
(2012) 11 RAJ CK 0046

In the Rajasthan High Court

Case No : Civil Writ Petition No. 5166 of 1998

Maiden Trading Co. Pvt. Ltd.

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 22-11-2012

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : AIR 2013 Raj 118

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : S.S. Hasan, for the Appellant; Anant Bhandari, Deputy Government Counsel, for the Respondent

Final Decision : Allowed

Judgement

Mohammad Rafiq, J.—This writ petition has been filed by Maiden Trading Company Private Limited inter alia with prayer that notification dated 28-02-1998 (Annexure 8) and letter dated 22-05-1998 (Annexure 10) may be quashed and set aside being barred by doctrine of promissory estoppel, and respondents be directed to grant subsidy as per Scheme of 1990 in view of Annexures 3, 4 and 6. Shri S.S. Hasan, learned counsel for petitioner has argued that petitioner purchased a plot by participating in an auction bid on 13-03-1997. This was plot No. F-1093 situate in Industrial Area, Bhiwadi, District Alwar. At that time, name of the petitioner-company was M/s. Sapphire Metal Private Limited. Subsequently, its name was changed to M/s. Maiden Trading Company Private Limited. Mutation of aforesaid land was attested in the name of petitioner by order dated 15-07-1997. Petitioner-company as per Central Government notifications issued from time to time was a small scale industrial unit. It was thus granted status of a small scale industrial unit as its annual capacity was of 3000 tones and it being SSI 100% export oriented unit as per certificate bearing Block Code 13 and District Code 02, State Code 17 issued by the Assistant Director, District Industries Centre, Bhiwadi. As per para 3 of the notification

dated 07-06-1994 also, status of the petitioner-company was not changed whereby certain amendments were made in the State Capital Investment Subsidy Scheme and the unit which was 100% export oriented and was engaged in tissue culture and floriculture with 20% of the eligible fixed capital investment or Rs. 25 lacs, whichever is less, were made eligible for subsidy. Petitioner-company qualified those requirements. Petitioner-company having made investment in plant and machinery valued at rupees one crore twenty seven lacs started its production on 14-01-1998. The Central Government, with a view to ascertaining as to which of the ancillary and small scale industrial undertakings were in need of supportive measures, exemption or other favourable treatment under the Industries (Development and Regulation) Act, 1951, and so as to enable them to maintain their viability and strength and for promoting in a harmonious manner the industrial economy of the country and arresting the problem of unemployment and securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common goods, issued an Order No. S.O. 857 (E) dated 10-12-1997. The Central Government in its policy to give incentive and boost to the industrialization, announced "Subsidy Scheme for Industries under New Industrial Policy, 1990". This scheme intended to extend several concessions and incentive facilities so as to encourage the entrepreneurs to set up their industries in Rajasthan. According to the said scheme, subsidy was available to new industrial units coming in commercial production on or after 01-04-1990. According to the petitioner-company, the petitioner being a SSI unit was entitled to rupees twenty lacs of subsidy as per the scheme, because of its eligible fixed capital investment within prescribed limit. District Level Committee in its meeting held on 21-01-1998 recommended for grant of subsidy to the petitioner-company as per the scheme then in vogue.

2. Shri S.S. Hasan, learned counsel for petitioner argued that the respondents arbitrarily relied on a subsequent Notification dated 28-02-1998, whereby Clause 2 of the Scheme sought to reduce the expenditure of capital investment from rupees three crores to rupees sixty lacs. Respondents illegally by their letter dated 22-05-1998, conveyed to the petitioner that since its capital investment exceeded the amount of Rs. 60,00,000/-, in terms of subsequent notification dated 28-02-1998, petitioner-company was not entitled to subsidy. Learned counsel argued that subsequent issued notification dated 28-02-1998 could not have been retrospectively applied to petitioner, particularly when already its case was recommended by the District Level Committee. Petitioner acting on the scheme promulgated by the respondent State, altered its provision and made huge investments. Respondents were therefore estopped by application of promissory estoppel from altering their position and going back upon their promise. Change in eligibility criteria by notification dated 28-02-1998 would only apply prospectively. It was therefore prayed that writ petition be allowed.

