case No : L.P.A. No. 578 of 2002

Larsen and Toubro Ltd.

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 15-09-2003

Acts Referred:

Central Sales Tax Act, 1956 — Section 13, 8(5)
Constitution of India, 1950 — Article 19(1), 265, 277, 278, 286
Madhya Pradesh Commercial Tax Act, 1994 — Section 4, 9
Madhya Pradesh General Sales Tax Act, 1958 — Section 12, 22D
Madhya Pradesh Re-organisation Act, 2000 — Section 2, 3, 75, 76, 77

Citation : (2004) 137 STC 269

Hon'ble Judges : Dipak Misra, J; A.K. Shrivastava, J

Bench : Division Bench

Advocate : A.M. Mathur and R.P. Agrawal, Sanjay Agrawal, Ashutosh Upadhyaya and Pankaj Sawant, for the Appellant; R.S. Jha, Deputy Advocate-General for Respondent Nos. 1 and 2 and S.K. Rao, for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, J.—The facts and law being common in both the appeals preferred under clause 10 of the Letters Patent, they were heard analogously and are disposed of by this common order.

2. The centripetal issue that arises for consideration in both the appeals wherein the order of the learned single Judge are under assail is whether the appellants are entitled to claim the benefit of deferment of tax provided to them under the M.P. Commercial Tax Act, 1994 (in short "the 1994 Act") after coming into force of M.P. State Re-organisation Act, 2000 (for brevity "the Reorganisation Act").

3. The facts which are essential to be stated are that the writ petitioners were granted benefit of deferment of tax by notification issued on February 19, 1991 u/s 12 of the M.P. General Sales Tax Act, 1958 and Section 8(5) of the Central Sales Tax Act, 1956, on fulfilment of certain conditions. The State Government

had framed a set of Rules called the M.P. Deferment of Tax Rules, 1986 (hereinafter referred to as "the Rules") and under the Rules the petitioners were conferred the benefit as they became eligible on November 19, 1996 as per the eligibility criteria fixed under the Rules and the benefit of deferment was granted for a period of 11 years. On November 1, 2000 the Reorganisation Act, 2000 came into force by which the erstwhile State of Madhya Pradesh was bifurcated into two successor States, namely, State of Madhya Pradesh and State of Chhattisgarh. The State of Chhattisgarh has adapted the M.P. Commercial Tax Act, 1994. The petitioners, as pleaded, submitted representations to the Commissioner of Commercial Tax in the State of Madhya Pradesh claiming that the sale of cement by them in the State of Madhya Pradesh be treated as intra-State sale. Reference has been made to Sections 78 and 79 of the Reorganisation Act, 2000 to contend that the notification issued by the erstwhile State of Madhya Pradesh would be available to the dealers within the old State of Madhya Pradesh though the manufacturing places of dealers fall in the area of State of Chhattisgarh. A reference has also been made to Section 85 of the Reorganisation Act to indicate that it has an overriding effect. It was put forth in the writ petition that the petitioner-company had set up an industry on the assurance of undivided State of Madhya Pradesh and accordingly, the petitioners invested huge sum but after the Reorganisation Act has come into being the said benefit is denied to the petitioners and tax is demanded. Being aggrieved by the aforesaid action of the Commercial Tax Department the petitioners knocked at the doors of this Court.

4. The State filed its return supporting the action on the foundation that after reorganisation of the State, the State of Chhattisgarh has adapted the law and law which is applicable by adaptation would be applicable to the territories situated within the State of Chhattisgarh and the notification would not have any applicability to the State of Madhya Pradesh. It was also put forth that the State of M.P. has rightly issued the demand for collection of tax and the recovery is well within its jurisdiction.

5. A counter-affidavit was filed by the respondent No. 3, the State of Chhattisgarh, contending, inter alia, that the factory is situated in the district of Raipur and the State of Chhattisgarh after adopting the law has named it as "Chhattisgarh Vanijyik Kar Adhiniyam". It is put forth by the said respondent that the benefit of deferment of payment of sales tax is existing in the State of Chhattisgarh only and the sales effected in the State of Madhya Pradesh have become inter-State sales and therefore, the tax is leviable if the sale is effected in other States including the State of M.P. as an inter-State sale.

