
(1990) 04 RAJ CK 0013
In the Rajasthan High Court
Case No : C.W.P. No. 867 of 1989

Mahesh Chand Goyal and Another

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 05-04-1990

Acts Referred:

Rajasthan Sales Tax Act, 1954 — Section 4(2)

Citation : (1990) 78 STC 51

Hon'ble Judges : S.S. Byas, J

Bench : Single Bench

Advocate : V.K. Singhal, S.L. Sharma and R.B. Mathur, for the Appellant; G.S. Bapna, for the Respondent

Judgement

S.S. Byas, J.—Since these four writ petitions are identical in nature and raise common question for consideration, they were heard together and are decided by a common judgment.

2. Facts are not in dispute and may briefly be recapitulated. The petitioners are industrial units and one of them started its production in February, 1986, while the others started their productions in May or September, 1987. Sunshine Electro Private Limited in Writ Petition No. 1340 of 1989 submitted an application in form "A" on February 5, 1988, for sales tax exemption under the Incentive Scheme notified by the State Government on May 23, 1987. The remaining three petitioners submitted their applications in form "A" under the aforesaid scheme in June or August, 1987. The Screening Committee granted eligibility certificate to them in 1988. Sunrise Rubber Industries Limited, petitioner in Writ Petition No. 1222 of 1989 was granted the eligibility certificate on May 4, 1988, Shri Laxmi Cement Private Limited on May 4, 1989, Rajdhani Associates Private Limited on February 12, 1988 and Sunshine Electro Private Limited on June 2, 1989. The tax concession under the aforesaid notification was thereafter granted to them from the aforesaid dates on which the eligibility certificates were issued by the Screening Committee. It is contended that the tax concession should have

been granted to them under the aforesaid Incentive Scheme from the dates the petitioners submitted their applications in form "A" under Clause 7(a) to the Screening Committee. Reliance in support of the contention was placed on *Om Shiv Shakti Cement Pvt. Ltd. v. State of Rajasthan* [1989] 72 STC 437 SC, decided by a Division Bench of this Court on September 28, 1988 and it was contended that all these four writ petitions are squarely covered by the aforesaid judgment.

3. The petitions were opposed by the respondents. It was contended that in Clause 7, a new Sub-clause (d) was added, inserted and introduced on February 5, 1988. This sub-clause lays down that the benefit of the Incentive Scheme shall be available from the date of issue of the eligibility certificate. The eligibility certificates were issued to the petitioners and the benefit of the Incentive Scheme was extended to them from the date of the issue of the eligibility certificate.

4. Learned counsel for the respondents had the fairness to concede that in case Clause 7(d) of the Incentive Scheme is not applicable, the cases are squarely covered by the judgment rendered in *Om Shiv Shakti Cement Pvt. Ltd.* [1989] 72 STC 437 (Raj).

Clause 7(d) reads as under :

"7. Grant of eligibility certificate.--

(a) to (c).....

(d) The benefit of the incentive scheme shall be available from the date of issue of the eligibility certificate."

5. This Sub-clause (d) was inserted and introduced by the notification issued on March 3, 1988. The question which arises for consideration is whether the said sub-clause is retrospective or prospective in nature. It was argued by Mr. Singhal, learned counsel for the petitioners, that the aforesaid sub-clause is prospective and does not govern the applications already submitted on or before February 5, 1988, or March 3, 1988. Since all the applications were submitted before February 5, 1988, the aforesaid sub-clause cannot be made applicable to them. It was, on the other hand, contended by Mr. Bapna, learned counsel for the respondents, that the aforesaid Sub-clause (d) is retrospective and as such the applications filed by the petitioners for the benefit of the Incentive Scheme will be governed by it. I have taken the respective submissions into consideration.

6. The State Government by the notification issued on May 23, 1987, framed the Incentive Scheme. There are various forms of delegated legislation. Notification is one of them if issued by the State Government in exercise of the power granted to it by the parent Act. The Incentive Scheme was introduced by the State Government in exercise of the powers conferred on it by Sub-section (2) of Section 4 of the Rajasthan Sales Tax Act, 1954. The Incentive Scheme was thus framed by the State Government under the delegated legislation.