3. Shri S.S. Hasan, learned counsel for petitioner, in support of his case, relied on the judgments of the Supreme Court in Nizam Sugar Factory Limited v. Collector

of Central Excise, (2003) 11 SCC 757 , Tata Motors Ltd. Vs. State of Maharashtra and Others, , R.C. Tobacco Pvt. Ltd. and Another etc. Vs. Union of India (UOI) and Others, , Vice Chancellor, M.D. University, Rohtak Vs. Jahan Singh, , Southern Petrochemical Industries Co. Ltd. Vs. Electricity Inspector and E.T.I.O. and Others, : MRF Ltd., Kottayam Vs. Assistant Commissioner (Assessment) Sales Tax and Others, , Sangam Spinners Vs. Regional Provident Fund Commissioner-I, : and U.P. Power Corporation Ltd. and Another Vs. Sant Steels and Alloys (P) Ltd. and Others, . Learned counsel for petitioner further relied on the judgments of this Court in J.K. Industries Ltd. Vs. Union of India (UOI) and Others, , Union of India (UOI) Vs. J.K. Industries Ltd., , J.K. Udaipur Udyog Ltd. Vs. State of Rajasthan and Others, , J.K. Udaipur Udyog Ltd. Vs. State of Rajasthan and Others, , Alora Arc Steels Pvt. Ltd. Vs. State of Rajasthan and Others, and Alfa Cymex Technologies Ltd. Vs. State of Rajasthan and Others, .

4. Shri Anant Bhandari, learned Deputy Government Counsel, argued that the State Government had issued a notification dated 07-06-1994 by which it sought to amend the State Capital Investment Subsidy Scheme for New Industries, 1990, whereby Clause 5(B) was substituted and the percentage of subsidy payable to SSI Units based on resources available in the stage was increased from 15% to 20% or Rs. 20 lacs whichever is less. As regards hundred percent export oriented units, in tissue culture and floriculture, percentage of subsidy available to such units was increased from 15% to 20% of the eligible fixed capital investment of Rs. 25 lacs, whichever is less. The scheme of 1990 was extended upto 31-03-1997. It was contended that the petitioner-company was registered as SSI unit because as per the order of the Central Government dated 10-12-1997, an industrial unit having investment in fixed assets and plant and machinery not exceeding Rupees three crores, would be regarded as SSI units. Initially, the incentive scheme of 1990 was made available to both the medium and large scale industries as well as small scale and ancillary industrial units having 100% export orientation, but subsequently the State Government realized that it has achieved little purpose by extending such benefits to medium and large scale industries. It therefore decided to discontinue such benefits to them. Thus, by notification dated 22-09-1997, the Government amended the scheme whereby benefit of scheme was directed to be made available only to genuine small scale industries. According to the said notification, rate of subsidy for the general category and other SSI units was reduced from earlier 20% to 15% of the eligible fixed capital investment or Rs. 15 lacs whichever is less. However, the rate of subsidy for 100% export oriented units and SSI units engaged in tissue culture and floriculture was maintained at 20% as eligible fixed capital investment or Rs. 20 lacs, whichever is less.

5. Shri Anant Bhandari, learned Deputy Government counsel further argued that since the investment made by the petitioner unit in its plant and machinery was Rs. 1.27 crore which was far exceeding the limit of sixty lacs rupees as per scheme amended vide notification dated 22-09-1997, it was not entitled to the said benefit. It is argued that principle of promissory estoppel cannot be held to

apply to the facts of the present case because the respondents never held out any representation to the petitioner nor did they in any manner encourage the petitioner for making investment on the assurance of grant of subsidy or incentive. It is therefore prayed that the writ petition be dismissed.

6. I have given my anxious and thoughtful consideration to rival submissions and perused the material on record.

7. Admittedly, in the present case, when the petitioner made investments for setting up the industry, the Scheme of 1990 was in vogue. At that time, despite its making investment of Rs. 1.27 crore, it was registered as SSI unit by the Assistant Director (Industries), District Industries Centre, Bhiwadi. It was also regarded as a small scale industry by the Central Government. What is also not disputable is the fact that the District Level Committee in its meeting held on 21-01-1998 resolved to grant benefit of subsidy to the petitioner. Minutes of the meeting are on record at Annexure-7. Name of petitioner industry is mentioned in the Schedule appended to the minutes of the meeting in Part B under the caption of self-financed declared industries at Serial No. 1. It was held to be hundred percent export oriented unit with investment of 1.27 crore in plant and machinery and therefore, it was held entitled to subsidy of Rs. 20 lacs.

8. The Supreme Court in *Tata Motors Ltd. Vs. State of Maharashtra and Others*, , held the retrospective operation of a provision depriving the assessee of the vested statutory right and covering a long period of eight years to be unreasonable and struck down the same as being unconstitutional. It was held that retrospective withdrawal of the benefit of setoff only for a particular period should be justified on some tangible and rational ground, when challenged on the ground of unconstitutionality. In *Southern Petrochemical Industries Co. Ltd. Vs. Electricity Inspector and E.T.I.O. and Others*, , it was held by the Supreme Court that it cannot be accepted that exemption from tax is a mere concession defensible 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 the appellants permanently. Thus, when a right is accrued or vested, the same can be taken away only by reason of a statute and not otherwise.