6. The learned single Judge scanned the provisions of the Reorganisation Act and came to hold that the petitioners are not entitled for deferment of tax as there has been statutory intervention. The learned single Judge did not accept the submission of the petitioners that the Re-organisation Act did not abrogate the benefit granted under the prevalent Rules. He further opined that though the law

of State of M.P. has been adapted in the State of Chhattisgarh it cannot be held that the benefits granted under the M.P. Commercial Tax Act continues, is in operation in both the States. It is appropriate to state here that before the learned single Judge a submission was canvassed that even the administrative order passed by the erstwhile State would continue in the successor State on the basis of law laid by the apex Court in the case of State of Punjab and Others Vs. Balbir Singh and Others, . But the said submission did not weigh with the learned single Judge and he declined to accept the proposition that the benefit of deferment would be allowed to the petitioners on the bedrock of the law laid down in the aforesaid decision. It is condign to state here that the learned single Judge has referred to certain decisions and come to hold that the law which is in force in one State cannot be made applicable or extended to another State and hence, the benefit conferred under the provision of Chhattisgarh Commercial Tax Act cannot be availed of in the State of M.P. Being of this view the learned single Judge dismissed the writ petitions. Hence, the jurisdiction has been invoked under the Letters Patent.

7. We have heard Mr. A.M. Mathur and Mr. R.P. Agrawal, learned Senior Counsel with Mr. Ashutosh Upadhyaya, Mr. Sanjay Agarwal and Mr. Pankaj Sawant for the appellants and Mr. R.S. Jha, learned Deputy Advocate-General for the respondents Nos. 1 and 2 and Mrs. S.K. Rao, learned counsel for the respondent No. 3. Mr. A.M. Mathur, learned Senior Counsel, has commended us to catena of decisions rendered in State of Punjab and Others Vs. Balbir Singh and Others, , Sada Singh Vs. The State of Punjab and Another, ; Smt. Bhagwan Kaur Vs. State of Punjab and Others, ; R.S. Mahmood Vs. Syed Ahmed, , Gummadi Narayana Reddi and Others Vs. State of Andhra Pradesh, , Ramdas v. State of M.P. Mangalore Ganesh Beedi Works Vs. State of Kerala, , M.P.V. Sundararamier and Co. Vs. The State of Andhra Pradesh and Another, , Sri Peera Mohammad Mahamood Saheb Vs. The State of Andhra Pradesh, ; Mukundas Proprietor, Krishna Cycle Stores, Secunderabad Vs. State of Andhra Pradesh, ; H.H. Shri Swamiji of Shri Amar Mutt and Others Vs. Commissioner, Hindu Religious and Charitable Endowments Department and Others, , A.S.S. Karanth v. Assistant Commercial Tax Officer AIR 1960 Mys. 275, Tata Cellular Vs. Union of India, , J.P. Bansal Vs. State of Rajasthan and Another, ; Dr. (Mrs.) Chanchal Goyal Vs. State of Rajasthan, , Shri Bakul Oil Industries v. State of Gujarat [1987] 64 STC 304 (SC); Shri Bakul Oil Industries and Another Vs. State of Gujarat and Another, , Dr. Ashok Kumar Maheshwari Vs. State of U.P. and Another, . Mr. R.S. Jha, learned Deputy Advocate-General has commended us to various decisions rendered in the cases of The State of Bombay Vs. R.M.D. Chamarbaugwala, , State of A.P. v. McDowell & Co. (1996) 3 SCC 709, A. Mahudeswaran and Others Vs. Govt. of T.N. and Others, , Sri Srinivasa Theatre v. Government of Tamil Nadu [1993] 89 STC 201 (SC); Sri Srinivasa Theatre and Others Vs. Government of Tamil Nadu and Others, , Kasinka Trading and another, etc. etc. Vs. Union of India and another, , Dr. Ashok Kumar Maheshwari Vs. State of U.P. and Another, .