7. On page 850 of N.S. Bindra's "The Interpretation of Statutes", such a matter has been dealt with as under :

"Executive rules not retrospective.--A legislature can certainly give retrospective effect to pieces of legislation passed by it but an executive Government exercising subordinate and delegated powers cannot make legislation retrospective in effect unless that power is expressly conferred. The rule-making authority does not possess plenary power to give the subordinate delegated legislation retrospective operation unless and until that power is expressly conferred by the parent enactment. Hence, the rule is well-established that even in a case where the executive Government, acts as a delegate of legislative authority, it has no plenary power to provide for retrospective operation unless and until that power is expressly conferred by the parent enactment."

8. It is also well-settled that a fiscal provision cannot by construction be regarded as retrospective except where the statute containing it expressly makes it retrospective.

9. Keeping the aforesaid principles in view, it can be confidently said that Clause 7(d) has no retrospective effect. The said sub-clause is not retrospective in operation and does not govern the applications submitted before it was inserted or introduced in Clause 7.

10. The language used in Sub-clause (d) also does not show that it was inserted with retrospective effect. Clause 7(d) is, therefore, prospective and cannot be applied to the applications submitted by the industrial units under the Incentive Scheme. The applications filed before the insertion and enforcement of the aforesaid sub-clause cannot be dealt with under it.

11. Since Clause 7(d) of the Incentive Scheme is not retrospective in nature, the judgment rendered in the case of Om Shiv Shakti Cement Pvt. Ltd. and Others Vs. The State of Rajasthan and Others, squarely covers the three writ petitions. These three writ petitions should, therefore, be allowed.

12. A few words may be added in respect of Civil Writ Petition No. 867 of 1989 (Mahesh Chand and another v. State of Rajasthan). The petitioners submitted the application in form "A" on August 27, 1987. Their application was dismissed by the Screening Committee. The petitioners filed a writ petition against the action of the Screening Committee and that writ petition was dismissed on September 21, 1988, with the observations that in case the petitioners filed I.S.I. certificate before the Screening Committee, their application could then be considered. The I.S.I. certificate was filed on January 21, 1989. The application filed by the petitioners in form "A" was, therefore, defective and the defect was removed only on January 21, 1989, when the I.S.I. certificate was filed. It would be, therefore, taken that these petitioners submitted the application in form "A" under Clause 7(a) of the Incentive Scheme on January 21, 1989. They are, therefore, entitled to get the eligibility certificate with effect from January 21, 1989 and not prior to it. The writ petition filed by these petitioners has,

therefore, no merit and should be dismissed. In the result, the three writ petitions (1) S.S. Bang and another v. State of Rajasthan and others (S.B. Civil Writ Petition No. 1222 of 1989), (2) Suresh Chand Rathi and another v. State of Rajasthan and others (S.B. Civil Writ Petition No. 1340 of 1989) and (3) Rajdhani Associates Private Limited and another v. State of Rajasthan and others (S.B. Civil Writ Petition No. 3810 of 1989) are allowed and it is declared that the eligibility certificates that have been issued to the petitioners under the Incentive Scheme would be operative with effect from the dates of the applications submitted by the petitioners and not with effect from the dates of issuance of the said certificates. The petitioners are entitled to exemption from tax under the Incentive Schemes on the basis of the eligibility certificates with effect from the date of submission of the applications and the assessment orders passed by the assessing authority u/s 7-B of the Rajasthan Sales Tax Act and u/s 9 of the Central Sales Tax Act read with Section 7-B of the Rajasthan Sales Tax Act in respect of the period subsequent to the date of submission of the applications for grant of the eligibility certificates and the demand notices issued by the assessing authorities for the recovery of the tax assessed under the assessment orders are quashed.

14. Writ Petition No. 867 of 1989 (Mahesh Chand Goyal and another v. State of Rajasthan and others) is hereby dismissed.

14. The parties are left to bear their own costs in all these writ petitions.