9. In *MRF Ltd., Kottayam Vs. Assistant Commissioner (Assessment) Sales Tax and Others*, , under challenge was the statutory notification exempting earlier notification and thereafter adversely affecting the rights that were already accrued. The Government in that case itself recognized the benefit of tax exemption for a period of seven years on fulfillment of prescribed conditions by the concerned industrial unit, which had actually obtained the eligibility certificate and after commencement of commercial production, was granted eligibility certificate and exemption order was passed in its favour. Subsequently, the State Government issued another notification excluding the formation of a compound rubber from the definition of "manufacture" for the purpose of the "original exemption notification". In those facts, it was held by the Supreme

Court that the impugned action on the part of the State Government is highly unfair, unreasonable, arbitrary and, therefore, the same is violative of Art. 14 of the Constitution of India. Action of the State cannot be permitted to operate if it is arbitrary or unreasonable. Equity that arises in favour of a party as a result of a representation made by the State is founded on the basic concept of "justice and fair play". The attempt to take away the said benefit of exemption with effect from an earlier date and thereby deprive MRF of the benefit of exemption for more than 5 years out of a total period of 7 years was held to be highly arbitrary, unjust and unreasonable. It was held that the State Government has no power to make a retrospective amendment affecting rights already accrued to MRF thereunder.

10. In *Sangam Spinners Vs. Regional Provident Fund Commissioner-I*, it was held by the Supreme Court that it is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have retrospective effect. The absence of a saving clause in a new enactment preserving the rights and liabilities under the repealed law is neither material nor decisive. Unless a different intention appears, the repeal shall not affect any right, privilege or liability acquired, accrued or incurred under the enactment repealed. The appellant in that case was held entitled to exemption for a period of three years from the date of production as per incentive scheme.

11. In *U.P. Power Corporation Ltd. and Another Vs. Sant Steels and Alloys (P) Ltd. and Others*, it was held by the Supreme Court that the general principle that emerges is that once a representation has been made by one party and the other party acts on that representation and makes investment and thereafter the other party resiles, such act cannot be stated to be fair and reasonable. When the State Government makes a representation and invites the entrepreneurs by showing various benefits encouraging them to make investment by way of industrial development of the backward areas or the hill areas, and thereafter the entrepreneurs on the representations so made bona fide make investment and thereafter if the State Government resiles from such benefits, then it certainly is an act of unfairness and arbitrariness.

12. In *J.K. Industries Ltd.*, supra, this Court held that Government, giving excise duty concession to petitioner establishing factory by investing huge money, cannot revoke concession on principle of promissory estoppel. In *Union of India (UOI) Vs. J.K. Industries Ltd.*, this Court, while dealing with question of unilateral revocation of benefit granted earlier, held that it cannot be allowed in view of doctrine of promissory estoppel and notification was held to be bad in law.

13. In *J.K. Udaipur Udyog Ltd.*, supra, this Court in a case where 100% exemption was granted from sales tax by State notification dated 07-04-1998 and accordingly State Level Selection Committee granted eligibility but by way of corrigendum dated 30-09-1999, the exemption was reduced to 25%, held that such corrigendum is amendment and therefore can apply only prospectively and

the petitioner was held entitled to relief as per the original scheme upto 07-01-2000 and as per the amended scheme thereafter. In J.K. Udaipur Udhog Ltd., supra, a Division Bench of this Court held that notification is an amendment of the scheme and amendment shall operate prospectively and power to issue notification with common objective cannot have retrospective operation in part and prospective operation at the same time. In Alora Arc Steels Pvt. Ltd., this Court held that petitioner cannot be deprived of such benefit with retrospective effect and cannot be asked to pay back such amount of tax which it never collected from its customers and availed the same as exemption from the sale tax under the eligibility certificate granted in its favour.

14. In view of the position of law discussed above, it is clear the State in the present case having once held out the representation to the petitioner and encouraged the petitioner to set up an industry by making investment up to Rs. 1.27 crore on the assurance of grant of subsidy or incentive, which was 100% export oriented SSI Unit to the extent of 20% of the eligible fixed capital investment or Rs. 20 lacs, whichever is less and accordingly the petitioner-company acting on such representation held out to it by the aforesaid incentive scheme altered its position by making investments and State authorities cannot be thereafter permitted to resile from their stand as the District Level Committee had already on scrutiny held the petitioner industrial unit entitled to subsidy of Rs. 20 lacs on satisfying itself about eligibility. In that view of the matter, the State authorities would be estopped by doctrine of promissory estoppel from going back upon their promise as the action of the respondents must be held to be illegal, arbitrary and unreasonable and against the concept of fair play and justice.

15. Writ petition therefore deserves to succeed. It is accordingly allowed. Respondents are directed to pay to petitioner subsidy in the sum of Rs. 20.00 lacs along with interest thereon at the rate of 6% per annum. Compliance of the order be made within three months.