8. As we have indicated earlier that the primal issue relates to the extension of

the benefit in the State of Madhya Pradesh. It is not disputed before us that the premises of the petitioners are situated within the territory of State of Chhattisgarh, after bifurcation of the State. There is no dispute that the benefit of deferment of payment of tax was extended by the erstwhile State of M.P. There is no controversy with regard the factum that after coming into force of the Reorganisation Act the State of Chhattisgarh has adapted the law in this regard which was in vogue in the State of M.P. and extended the benefit to the petitioner. The spinal issue that has spiraled to this Court is whether the petitioners are entitled to the said benefit as per existing legal provisions and further whether the State of M.P., after November 1, 2000 is also estopped to deny the benefit to the petitioners on the foundation or base of promissory estoppel.

9. To appreciate the real core issues it is pertinent to refer to Section 2(f) of the Re-organisation Act. It reads as under :--

"2(f). "law" includes any enactment, Ordinance, regulation, order, bye-law, rule, scheme, notification, or other instrument having, immediately, before the appointed day, the force of law in the whole or in any part of the existing State of Madhya Pradesh."

10. In this context, it is appropriate to reproduce the provisions contained in Sections 78, 79 and 85 of the aforesaid statute. They read as under :

"78. Territorial extent of laws.--The provisions of Part II of this Act shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extends or applies, and territorial reference in any such law to the State of Madhya Pradesh shall, until otherwise provided by a competent Legislature or other competent authority be constituted as meaning the territories within the existing State of Madhya Pradesh before the appointed day.

79. Power to adapt laws.--For the purpose of facilitating the application in relation to the State of Madhya Pradesh or Chhattisgarh of any law made before the appointed day, the appropriate Government may, before the expiration of two years from that day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent Legislature or other competent authority.

85. Effect of provisions of the Act inconsistent with other laws.--The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law."

11. Submission of Mr. Mathur, learned counsel for the appellant is that the learned single Judge has erred in law in interpreting the aforesaid provisions. To appreciate the aforesaid, we have carefully scanned the anatomy of the aforesaid

provisions. Section 78 of the Reorganisation Act deals with territorial extent of laws and Section 79 empowers the State to adapt laws for the purpose of facilitating the application in relation to State of Madhya Pradesh or Chhattisgarh. When both the provisions are read in conjoint and purposive manner what ensures is that certain powers have been conferred on the successor States for certain period subject to adaptation and modification so made until altered, repealed by the competent Legislature or other competent authority. Section 85 of the Reorganisation has an overriding effect. Section 2(f) deals with definition of law. Section 2(e) defines "existing State of Madhya Pradesh" and Section 2(j) defines "successor State". The scheme of the Act has been scanned by the learned single Judge. We have also perused certain provisions. There is no difficulty in coming to hold that both the States are separate States and enjoy separate status. There is no provision of adoption of old law and notification. The learned single Judge has appreciated the decisions rendered in the case of Sada Singh Vs. The State of Punjab and Another, ; Smt. Bhagwan Kaur Vs. State of Punjab and Others, ; R.S. Mahmood Vs. Syed Ahmed, , Gummadi Narayana Reddi and Others Vs. State of Andhra Pradesh, , State of Punjab and Others Vs. Balbir Singh and Others, , H.H. Shri Swamiji of Shri Amar Mutt and Others Vs. Commissioner, Hindu Religious and Charitable Endowments Department and Others, , Kalicharan Dixit v. Krishnachandra 1961 MPLJ 117 and M.P.V. Sundararamier and Co. Vs. The State of Andhra Pradesh and Another, and distinguished them on facts. We have gone through the decisions and further appreciated the approach of the learned single Judge. In our considered view the distinction made by the learned single Judge cannot be found fault with. At this juncture, we may hasten to state here that the learned Senior Counsel has placed heavy reliance on the decision rendered in the case of State of Punjab and Others Vs. Balbir Singh and Others, and submitted that the same has been followed from time to time. The learned single Judge has reproduced paragraphs 13 and 14 of the said decision in paragraph 20 of his order.

12. It is submitted by the learned Senior Counsel for the appellant that the law laid down in the case of State of Punjab and Others Vs. Balbir Singh and Others, has been followed in the case of Dhayanand, Mubarak Masih, B.P. Singhand others and U.T. Chandigarh Vs. Union of India and others, Finance Secretary, Union Territory of Chandigarh and others and Natha Singh and others, and Ram Badan Rai and Others Vs. Union of India and Others, has been stated in Dhayanand, Mubarak Masih, B.P. Singhand others and U.T. Chandigarh Vs. Union of India and others, Finance Secretary, Union Territory of Chandigarh and others and Natha Singh and others, is that by virtue of Section 88 of the Punjab Reorganisation Act, 1966 an administrative order made by the erstwhile State does not automatically lapse and continues to be in force, effective and binding on the successor State unless modified and repudiated. In the case of Ram Badan Rai and Others Vs. Union of India and Others, the apex Court placed reliance on State of Punjab and Others Vs. Balbir Singh and Others, and came to hold that Section 88 of the Punjab Reorganisation Act is similar to Section 26 of

Bihar and U.P. (alteration of Boundaries) Act, 1968.

13. In this regard we may profitably refer to a division Bench decision rendered in the case of Commissioner, Commercial Taxes, Ranchi v. Swarn Rekha Cokes & Coals Private Ltd. [2003] 129 STC 188 by the Patna High Court which after referring to the decision rendered in the case of State of Punjab and Others Vs. Balbir Singh and Others, and referring to Sections 84 and 85 of the Bihar Reorganisation Act in paragraphs 9 to 11 held as under :--

"9. It is significant to mention that what had fallen for consideration before the Supreme Court was an administrative order not amounting to law within the meaning of Section 2(g) of the Punjab Reorganisation Act--as held by the Punjab High Court with which the Supreme Court agreed. It was on general principles that extended meaning was given to the administrative orders and they were held to be applicable in the successor States. The present case stands on a much higher footing inasmuch as the basis of the claim of the respondent is a statutory order/notification which amounts to law by virtue of the inclusive definition of the term "law" in Section 2(f) of the Bihar Act.

10. The above categorical and definite enunciation of law by the apex Court leaves no room for doubt applicability and binding nature of the statutory orders/notifications of the Government of the erstwhile State of Bihar in the successor State of Jharkhand. In fact, there is no necessity of its being "adopted", as observed by the learned Judge. u/s 84--unless repudiated or otherwise modified or superseded by a legislative mandate, they continue to be applicable and binding in the successor State.

11. So far as the Industrial Policy, 2001 of the Government of Jharkhand is concerned reference to it by the appellants is wholly misplaced. The said policy resolution envisages giving certain tax benefits, among other things, to the new industrial units set up after November 15, 2000. It obviously refers to the industrial units situate in the State of Jharkhand and has nothing to do with the units situate outside the State. It has been referred to, perhaps, to point out that the Government of Jharkhand having declared an Industrial Policy of its own, the Industrial Policy of the erstwhile State of Bihar of 1995 came to an end and therefore, any tax benefit available to units thereunder also came to an end. If this is what the appellants intend to convey, it must be rejected out of hand, for, the Industrial Policy of the Jharkhand State relates to industrial units situate in that State. Whether the industrial units situate outside the State are entitled to any such benefit has to be considered with reference to the statutory orders made under the Bihar Finance Act because notwithstanding the terms of the policy, unless corresponding provisions are made by issuing notifications/orders under the Bihar Finance Act to carry out the objects of the Industrial Policy, a trader does not get benefits of any sales tax exemption."

14. The learned counsel for the appellants has placed immense emphasis on the said decision to show that the notification issued by the erstwhile State of

Madhya Pradesh would be applicable in the State of M.P. being a successor State. In our considered opinion, what has been stated by Patna High Court is quite reverse. At this juncture we may refer with profit to the decision rendered by Jharkhand High Court in the case of Bhagwati Coke Industries Pvt. Ltd. v. State of Jharkhand [2003] 131 STC 667: (2003) 2 STJ 73 wherein the division Bench was in seisin of the matter pertaining to grant of exemption issued by the erstwhile State of Bihar in the State of Jharkhand. The learned Chief Justice speaking for the court has stated thus :

"4..... On the question of enforce ability of 1995 policy resolution, our view is that even in 1995 itself, when undivided State of Bihar was in existence, the State Government's intention was to grant incentive with respect of the payment of sales tax under the Bihar Finance Act, 1981. 1995 Policy resolution did not contain or carry any explicit or implied indication that the State Government intended to grant any exemption with respect to the transaction in the nature of inter-State sale of goods. In other words, what the Government of Bihar (in 1995) promised in the aforesaid 1995 policy resolution was that insofar as the intra-State sale is concerned, there would be exemption on payment of sales tax for the purchase of raw material, but insofar as the inter-State sale is concerned, no such exemption intention could be gathered or inferred from 1995 Policy resolution nor was it permissible under the Bihar Finance Act, 1981. This apart, we have also very strong doubts whether the 1995 Policy resolution by itself can be termed to be "law" either within the scope and ambit of Section 2(f) of the Act or even otherwise. We are saying so, because on the touch-stone of Section 84 read with Section 86 of the Act, without the issuance of the requisite statutory notification (under the provisions of Bihar Finance Act, 1981), the policy resolution of 1995 by itself was not even enforceable or implementable. What was enforceable and implementable was the statutory notification. The policy resolution actually was translated into the statutory notification by the issuance of S.O. No. 478. The policy resolution of 1995 thus culminated into and merged with the statutory notification being S.O. No. 478 and once the statutory notification was issued, the policy resolution faded into oblivion and got eclipsed totally. What, therefore, is enforceable in law in terms of Section 84 of the Act read with Section 86 is the statutory notification being S.O. No. 478 and the statutory notification providing only for the exemption with respect to such sale transactions which have intra-State connotation, with respect to inter-State sales, the exemption cannot be claimed or granted in favour of the petitioners."

15. In the case at hand, the State of Chhattisgarh has adapted the notification. The same adaptation is in consonance with law and also what has been said by the High Court of Patna in the case of Swam Rekha Cokes [2003] 129 STC 188. Thus, it cannot be said that the State of M.P. would be bound by it as that would be amounting to entrenching upon a different statute as a sale effected in the State of M.P. by a dealer of Chhattisgarh, it will be inter-State sale.

16. Now, we shall proceed to deal with the concept of promissory estoppel. Be it

noted that the State of M.P. had issued a notification for its own territory. Under Article 3 of the Constitution of India the Parliament can form new States. By operation of law, namely, Re-organisation Act, 2000 two States came into being. Once two States come into being the law has to prevail. If a dealer sells goods in the State of M.P. indubitably it would be inter-State sale and not intra-State sale. When the law operates or comes into effect any promise is given by any authority contrary to law has to succumb. The same cannot be allowed to have any play.

17. As far as the plea of legitimate expectation is concerned it has its own confines and boundaries. The legitimate expectation cannot travel beyond law, more so, fiscal law. The principles that abrogate the conception of promissory estoppel, in our considered opinion, would apply as *mutatis mutandis* to the concept of legitimate expectation. Hence, the said proponement does not impress us.

18. In view of our preceding analysis we do not find any error of law in the order passed by the learned single Judge and treat it to be absolutely impeccable and presentable.

19. Consequently, both the appeals, being devoid of merit, stand dismissed. However, in the peculiar facts and circumstances of the case there shall be no order as to costs.